



Brussels, 18.5.2016
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COMMISSION DELEGATED REGULATION (EU) .../...

of 18.5.2016

supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The 2013 reform of the Common Agricultural Policy (the "CAP") confirmed that the system of public intervention and aid for private storage should continue as the main market measures of the CAP laid down in the Regulation on the common organisation of the markets in agricultural products (the CMO Regulation).

As a consequence of successive reforms of the CAP, public intervention and aid for private storage can now be seen as "safety net" measures that are only relevant when there is a market crisis.

Many of the management rules laid down in Commission implementing regulations have not been updated and therefore do not fully reflect what is likely to be necessary in the future, particularly in terms of simplicity of operation and an acceptable administrative burden for operators and Member States. Therefore, the previous implementing regulations on public intervention and aid for private storage need to be repealed and replaced by simplified rules that are aligned with the Treaty of Lisbon and the empowerments contained in the relevant basic acts. Moreover, in line with the objective of reducing the number of legal acts, the currently separate legal regulations covering public intervention and aid for private storage are being merged into one delegated and one implementing act.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission discussed the draft Delegated Act with experts nominated by the Member States in meetings of the CMO Expert Group during the period February to July 2015 and took account of the views and positions expressed during these consultations.

In the period March 2014 to April 2015, the provisions on public intervention and aid for private storage laid down in existing Commission Implementing Regulations and the issues arising from them were discussed extensively with the experts of the Member States using the open working method developed by the Task Force to coordinate the alignment of existing CMO Regulations.

The experts of the European Parliament were informed about all those discussions and invited to all the meetings.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act supplements the basic act as regards the conditions on eligibility of products for the schemes taking account of the different nature of the products and in respect of public intervention on the buying-in and reselling of eligible products by the paying agencies of the Member States, including on the conditions to be fulfilled by the storage places in order to ensure the safe storage of the products. In order to protect legitimate expectations of producers, the delegated act provides for updated requirements relating to the eligibility of cereals for public intervention to apply as from the 2017/18 cereals marketing year.

In order to facilitate management and control of the system, the delegated act lays down rules for the eligibility of operators participating in the schemes

In order to ensure the seriousness of offers or tenders for the schemes, the delegated act contains requirements relating to the lodging of a security to participate in the schemes and

lays down rules on the release or forfeiture of such securities; and lays down provisions on penalties in respect of aid for private storage.

Finally, the delegated act repeals existing Commission Regulations on public intervention and aid for private storage.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007¹, and in particular Articles 19(1), (2), (3), (4)(a) and (5) and 223(2)(a) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008², and in particular Articles 64(6) and 66(3)(c) and (e) thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 replaced Council Regulation (EC) No 1234/2007³ and lays down new rules regarding public intervention and aid for private storage. It also empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the public intervention and aid for private storage schemes in the new legal framework, certain rules have to be adopted by means of such acts.
- (2) Article 11 of Regulation (EU) No 1308/2013 provides that public intervention applies in respect of common wheat, durum wheat, barley, maize, paddy rice, fresh or chilled meat of the beef and veal sector, butter and skimmed milk powder, in accordance with the conditions set out in that Regulation and additional requirements determined by the Commission.
- (3) Article 17 of Regulation (EU) No 1308/2013 provides that aid for private storage may be granted for white sugar, olive oil, flax fibre, fresh or chilled meat of bovine animals aged eight months or more, butter, cheese, skimmed milk powder, pigmeat, or sheepmeat and goatmeat in accordance with the conditions set out in that Regulation and additional requirements determined by the Commission.

¹ OJ L 347, 20.12.2013, p. 671.

² OJ L 347, 20.12.2013, p. 549.

³ 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) (OJ L 299, 16.11.2007, p. 1).

