

Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 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 (Text with EEA relevance)

TITLE II

PUBLIC INTERVENTION

CHAPTER I

Specific rules related to public intervention

Article 3

Intervention storage places

1 Each intervention storage place ('storage place') shall have a minimum storage capacity of:

- a for cereals: 5 000 tonnes, 7 500 tonnes from the public intervention period 2017/18, 10 000 tonnes from the 2018/19 period, 15 000 tonnes from the 2019/20 period;
- b for rice: 5 000 tonnes, 7 500 tonnes from the public intervention period 2017/18, 10 000 tonnes from the 2018/19 period;
- c for butter and skimmed milk powder: 400 tonnes, 600 tonnes from the 2017 public intervention period, 800 tonnes from the 2018 period.

Member States with an average annual production of cereals of less than 20 million tonnes may continue to apply from the 2019/20 period a minimum storage capacity of 10 000 tonnes.

2 For the purposes of this Article, the 'minimum storage capacity' means a minimum capacity which may not be available permanently, but is readily achievable during the period when buying-in might take place.

3 A paying agency may derogate from paragraph 1 only where it demonstrates that the minimum storage capacity specified in that paragraph is not available and where the replacement storage places have ready access to a river, a sea or a railway connection.

Article 4

Establishing the eligibility of products

1 The eligibility of products for public intervention shall be established in accordance with the methods laid down in the following provisions:

- a for cereals: in Parts I, II, III and IV of Annex I;
- b for rice: in Part I of Annex II;
- c for beef: in Part I of Annex III;
- [^{F1}d for butter: in Parts I and Ia of Annex IV to this Regulation;]

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Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

[^{F1}e for skimmed milk powder: in Parts I and Ia of Annex V to this Regulation.]

[^{F12} The methods to be used to determine the quality of cereals, butter and skimmed milk powder eligible for public intervention referred to in Annexes I, IV and V respectively, shall be those established by the latest versions of the relevant European or international standards, as the case may be, in force at least 6 months before the first day of the public intervention period as defined in Article 12 of Regulation (EU) No 1308/2013.]

Textual Amendments

- F1** Substituted by [Commission Implementing Regulation \(EU\) 2018/150 of 30 January 2018 amending Implementing Regulation \(EU\) 2016/1240 as regards methods for the analysis and quality evaluation of milk and milk products eligible for public intervention and aid for private storage.](#)

CHAPTER II

Buying-in of products into intervention

Section 1

General provisions

Article 5

Minimum quantities of products offered or tendered

- 1 The minimum quantity of products offered or tendered for buying-in shall be:
- a for common wheat, barley and maize: 160 tonnes;
 - b for durum wheat: 20 tonnes;
 - c for rice: 40 tonnes;
 - d for beef: 20 tonnes;
 - e for butter: 30 tonnes;
 - f for skimmed milk powder: 30 tonnes.

Member States with an average annual production of cereals of less than 20 million tonnes may decide to apply a minimum quantity of 120 tonnes for common wheat, barley and maize.

2 A paying agency may set a minimum quantity higher than that provided for in paragraph 1 if justified by the conditions and practices of the wholesale trade or environmental rules in force in the Member State concerned.

Article 6

Level of the security for buying-in of products

The level of the security required in accordance with Article 4(a) of Delegated Regulation (EU) 2016/1238 when submitting an offer or tender for the buying-in of products into public intervention shall be:

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- (a) for cereals: EUR 20/tonne;
- (b) for rice: EUR 30/tonne;
- (c) for beef: EUR 300/tonne;
- (d) for butter: EUR 50/tonne;
- (e) for skimmed milk powder: EUR 50/tonne.

Article 7

Submission and admissibility of offers and tenders

1 An offer or tender shall be admissible if it complies with the requirements laid down in Article 2 and, in the case of a tendering procedure, in the Implementing Regulation opening the tendering procedure referred to in Article 12. It shall also meet the following conditions:

- a it includes at least the following information:
 - (i) for rice, an indication of the type and variety;
 - (ii) except for beef, the place where the product is held at the time of the offer or tender;
 - (iii) for cereals and rice, the storage place for which the offer or tender is made;
 - (iv) for cereals and rice, the year of harvest and the area or areas of production in the Union;
 - (v) for butter and skimmed milk powder, the date of production;
 - (vi) for butter and skimmed milk powder, the name and approval number of the approved undertaking in which it was produced;
- b the operator has lodged a security in accordance with Article 4(a) of Delegated Regulation (EU) 2016/1238;
- c for cereals and rice, the operator has declared:
 - (i) that the products are of Union origin;
 - (ii) that the offer or tender refers to a homogeneous lot which, for rice, must comprise paddy rice of the same variety;
 - (iii) whether any post-harvest treatment has been carried out or not, and, where appropriate, the name of the product used, that it has been applied in conformity with the conditions of use, and that the product is authorised under Regulation (EC) No 1107/2009 of the European Parliament and of the Council⁽¹⁾.

2 For products other than beef, the operator may request on the form referred to in Article 2(2) that the product be taken over at the storage place where it is held at the time the offer or tender is submitted provided that the storage place fulfils the requirements laid down in Article 7(1) of Delegated Regulation (EU) 2016/1238 and in Article 3 of this Regulation.

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Article 8

Verification of offers and tenders by the paying agency

1 The paying agencies shall decide on the admissibility of offers and tenders on the basis of the requirements laid down in Articles 2 and 7.

Where the paying agency decides that an offer or tender is inadmissible, it shall inform the operator concerned within three working days of the receipt of the offer or tender. For offers, if the operator does not receive such information, the offer is considered as being admissible.

2 As regards cereals and rice, the declarations referred to in Article 7(1)(c) may be checked for compliance by administrative means after the paying agency has verified that the offers or tenders are admissible, if necessary with the assistance of the paying agency competent for the storage place indicated by the operator, in accordance with Article 57(2).

Article 9

Notifications of offers and tenders to the Commission

1 Member States shall notify the Commission of all admissible offers and tenders within the following time limits:

- a in the case of offers, notifications shall be submitted not later than 12.00 (Brussels time) each Tuesday and shall relate to the quantities of the products which, during the preceding week, have been the subject of an admissible offer, and of the related information.

When the quantities offered approach the limits fixed in Article 3(1) of Regulation (EU) No 1370/2013, the Commission shall inform Member States as of which date they shall notify the Commission on each working day.

As from that date, Member States shall notify the Commission, not later than 14.00 (Brussels time) each working day, of the quantities offered for intervention during the preceding working day.

- b in the case of tenders, the time limits laid down in the Implementing Regulation opening the tendering procedure shall apply.

2 The notifications provided for in points (a) and (b) of paragraph 1 shall not contain the operator's name, address and VAT registration number and, in the case of butter and skimmed milk powder, the name and approval number of the approved undertaking.

3 Where a Member State does not notify the Commission of an admissible offer or tender within the time limits referred to in points (a) and (b) of paragraph 1, it shall be deemed to have notified the Commission of a nil return.

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Section 2

Buying-in at fixed price

Article 10

Submission of offers for buying-in of common wheat, butter and skimmed milk powder at fixed price

Offers may be submitted to the paying agency from the beginning of the public intervention periods laid down in Article 12 of Regulation (EU) No 1308/2013.

Article 11

Measures for respecting the quantitative limitations

1 In order to comply with the quantitative limitations fixed in Article 3(1) of Regulation (EU) No 1370/2013, the Commission shall decide as provided for in Article 3(6)(a) of that Regulation:

- a to close intervention buying-in at fixed price;
- b where acceptance of the full quantity offered would lead to the maximum quantity being exceeded, to set an allocation coefficient applicable to the total quantity in the offers received and notified to the Commission from each operator on the day of the decision;
- c where appropriate, to reject pending offers submitted to the paying agencies of the Member States.

The Commission shall decide within two working days of the notification referred to in the first subparagraph of point (a) of Article 9(1), and within five working days of the notification referred to in the third subparagraph of point (a) of Article 9(1).

For the purposes of this Article, when a date of notification is a public holiday for the Commission the counting of the deadline shall start on the first working day after that public holiday. If such public holidays are included in the time period for the Commission's decision, only working days shall be counted.

2 By way of derogation from Article 2(6), an operator to whom an allocation coefficient as referred to in point (b) of paragraph 1 applies may withdraw his offer within five working days of the date of entry into force of the decision setting the allocation coefficient.