- (4) In order to simplify and improve the effectiveness of the management and control mechanisms related to the public intervention and aid for private storage schemes, common rules for all the eligible products should be laid down.
- (5) As a general rule, in order to facilitate management and control, participation in the public intervention and aid for private storage schemes should be allowed only to operators established and registered for VAT purposes in a Member State.
- (6) In order to provide for effective control of the production of olive oil and sugar, operators eligible for aid for private storage should fulfil additional conditions.
- (7) Since products covered by public intervention and aid for private storage have a different nature as to production or harvest time and storage requirements, specific conditions of eligibility for each product should be provided for. In order to give the operators the time to adapt to the new system, some conditions should be applicable only from the 2017/18 marketing year with regard to cereals.
- (8) In order to guarantee the seriousness of the offer or tender or application and to ensure that the measure will have the desired effect on the market, both in the case of intervention buying-in, sales and disposal under the scheme for the most deprived in the Union, and in respect of aid for private storage, requirements relating to the lodging of a security should be laid down.
- (9) Provisions should also be laid down for the release and forfeiture of the security for intervention buying-in, sales and disposal under the scheme for the most deprived in the Union, and in respect of aid for private storage.
- (10) In respect of intervention sales, the tendering procedure can take place properly only if genuine tenders are submitted. To achieve that objective, it should be required that the security be released subject to the payment of the selling price within the time limit laid down.
- (11) In order to ensure that the public intervention scheme operates as simply and efficiently as possible throughout the Union, as regards the buying-in of eligible products on the one hand and the selling of products taken over by paying agencies on the other hand, the storage places should fulfil certain conditions.
- (12) It is necessary to provide that the paying agencies in charge of public intervention in the Member States, in accordance with Commission Delegated Regulation (EU) No 907/2014⁴, ensure that those conditions relating to the storage places are complied with.
- (13) In the event that the allocation of beef for buying-in exceeds the cold storage capacity available in a Member State, it is necessary to provide for the possibility for a Member State to utilise cold storage capacity in another Member State.
- (14) In order to ensure that aid for private storage is managed efficiently, specific rules related to the payment of the aid for private storage should be laid down.
- (15) As the aim of this Regulation and the implementing act to be adopted in respect of public intervention and private storage is to simplify and adapt the provisions applicable to the products covered by public intervention and aid for private storage to

⁴ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

the new legal framework established by Regulation (EU) No 1308/2013 and Council Regulation (EU) No 1370/2013⁵, it should replace the provisions contained in Commission Regulations (EEC) No 3427/87⁶, (EEC) No 2351/91⁷, (EC) No 720/2008⁸, (EC) No 826/2008⁹, (EC) No 1130/2009¹⁰, (EU) No 1272/2009¹¹ and (EU) No 807/2010¹². For the sake of clarity, those latter Regulations should therefore be repealed,

HAS ADOPTED THIS REGULATION:

Chapter I

Introductory provision

Article 1

Scope

This Regulation lays down rules supplementing Regulation (EU) No 1308/2013 as regards:

- (a) the buying-in and selling from public intervention of products listed in Article 11 of that Regulation; and
- (b) the granting of aid for private storage for products listed in Article 17 of that Regulation.

Chapter II

General rules

Article 2

Eligibility of operators

1. Operators shall be established and registered for VAT purposes in the Union in order to submit:
 - (a) an offer or a tender for the buying-in, or a tender for the selling, of products under public intervention; or

⁵ Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (OJ L 346, 20.12.2013, s. 12).

⁶ Commission Regulation (EEC) No 3427/87 of 16 November 1987 laying down detailed rules for intervention on the market in rice (OJ L 326, 17.11.1987, p. 25).

⁷ Commission Regulation (EEC) No 2351/91 of 30 July 1991 laying down detailed rules applicable on the purchase of rice held by an intervention agency for the supply of food aid (OJ L 214, 2.8.1991, p. 51).

⁸ Commission Regulation (EC) No 720/2008 of 25 July 2008 laying down common detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the storage and movement of products bought in by a paying agency or an intervention agency (codified version) (OJ L 198, 26.7.2008, p. 17).

⁹ Commission Regulation (EC) No 826/2008 of 20 August 2008 laying down common rules for the granting of private storage aid for certain agricultural products (OJ L 223, 21.8.2008, p. 3).

¹⁰ Commission Regulation (EC) No 1130/2009 of 24 November 2009 laying down common detailed rules for verifying the use and/or destination of products from intervention (OJ L 310, 25.11.2009, p. 5).