Section 3

Buying-in via a tendering procedure

Article 12

Tendering procedure

1 A tendering procedure for the buying-in of products referred to in Article 11 of Regulation (EU) No 1308/2013 shall be opened by way of an Implementing Regulation opening the tendering procedure, which shall contain, in particular, the following information:

- a the products covered, and:

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- (i) for rice, an indication of the type and variety;
 - (ii) for beef, whether the tender is for the bought-in carcasses to be deboned or for storage without deboning;
- b the period covered ('tendering period') and, if necessary, the different sub-periods during which the tenders can be submitted.
- 2 The Commission may open a tendering procedure for buying-in of beef by category and Member State, or region thereof, as provided for in Article 13(1)(c) of Regulation (EU) No 1308/2013, on the basis of the two most recent weekly market prices recorded. The Commission may close that tendering procedure, as provided for in Article 13(2) of that Regulation, on the basis of the most recent weekly market prices recorded.
- 3 If the Commission opens a restricted tendering procedure as referred to in Article 3(3) of Regulation (EU) No 1370/2013, the Implementing Regulation opening that procedure shall refer to the specific Member State or region(s) of a Member State covered by the tendering procedure.
- 4 With regard to rice, the tendering procedure may be restricted to specific varieties or one or more types of paddy rice, namely 'round grain rice', 'medium grain rice', 'long grain rice A' or 'long grain rice B', as defined in points (a), (b) or (c) of point I.2 of Part I of Annex II to Regulation (EU) No 1308/2013.
- 5 With regard to beef, the following rules shall apply:
- a the average market price by eligible category in a Member State or in a region thereof shall take account of the prices for qualities U, R and O, expressed in quality R3 using the conversion coefficients set out in Part II of Annex III in the Member State or the intervention region concerned;
 - b the average market prices shall be recorded in accordance with Commission Regulation (EC) No 1249/2008⁽²⁾;
 - c the average market price by eligible category in a Member State or a region thereof shall be the average of the market prices for all the qualities referred to in point (b), weighted by the proportion each quality represents in the total number of slaughterings in that Member State or region.

The United Kingdom shall consist of two intervention regions as follows:

- (i) region I: Great Britain;
- (ii) region II: Northern Ireland.

Article 13

Submission and admissibility of tenders

1 In addition to the general conditions laid down in Articles 2 and 7, a tender shall only be admissible if it indicates a proposed price in euro per unit of measurement of the product rounded to no more than two decimal places, exclusive of VAT.

In the case of cereals and rice, the price tendered per tonne of products shall be a price corresponding to the minimum quality for cereals defined in Part II of Annex I to Delegated Regulation (EU) 2016/1238 or to the standard quality for rice defined in Section A of Annex III to Regulation (EU) No 1308/2013, delivered to the storage place, not unloaded.

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In the case of butter and skimmed milk powder, the tendered price shall be the price per 100 kg of products delivered to the loading bay of the storage place.

In the case of beef, tenders shall state the price quoted in accordance with Article 12(5) (a), expressed per tonne of products of quality R3, and if it relates to bone-in meat intended for deboning, or for storage without deboning.

2 Without prejudice to Article 15(2) of this Regulation, the price tendered shall not exceed the level of the public intervention price set out in Article 2(1) of Regulation (EU) No 1370/2013.

Article 14

Decisions on the buying-in price

1 On the basis of the tenders notified in accordance with Article 9, the Commission shall decide:

- a not to fix a maximum buying-in price; or
- b to fix a maximum buying-in price.

2 The decision referred to in paragraph 1 shall be published in the *Official Journal of the European Union*.

Article 15

Individual decisions on tenders

1 Where no maximum buying-in price has been fixed, all tenders shall be rejected.

2 Where a maximum buying-in price has been fixed, the paying agency shall accept tenders which are equal to or lower than that amount. All the other tenders shall be rejected.

The paying agency shall only accept tenders that have been notified to the Commission in accordance with Article 9.

3 The paying agency shall take the decisions referred to in paragraphs 1 and 2 of this Article after the publication of the decision of the Commission referred to in Article 14(1).

The paying agency shall notify the operators of the outcome of their participation in the tendering procedure within three working days of the entry into force of that decision of the Commission.

This notification shall not be necessary when the tender is accepted, if the paying agency issues a delivery order as referred to in Article 17 within five working days of the entry into force of that decision of the Commission. In case of such acceptance, no further extension of the time limit for the issue of the delivery order, as referred to in the second subparagraph of Article 17(1), may be granted.

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Article 16

Limitation of buying-in for beef

Where the paying agencies are offered beef in quantities greater than they are able to take over, they may limit the buying-in to the quantities they can take over in their territory or in one of their intervention regions referred to in Article 12(5).

Paying agencies shall ensure equal access for all parties concerned in the event of such limitation.

Section 4

Deliveries and transport costs

Article 17

Delivery order

1 After the paying agency has checked the admissibility of the offer or tender in accordance with Articles 8 and 13, it shall issue the delivery order within five working days of the deadline referred to in the second subparagraph of Article 11(1) or of the entry into force of the decision referred to in Article 14(1).