¹¹ Commission Regulation (EU) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention (OJ L 349, 29.12.2009, p. 1).

¹² Commission Regulation (EU) No 807/2010 of 14 September 2010 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Union (OJ L 242, 15.9.2010, p.9).

- (b) a tender for aid for private storage or an application for aid for private storage fixed in advance.
- 2. In the case of buying-in of beef, only the following operators referred to in paragraph 1 may submit tenders:
 - (a) slaughterhouses for bovine animals approved in accordance with Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council¹³;
 - (b) livestock or meat traders who have slaughtering undertaken therein on their own account.
- 3. In the case of aid for private storage, only the following operators referred to in paragraph 1 may apply or submit tenders:
 - (a) in the olive oil sector, operators who fulfil the requirements laid down in Annex VII;
 - (b) in the sugar sector, operators who are sugar manufacturers.

Article 3

Eligibility of products

- 1. Products shall be of sound, fair and marketable quality and meet the requirements laid down in Regulation (EU) No 1308/2013.
- 2. In the case of buying-in, products shall fulfil the requirements laid down as follows:
 - (a) for cereals: in Annex I to this Regulation;
 - (b) for rice: in Annex II to this Regulation;
 - (c) for beef: in Annex III to this Regulation;
 - (d) for butter: in Parts I and II of Annex IV to this Regulation and Article 21 of Commission Implementing Regulation (EU) 2016/xxx¹⁴;
 - (e) for skimmed milk powder: in Parts I and II of Annex V to this Regulation and Article 21 of Implementing Regulation (EU) 2016/xxx.

In addition, butter and skimmed milk powder must have been produced in an undertaking approved in accordance with Part III of Annex IV or Part III of Annex V to this Regulation, respectively.

- 3. In the case of aid for private storage, products shall fulfil the requirements laid down in Annex VI to this Regulation.

Article 4

Security

Operators shall lodge a security in favour of the relevant paying agency in accordance with Section 2 of Chapter IV of Delegated Regulation (EU) No 907/2014 when:

¹³ 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 (OJ L 139, 30.4.2004, p. 55).

¹⁴ Commission Implementing Regulation (EU) 2016/xxx of [...] laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage (OJ [...]).

- (a) submitting an offer or a tender for the buying-in or sale of intervention products, or the disposal of such products under the scheme for food distribution for the most deprived in accordance with Article 16(2) of Regulation (EU) No 1308/2013;
- (b) submitting a tender or an application for aid for private storage unless an Implementing Regulation opening the tendering procedure or fixing the amount of aid in advance as referred to in Implementing Regulation (EU) 2016/xxx provides otherwise.

Article 5

Release and forfeiture of security

1. The security provided for in Article 4 shall be released where a tender, offer or application is inadmissible or has not been accepted.
2. In the case of intervention buying-in, the security shall be released when:
 - (a) the operator has delivered the quantity indicated by the final date for delivery set out in the delivery order referred to in Article 17 of Implementing Regulation (EU) 2016/xxx; and
 - (b) conformity with the product eligibility requirements referred to in Article 3 of this Regulation has been established; or
 - (c) an allocation coefficient as referred to in Article 11(1)(b) of Implementing Regulation (EU) 2016/xxx is applied. In that case, the amount of the released security shall correspond to the quantity not accepted; or
 - (d) the offer is withdrawn by an operator to whom an allocation coefficient as referred to Article 11(1)(b) of Implementing Regulation (EU) 2016/xxx applies.
3. In the case of sale of intervention products, the security shall be released:
 - (a) for unsuccessful operators, after the decision referred to in Article 32(1) or 36(2) of Implementing Regulation (EU) 2016/xxx has been taken;
 - (b) for successful operators, in respect of the quantities for which payment has been made in accordance with Article 35 of Implementing Regulation (EU) 2016/xxx;
 - (c) where the obligations relating to the disposal of products under the scheme for food distribution for the most deprived have been met.
4. In the case of aid for private storage, the security shall be released when:
 - (a) an allocation coefficient as referred to in the first subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/xxx is applied. In that case, the amount of the released security shall correspond to the quantity not accepted;
 - (b) the tender is withdrawn by the reason of fixing of an allocation coefficient as referred to in the second subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/xxx;
 - (c) the contractual obligations in respect of the contractual quantity have been fulfilled.
5. The security referred shall be forfeit where the offer, tender or application is:

- (a) withdrawn by reasons other than fixing of an allocation coefficient pursuant to Article 11(1)(b) or the first subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/xxx; or
 - (b) amended after submission.
6. In the case of intervention buying-in, the security shall be forfeit where:
- (a) the products do not conform with the requirements referred to in Article 3 in respect of the quantities not accepted;
 - (b) except in cases of *force majeure*, the operator fails to deliver the products by the final date set out in the delivery order, in proportion to the quantities not delivered and buying-in shall be cancelled in respect of those quantities.
- However, in the case of cereals, rice and beef, if the quantity actually delivered and accepted is less than the quantity specified in the delivery order, the security shall be released in full where the difference is not more than 5 %.
7. In the case of sale of intervention products, except in cases of *force majeure*, the security shall be forfeit:
- (a) in respect of quantities for which payment has not been made in accordance with Article 35 of Implementing Regulation (EU) 2016/xxx and the sale shall be cancelled in respect of those quantities;
 - (b) where the obligations relating to the disposal of products under the scheme for food distribution for the most deprived have not been fulfilled.
8. In the case of aid for private storage, the security shall be forfeit where:
- (a) less than 95 % of the quantities specified in the tender or application are placed in storage under the conditions provided for in Article 52(1)(a) of Implementing Regulation (EU) 2016/xxx;
 - (b) less than the percentage of the contractual quantity referred to in Article 8(1) is kept in storage, including in the case of sugar stored in bulk in the silo designated by the operator, for the period laid down in the Implementing Regulation opening the tendering procedure or fixing the amount of aid for private storage in advance;
 - (c) the time limit for placing the products into storage as referred to in Article 47(1) of Implementing Regulation (EU) 2016/xxx is not complied with;
 - (d) the checks provided for Chapter I of Title IV of Implementing Regulation (EU) 2016/xxx show that the products stored do not correspond to the quality requirements referred to in Article 3 of this Regulation;
 - (e) the requirement laid down in Article 53(3) of Implementing Regulation (EU) 2016/xxx is not complied with.

Chapter III

Specific rules related to public intervention

Article 6

Intervention storage places

1. Paying agencies shall ensure that intervention storage places ("storage places") are suitable for the storage and keeping in good condition of the products bought-in, including storage temperature, and meet the requirements referred to in Article 7.
2. During the periods when intervention buying-in is taking place, paying agencies shall publish and keep updated information concerning the storage places available in their territories.

Article 7

Requirements for storage places

1. Each storage place shall fulfil the following requirements:
 - (a) it has available the necessary technical equipment to take over the products;
 - (b) it is able to remove quantities in order to comply with the removal period indicated in Article 37(2) of Implementing Regulation (EU) 2016/xxx;
 - (c) in the case of cereals, rice, butter and skimmed milk powder, it has a minimum storage capacity as laid down in Article 3(1) of Implementing Regulation (EU) 2016/xxx.
2. The paying agencies may lay down technical standards for storage places and shall take any other measures necessary to ensure that products taken into storage are properly conserved.
3. In the case of the beef sector, the storage places shall permit:
 - (a) storage of carcasses, half carcasses and carcasses cut into quarters taken over and deboned;
 - (b) freezing of all deboned meat to be stored without further processing.

However, where deboning is not a condition of the tender, the storage place shall permit bone-in meat to be taken over.

When the cutting plant and refrigeration plant of a storage place are connected with the slaughterhouse or the operator, the paying agency shall carry out the appropriate checks in order to ensure that beef subject to intervention is handled and stored in accordance with this Regulation.

The cold stores located in the Member State exercising jurisdiction over the paying agency shall be capable of holding all beef allocated by the paying agency for at least three months under technically satisfactory conditions.