The paying agency may decide to extend the time limit for the issue of the delivery order when it is necessary due to high quantities of cereals or rice accepted. However, the final date for delivery of the products shall not be later than 65 days after the deadline or entry into force referred to in the first subparagraph. In such cases the paying agency shall inform the affected operators.

2 The delivery order shall be dated and numbered and shall contain the following information:

- a the quantity to be delivered;
- b the final date for delivery of the products;
- c the storage place to which the products shall be delivered;
- d the price at which the offer or tender is accepted.

3 The delivery order shall be issued only for quantities notified to the Commission as provided for in Article 9.

Article 18

Specific provisions for the delivery of cereals and rice

1 The paying agency shall designate the storage place to which the cereals or rice shall be delivered at lowest cost.

2 Delivery to the storage place shall occur not later than 60 days following the date of issue of the delivery order. However, depending on the quantities accepted, the paying agency may extend that period by up to 14 days. In such cases the delivery period referred to in the

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second subparagraph of Article 17(1) may be extended accordingly. The paying agency shall inform the affected operators.

3 The operator shall bear the costs relating to the following tests carried out for cereals in accordance with the methodology referred to in Part IV of Annex I:

- (i) the amylasic activity (Hagberg) test;
- (ii) the test for the determination of the protein content of durum wheat and common wheat;
- (iii) the Zeleny test;
- (iv) the machinability test;
- (v) analyses of contaminants.

Article 19

Transport costs for cereals and rice

1 The cost of transporting the cereals or rice from the place where the product was stored at the time of the offer or tender to the storage place specified in the delivery order shall be borne by the operator, where the distance involved is equal to or less than 50 km.

Beyond that maximum distance, the additional transport costs shall be borne by the paying agency and reimbursed by the Commission at a rate per tonne and per kilometre of EUR 0, 05.

2 Where the paying agency which buys-in the cereals or rice is in a Member State other than the one in whose territory the product is stored, no account shall be taken, in calculating the maximum distance referred to in paragraph 1, of the distance between the store of the operator and the border of the Member State of the purchasing paying agency.

Article 20

Specific provisions for the delivery of beef

1 The buying-in price for beef shall be the price of the beef delivered to the entrance weighing point of the storage place or, where the meat is to be deboned, at the cutting plant.

2 The costs of unloading shall be borne by the operator.

3 Operators shall deliver the products not later than 15 days following the date of issue of the delivery order. However, depending on the quantities awarded, the paying agency may extend that period by up to seven days. In such cases the paying agency shall inform the affected operators.

Article 21

Specific provisions for the packing, delivery and storage of butter and skimmed milk powder

1 Butter shall be packed and delivered in blocks of 25 kilograms net in accordance with the requirements laid down in Part II of Annex IV.

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2 Skimmed milk powder shall be packed and delivered in bags of a net weight of 25 kilograms in accordance with the requirements laid down in Part II of Annex V.

3 The operator shall deliver the butter or skimmed milk powder to the loading bay of the storage place within 21 days of the date of issue of the delivery order. However, depending on the quantities accepted, the paying agency may extend that period by up to seven days. In such cases the paying agency shall inform the affected operators.

The butter and skimmed milk powder shall be delivered on pallets of a quality suitable for long-term storage, to be exchanged against equivalent pallets. Alternatively, an equivalent system may be approved by the paying agency.

The costs incurred in unloading the butter or skimmed milk powder at the loading bay of the storage place shall be borne by the paying agency.

4 The paying agency shall require that butter and skimmed milk powder be placed and kept in storage on pallets in such a way as to create easily identifiable and readily accessible lots.

Article 22

Delivery

1 The date of delivery shall be:

- a for cereals, rice, butter and skimmed milk powder: the date on which it is confirmed that the whole of the quantity referred to in the delivery order entered the designated storage place. This date cannot be earlier than the day following the date of issue of the delivery order;
- b for each consignment of beef: the date of entrance at the weighing point of the intervention storage place or, where the meat is to be deboned, at the cutting plant.

2 The paying agency may decide that the takeover of cereals, rice, butter or skimmed milk powder takes place in the storage place where the products are held at the time the offer or tender is submitted, provided that the storage place fulfils the requirements laid down in Article 7(1) of Delegated Regulation (EU) 2016/1238 and in Article 3 of this Regulation. In that case, the date of delivery shall be the day following the date of issue of the delivery order and shall serve as the relevant date for the purposes of Article 18(2)(a) of Implementing Regulation (EU) No 908/2014.

3 The products shall be taken over by the paying agency or its representative, who shall be independent from the operator.

Section 5

Control and takeover

Article 23

The takeover record

1 The takeover record shall be issued by the paying agency after the required checks and analyses have established that the eligibility requirements laid down in Article 3 of Delegated Regulation (EU) 2016/1238 are fulfilled. It shall indicate at least:

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- a the quantities delivered and, for rice, the variety;
 - b the characteristics of the products as resulting from the analyses in so far as this is relevant for the calculation of the price;
 - c if applicable, the quantities that have not been taken over. In this case, the operator shall be notified accordingly.
- 2 The takeover record shall be dated and sent to the operator and to the storekeeper.

Article 24

Obligations of the operator

The products shall meet the eligibility requirements set out in Article 3 of Delegated Regulation (EU) 2016/1238. Where the required checks show that the products do not fulfil the eligibility requirements, the operator shall:

- (a) take back at his expense the products concerned;
- (b) pay the associated costs from the date of entry of the products into the storage place until the date of their removal from storage.

The costs to be paid by the operator shall be determined on the basis of standard amounts for entry, removal and storage costs in accordance with Article 3 of Commission Delegated Regulation (EU) No 906/2014⁽⁹⁾.

Article 25

Deboning requirement for beef

Where deboning is required as a condition of the tendering procedure, the paying agency shall have all the beef that is bought-in deboned in accordance with Part III of Annex III.

Section 6

Price adjustments and payments

Article 26

Price adjustments for cereals and rice

- 1 The price adjustment as provided for in Articles 2(2) and 3(4) of Regulation (EU) No 1370/2013 shall be made in accordance with:
- a Parts V and VI of Annex I to this Regulation in the case of cereals;
 - b Part II of Annex II to this Regulation in the case of rice.
- 2 If the paying agency takes over and stores cereals and rice at the storage place in accordance with Article 22(2), a reduction of EUR 5/tonne shall be made to the buying-in price.

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Article 27

Payments

1 Payments for the quantities stated in the takeover record shall be made no later than the 65th day following the date of delivery referred to in Article 22, unless an administrative inquiry is under way.

2 Only the quantity actually delivered and accepted shall be paid for. However, if that quantity is greater than the quantity stated in the delivery order, only the quantity specified in the delivery order shall be paid for.

CHAPTER III

Sale of products from intervention

Article 28

Opening of the tendering procedure

1 Products taken over into public intervention and available for sale shall be sold through a tendering procedure.

2 The tendering procedure shall be opened by way of an Implementing Regulation opening the sale.

The first closing date for submission of tenders shall be fixed not earlier than six days after the publication of that Implementing Regulation in the *Official Journal of the European Union*.

3 Tendering procedures may be open for the sale of products stored in one or several regions of the Union or a Member State.

4 The Implementing Regulation opening the sale shall contain, in particular, the following information:

- a the products covered, and in particular:
 - (i) for rice, an indication of the type and variety,
 - (ii) for beef, the relevant cuts;
- b the period covered ('tendering period') and the different sub-periods during which the tenders can be submitted;
- c for beef, butter and skimmed milk powder, the minimum quantity for which a tender may be submitted;
- d the amount of the security that shall be lodged when submitting a tender.

In addition, that Implementing Regulation may contain:

- (a) the global quantities covered by the tendering procedure;
- (b) if applicable, provisions concerning transport costs for cereals and rice.

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5 Tendering procedures may be restricted to specified uses or destinations and include provisions for verifying the use or destination.

Article 29

Notice of invitation to tender and arrangements related to the invitation to tender

1 Each paying agency holding intervention stocks available for sale shall draw up a notice of invitation to tender, and publish it at least four days before the first date for the submission of tenders.

2 The notice of invitation to tender shall indicate in particular:

- a the name and address of the paying agency issuing the notice of invitation to tender;
- b the reference to the Implementing Regulation opening the sale;
- c the closing dates for the submission of tenders for each partial invitation to tender;
- d for each storage place, the name and address of the storekeeper, and, as appropriate:
 - (i) for cereals and rice, the quantities available presented in sales lots determined in such a way to ensure equal access to operators, together with a description of the quality of each sales lot;
 - (ii) for beef, the quantities available by cut, in accordance with Part IV of Annex III and the date of delivery;
 - (iii) for butter and skimmed milk powder, the quantities available and the date of delivery;
- e the delivery stage as referred to in Article 30(1)(d) and, if applicable, the type of packaging;
- f any facilities at the storage place for loading onto a means of transport;
- g for butter, where appropriate, the available quantity of sweet cream butter per storage place, as referred to in point 2(d) of Part II of Annex IV.