However, where there is insufficient cold storage capacity in a Member State for the allocated beef, the paying agency concerned may arrange for such beef to be stored in another Member State and notify the Commission accordingly.

Chapter IV

Specific rules related to aid for private storage

Article 8

Payment of aid for private storage

1. The aid for private storage shall be paid for the contractual quantity if the quantity stored during the contractual storage period represents at least 99 % of the contractual quantity.

However, in respect of the following products, the aid shall be paid for the contractual quantity if the quantity stored during the contractual storage period represents at least 97 % of the contractual quantity:

- (a) sugar that is stored separately from other sugar in the silo designated by the operator;
 - (b) olive oil;
 - (c) flax fibre;
 - (d) beef, pigmeat, sheepmeat and goatmeat, whereas the contractual quantity relates to the fresh meat entering the store;
 - (e) cheese;
 - (f) skimmed milk powder in "big bags" as referred to in point (c) of Part VI of Annex VI.
2. Except in cases of *force majeure*, if the quantity stored during the contractual storage period, including in the case of sugar stored in bulk in the silo designated by the operator, is less than the percentage of the contractual quantity referred to in paragraph 1, no aid shall be paid. Nevertheless, in the case of cheese, if the paying agency deems that the cheese in question was subject to natural weight loss during the storage period, this weight loss shall not lead to a reduction of the aid or the forfeiture of the security.
 3. Aid shall only be paid where the contractual storage period respects the storage period laid down in the Implementing Regulation opening the tendering procedure or fixing the amount of aid in advance.
 4. If checks during storage or on removal reveal that the products are defective, no aid shall be paid for the quantities concerned. The remainder of the storage lot eligible for aid shall be not less than the minimum quantity provided for in the Implementing Regulation opening the tendering procedure or fixing the amount of aid in advance.

The same rule shall apply where part of a storage lot or batch is removed from storage for reasons of defectiveness before the end of the minimum storage period or before the first date allowed for removal operations, where such a date is provided for in the Implementing Regulation opening the tendering procedure or fixing the amount of aid in advance.

Defective products shall not be included in the calculation of the quantity stored referred to in paragraph 1.

5. Except in cases of *force majeure*, where in respect of the total quantity stored the operator fails to respect the end of the contractual storage period, which has been fixed in accordance with Article 48(2) of Implementing Regulation (EU) 2016/xxx, the aid for the contract in question shall be reduced by 10 % for each calendar day of non-compliance.

However, this reduction shall not exceed 100 % of the aid.

6. No aid for private storage shall be paid in respect of the contract concerned where the requirement laid down in Article 53(3) of Implementing Regulation (EU) 2016/xxx is not complied with.

Chapter V

Common and final provisions

Article 9

Notifications

Member States shall notify the Commission of the approved paying agencies and quantities under the detailed conditions laid down in Chapter I of Title V of Implementing Regulation (EU) 2016/xxx.

Article 10

Repeal and transitional provisions

Regulations (EEC) No 3427/87, (EEC) No 2351/91, (EC) No 720/2008, (EC) No 826/2008, (EC) No 1130/2009, (EU) No 1272/2009 and (EU) No 807/2010 are repealed.

Articles 56(3) and 56(4) of Regulation (EU) No 1272/2009 and Part A to Annex III of Regulation (EC) No 826/2008 shall continue to apply until acts replacing Commission Regulation (EC) No 792/2009¹⁵ have become applicable.

Part II, Table IV of Part IX and point (h) of Part XI of Annex I to Regulation (EU) No 1272/2009 shall continue to apply until 30 June 2017.

Regulation (EU) No 1272/2009 shall continue to apply in respect of offers or tenders received under that Regulation before the date of entry into force of this Regulation.

Regulation (EC) No 826/2008 shall continue to apply in respect of tenders or applications received under that Regulation before the date of entry into force of this Regulation.

Article 11

Entry into force and application

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

It shall apply as from 1 October 2016. However, as regards buying-in to public intervention, Part II of Annex I shall apply from 1 July 2017.

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

¹⁵ Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 19.09.2009, p. 3).

Done at Brussels, 18.5.2016

For the Commission
The President
Jean-Claude JUNCKER