3 The paying agency shall ensure that notices of invitation to tender are properly publicised.

4 The paying agency shall make the necessary arrangements to enable interested parties:

- a to inspect and to take and examine samples of cereals and rice put up for sale at their own expense before submitting a tender;
- b to consult the results of the analyses referred to in Part IV of Annex I, Part I of Annex II, Part I of Annex IV or Part I of Annex V, as appropriate.

Article 30

Submission and admissibility of tenders

1 A tender shall be admissible if it complies with the requirements laid down in Article 2 and the Implementing Regulation opening the sale. It shall also meet the following conditions:

- a it indicates a reference to the Implementing Regulation opening the sale and the expiry date for the sub-period of submission of the tenders;
- b for beef, it indicates the relevant cuts;
- c for cereals and rice, it indicates the total quantity of the sales lot;

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- d it indicates the price in euro tendered per unit of measurement, rounded to no more than two decimal places, exclusive of VAT, as follows:
 - (i) in the case of cereals and rice, for the product loaded onto the means of transport;
 - (ii) in the case of butter or skimmed milk powder, for the product supplied on pallets at the loading bay of the storage place or, if necessary, supplied on pallets loaded onto the means of transport where it is a lorry or railway wagon;
 - (iii) in the case of beef, for the product delivered to the loading bay of the storage place.
- e for beef, butter and skimmed milk powder, that it relates to at least the minimum quantity referred to in the Implementing Regulation opening the sale;
- f it indicates the storage place where the product is held and, for butter and skimmed milk powder, an alternative storage place may be specified;
- g the operator has lodged the amount of the security provided for in the Implementing Regulation opening the sale.

2 For cereals, the tendered price shall refer to the minimum quality defined in Part II of Annex I to Delegated Regulation (EU) 2016/1238 or, for rice to the standard quality defined in Section A of Annex III to Regulation (EU) No 1308/2013.

3 For beef, butter and skimmed milk powder, the tendered price shall apply to net weight.

For butter, where appropriate, the tender may specify that it is submitted exclusively for sweet cream butter as referred to in Article 29(2)(g).

Article 31

Notification of tenders to the Commission

1 Member States shall notify the Commission of all admissible tenders within the time limits set in the Implementing Regulation opening the sale.

2 The notifications provided for in paragraph 1 shall not contain the operator's name, address and VAT registration number.

3 Where a Member State does not notify the Commission of an admissible tender within the time limits referred to in paragraph 1, it shall be deemed to have notified the Commission of a nil return.

Article 32

Decisions on the selling price

1 On the basis of the tenders notified in accordance with Article 31, the Commission shall decide, in accordance with the procedure referred to in Article 229(2) of Regulation (EU) No 1308/2013:

- a not to fix a minimum selling price; or
- b to fix a minimum selling price.

For butter and skimmed milk powder the minimum selling price may vary according to the location of the products offered for sale.

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2 The decision referred to in paragraph 1 shall be published in the *Official Journal of the European Union*.

Article 33

Individual decisions on tenders

1 Where no minimum selling price has been fixed, all tenders shall be rejected.

2 Where a minimum selling price has been fixed, the paying agencies shall reject any tender lower than the minimum selling price.

The paying agencies shall only accept tenders that have been notified to the Commission in accordance with Article 31.

3 The paying agencies shall take the decisions referred to in paragraphs 1 and 2 of this Article after the publication of the decision of the Commission referred to in Article 32.

The paying agency shall notify the operators of the outcome of their participation in the tendering procedure within three working days of the entry into force of that decision of the Commission.

Article 34

Specific rules for the allocation of beef, butter and skimmed milk powder

1 For butter and skimmed milk powder, the successful operator shall be the operator offering the highest price. If the full quantity available is not allocated, the remainder shall be awarded to the other operators on the basis of the prices tendered, starting with the highest price.

2 Where acceptance of a tender would result in contracts being awarded in excess of the quantity of beef, butter or skimmed milk powder available at a particular storage place, only the quantity available shall be awarded to the operator in question. However, with the agreement of the operator, the paying agency may allocate product from other storage places to fulfil the tender quantity.

3 Where acceptance of two or more tenders offering the same price at a particular storage place would lead to contracts being awarded in excess of the available quantity of beef, butter or skimmed milk powder, the award shall be made by allocating the quantity available in proportion to the quantities tendered for. However, if such allocation leads to the award of quantities of less than the minimum quantity referred to in Article 28(4)(c), the award shall be made by drawing lots.

4 Where after the acceptance of all successful tenders the quantity of beef, butter or skimmed milk powder left at the storage place is less than the minimum quantity referred to in Article 28(4)(c), the remaining quantity shall be offered by the paying agency to the successful operators starting with the one who offered the highest price. The successful operators shall be offered the option to buy the remaining quantity at the minimum selling price.

5 The paying agency shall allocate the product on the basis of its date of entry into storage, starting with the oldest product of the total quantity available at the storage place designated by the operator or, as the case may be, the oldest of the quantity of butter or sweet cream butter or cut of beef available in the cold storage place designated by the operator.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

Article 35

Payments

Before removing the product and within the period specified in Article 37(2), operators shall pay the paying agency the amount corresponding to their tender for each quantity that they withdraw from the storage place, as notified by the paying agency in accordance with Article 33(3).

Article 36

Sales by Member States

1 In a Member State where no tendering procedure is open in accordance with Article 28, the paying agency may itself open a tendering procedure for the sale of intervention products when the total quantity remaining in all its storage places is less than:

- a for each cereal: 10 000 tonnes;
- b for rice: 2 000 tonnes;
- c for beef, butter or skimmed milk powder: 200 tonnes.

2 Chapter II of Delegated Regulation (EU) 2016/1238 and this Chapter shall apply to a tendering procedure opened by a paying agency in accordance with paragraph 1, with the exception of Articles 28(2), 29(2)(b), 30(1)(a) and (e), 31 and 32(2) of this Regulation. Article 32(1) shall apply *mutatis mutandis* to a respective decision of the Member State.

3 Within the quantities fixed in paragraph 1, paying agencies may put up for direct sale products which, after visual examination in the context of the annual stocktaking in accordance with point (g) of the first subparagraph of Article 3(3) and Article 3(4) of Delegated Regulation (EU) No 907/2014 or during the inspection after taking into intervention, may no longer be repackaged or are deteriorated.

4 The paying agencies shall ensure equality of access for all parties concerned.

Article 37

Removal order

1 On payment of the amount referred to in Article 35, the paying agency shall issue a removal order indicating:

- a the quantity in respect of which the corresponding amount has been paid;
- b the storage place in which the product is stored;
- c the final date for removal of the product.

2 The operators shall remove the product awarded to them within 30 days of the notification referred to in Article 33(3). After that period of time the costs and risks shall be borne by the operator.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

Article 38

Removal of butter and skimmed milk powder

1 At the time of removal from the storage place and in the case of delivery outside the storage place, the paying agency shall make the butter and skimmed milk powder available on pallets at the loading bay of the storage place, and loaded onto the means of transport where it is a lorry or a railway wagon. The costs involved shall be borne by the paying agency.

2 The operator shall return equivalent quality pallets to the paying agency on removal from the storage place. Alternatively, an equivalent arrangement may be agreed with the paying agency.

3 Any stowage and depalletising costs shall be borne by the operator of the butter or skimmed milk powder.

[^{F2}CHAPTER IV

Disposal of products from intervention for the scheme for food distribution to the most deprived in the Union

Article 38a

Making products from intervention available for the scheme

1 The Commission may, by way of an Implementing Regulation adopted in accordance with the procedure referred to in Article 229(2) of Regulation (EU) No 1308/2013, make intervention products available for the scheme for food distribution to the most deprived in the Union referred to in Article 16(2) of that Regulation ('the scheme').

2 The Implementing Regulation referred to in paragraph 1 shall contain, in particular, the following information:

- a the type and quantity of the products that are made available for the scheme;
- b the location of the products made available for the scheme and the criteria for the distribution of the available lots among the Member States concerned on the basis of their location;
- c the way in which the products are to be disposed of in accordance with the second subparagraph of Article 23(4) of Regulation (EU) No 223/2014 of the European Parliament and of the Council⁽⁴⁾ (direct use, processing or sale) in order to make them available for the scheme in a way that is economically the most favourable option taking into account the nature and characteristics of the products;
- d where the products are to be sold in accordance with Article 38b of this Regulation, the level of the security to be lodged in accordance with Article 4(a) of Delegated Regulation (EU) 2016/1238 and the price below which the products shall not be sold.

3 Member States interested to be allocated part or all of the quantity referred to in point (a) of paragraph 2 shall submit a request to the Commission within 10 working days after the publication of the Implementing Regulation referred to in paragraph 1. That request shall specify the type and the quantity (expressed in tonnes) of the product requested. The quantity requested by a Member State shall not exceed the quantity referred to in point (a) of paragraph 2.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

- 4 Within 20 working days after the publication of the Implementing Regulation referred to in paragraph 1, the Commission shall adopt an Implementing Regulation without applying the procedure referred to in Article 229(2) or (3) of Regulation (EU) No 1308/2013 by which it:
- a allocates a quantity to each Member State that submitted a request;
 - b specifies the location of the available lots as distributed to the Member States concerned in accordance with the criteria referred to in point (b) of paragraph 2.

For the purposes of point (a) of the first subparagraph, where the total quantity requested by Member States exceeds the quantity referred to in point (a) of paragraph 2, a quantity shall be allocated to the Member States concerned in proportion to the quantity requested by them.

- 5 Where the quantity allocated to a Member State is 50 % lower than the quantity requested, the Member State may renounce the quantity allocated to it by informing the Commission of its decision within 10 working days after the publication of the Implementing Regulation by which the products were allocated. Those products shall no longer be available for the scheme under that specific Implementing Regulation.

Article 38b

Sale of intervention products made available for the scheme

- 1 Where the Implementing Regulation referred to in Article 38a(1) provides that the products made available for the scheme have to be disposed of by sale, paragraphs 2 to 7 of this Article shall apply.

- 2 The paying agency of the Member State that has been allocated products in accordance with Article 38a(4) shall, within 40 working days after the publication of the Implementing Regulation by which the products were allocated, open a tendering procedure for the sale of the products.

Where a Member State has been allocated products held by the paying agency of another Member State, the paying agency holding the products shall provide to the paying agency selling the products the information referred to in Article 29(2)(d) to (g) within 10 working days after the publication of the Implementing Regulation by which the products were allocated.

- 3 Where the paying agency of a Member State that has been allocated products held by the paying agency of another Member State sells all or part of those products, the paying agency selling the products shall pay the paying agency holding them at the accounting value referred to in Article 16(2) of Regulation (EU) No 1308/2013. That payment shall be made within 4 working days after the receipt of the payment from an operator of the amount corresponding to his tender. The paying agency holding the products shall issue the removal order referred to in Article 37 of this Regulation within 5 working days after the receipt of the payment from the paying agency selling the products.

- 4 The paying agency selling the products shall, within 10 working days after the receipt of the payment from an operator of the amount corresponding to his tender, transfer the difference between the selling price and the accounting value of the products, multiplied by the quantity sold, to the body to which payments are made by the Commission under Regulation (EU) No 223/2014. That transferred amount shall be used to finance the purchase and distribution of food for the most deprived in addition to the resources already available in the operational programme.

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

5 Any administrative costs related to the sale of the products shall be borne by the paying agency selling the products.

6 Chapter II of Delegated Regulation (EU) 2016/1238 and Chapter III of Title II of this Regulation, with the exception of Article 28(2), Article 29(2)(b), Article 30(1)(a) and (e), Article 31, 32(2), the second subparagraph of Article 33(2) and Article 36 of this Regulation, shall apply to a tendering procedure opened by a paying agency in accordance with paragraph 2 of this Article. Articles 32(1) and 33(3) shall apply *mutatis mutandis* to a respective decision of a Member State. For the purposes of Article 30(1)(g), the amount of the security provided for in the Implementing Regulation opening the sale shall be understood as the amount of the security provided for in the Implementing Regulation referred to in Article 38a(1).

7 Where all or part of the products allocated to a Member State have not been sold within 5 months after the publication of the Implementing Regulation by which the products were allocated, those products shall no longer be available under that specific Implementing Regulation.]

Textual Amendments

- F2** Inserted by [Commission Implementing Regulation \(EU\) 2017/1479 of 16 August 2017 amending Implementing Regulation \(EU\) 2016/1240 as regards the disposal of intervention stocks for the scheme for food distribution to the most deprived.](#)

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Commission
Implementing Regulation (EU) 2016/1240, TITLE II. (See end of Document for details)

- (1) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([OJ L 309, 24.11.2009, p. 1](#)).
- (2) Commission Regulation (EC) No 1249/2008 of 10 December 2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcasses and the reporting of prices thereof ([OJ L 337, 16.12.2008, p. 3](#)).
- (3) Commission Delegated Regulation (EU) No 906/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to public intervention expenditure ([OJ L 255, 28.8.2014, p. 1](#)).
- (4) [^{F2}Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived ([OJ L 72, 12.3.2014, p. 1](#)).]

Textual Amendments

- F2** Inserted by [Commission Implementing Regulation \(EU\) 2017/1479 of 16 August 2017 amending Implementing Regulation \(EU\) 2016/1240 as regards the disposal of intervention stocks for the scheme for food distribution to the most deprived.](#)

Status:

Point in time view as at 31/01/2020.

Changes to legislation:

There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/1240, TITLE II.