

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of 20 August 2008 laying down common rules for the granting of private storage aid for certain agricultural products (repealed)

## CHAPTER I

### **Introductory provisions**

#### Section 1

### **Scope and general rules for granting of private storage aid**

#### *Article 1*

### **Scope and definition**

1 This Regulation lays down common rules for the granting of an aid for private storage for products listed in Articles 28 and 31 of Regulation (EC) No 1234/2007.

It shall apply without prejudice to the specific provisions laid down in Commission Regulations either opening a tendering procedure or fixing in advance the private storage aid.

2 For the purposes of this Regulation ‘the competent authorities of the Member States’ shall mean the departments or bodies accredited by the Member States as paying agencies which fulfil the conditions laid down in Article 6 of Council Regulation (EC) No 1290/2005<sup>(1)</sup>.

#### *Article 2*

### **Eligibility of products**

1 In order to qualify for private storage aid, in addition to the requirements laid down in Regulation (EC) No 1234/2007, the products shall fulfil the requirements listed in Annex I to this Regulation.

2 Butter stored in a Member State other than the Member State of production, shall fulfil also the additional requirements set out in Annex II to this Regulation.

#### *Article 3*

### **Conditions for granting aid for white sugar**

1 The decision to grant an aid for private storage of white sugar may be taken where the following conditions are met:

- a the average Community price for white sugar recorded within the price reporting system is below 85 % of the reference price;
- b the recorded average prices for white sugar are likely to remain at or below that level for two months on the basis of the market situation, account being taken of expected effects of market management mechanisms and notably withdrawals.

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Subject to the criteria set out in the first subparagraph, the granting of aid for private storage may be limited to Member States in which the average price for white sugar recorded within the price reporting system is below 80 % of the reference price. The aid shall be granted for sugar stored or to be stored by sugar manufacturers approved in these Member States.

2 The private storage of white sugar may take place in a period running from 1 November to 30 June of the marketing year in which the aid is granted.

#### *[<sup>F1</sup>Article 4*

### **Conditions for granting aid for olive oil**

1 For the purposes of application of Article 33 of Regulation (EC) No 1234/2007, the average price shall be recorded on the representative markets during a period of two weeks at least and notified to the Commission by producing Member States as laid down in Part A of Annex III to this Regulation.

2 The notifications referred to in paragraph 1 shall be made in accordance with Commission Regulation (EC) No 792/2009<sup>(2)</sup>.]

#### **Textual Amendments**

**F1** Substituted by [Commission Regulation \(EU\) No 557/2010 of 24 June 2010 amending Regulations \(EC\) No 1518/2003, \(EC\) No 596/2004, \(EC\) No 633/2004, \(EC\) No 1345/2005, \(EC\) No 2014/2005, \(EC\) No 239/2007, \(EC\) No 1299/2007, \(EC\) No 543/2008, \(EC\) No 589/2008, \(EC\) No 617/2008 and \(EC\) No 826/2008 as regards the notification obligations within the common organisation of agricultural markets.](#)

#### *Article 5*

### **Conditions for granting aid for beef**

An aid for private storage may be granted if the average Community price for carcasses of adult male bovine animals expressed as grade R3, calculated in accordance with Part B of Annex III, is recorded at EUR 2 291 per tonne or lower.

#### Section 2

### **General rules for fixing the private storage aid**

#### *Article 6*

### **Procedure for fixing the aid**

To establish the amount of aid for private storage for the products listed in Articles 28 and 31 of Regulation (EC) No 1234/2007, the Commission shall either open a tendering procedure for a limited period in accordance with Article 9 of this Regulation or fix in advance the aid in accordance with Article 16 of this Regulation.

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## Article 7

### Tenders and applications for private storage aid

[<sup>X1</sup>1 An operator seeking aid shall either lodge a tender in accordance with Article (10)(1), or an application in accordance with Article 17(1) with the competent authorities of the Member States where the products are stored or will be stored.]

2 In sectors where the storage scheme is open only to one or several regions or Member States, tenders and applications may be lodged only in those regions or Member States.

3 Tenders or applications for private storage aid for salted and unsalted butter and cheeses shall relate also to products which have been fully placed in storage.

4 Tenders and applications for private storage aid for fresh or chilled meat of bovine animals, pig, sheep, goat and olive oil shall relate to quantities of those products which have not yet been placed in storage.

5 Tenders or applications for private storage aid for sugar shall relate to sugar which is already placed into storage or which will be placed in storage.

#### Editorial Information

**X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Union L 223 of 21 August 2008\)](#).

## Article 8

### Conditions related to the eligibility of operators

1 Operators applying or submitting a tender for private storage aid shall be established and registered for VAT purposes in the Community.

2 In the case of olive oil, operators applying or submitting a tender for private storage aid shall fulfil the conditions laid down in paragraph 1 and the additional requirements laid down in Annex IV.

3 In the case of sugar, operators applying or submitting a tender for an aid for private storage shall fulfil the conditions laid down in paragraph 1 and shall be sugar manufacturers as referred to in point (a) of Article 7(1) of Regulation (EC) No 952/2006.

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## CHAPTER II

### Aid granted through a tendering procedure

#### Article 9

##### Opening of the tendering procedure

1 A tendering procedure shall be opened in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007 by way of Regulation, hereinafter referred to as ‘Regulation opening the tendering procedure’.

2 The Regulation opening the tendering procedure may contain the following information:

- a the products covered with their relevant CN codes, if applicable;
- b the unit of measurement of the quantities (lots, batches, vats/silos);
- c the period covered (‘tendering period’) and the different sub-periods when the tenders can be lodged;
- d the opening and closing time between which tenders may be lodged;
- e the minimum and the maximum period of storage;
- f the global quantity covered by the tendering procedure, if necessary;
- g the minimum quantity each tender must provide for;
- h the amount of the security per unit;
- i the periods of placing into store and of removal from store;
- j the specifications that have to appear on the packages.

3 At least six days must elapse between the entry into force of the Regulation opening the tendering procedure and the first date for the submission of tenders.

#### Article 10

##### Submission of tenders

1 Tenders shall be lodged using the method made available to the operators by the Member State concerned.

The competent authorities of the Member States may require that electronic tenders be accompanied by an advance electronic signature within the meaning of Article 2, point (2) of Directive 1999/93/EC of the European Parliament and of the Council<sup>(3)</sup> or by an electronic signature offering equivalent assurances with regard to the functionalities attributed to a signature by applying the same rules and conditions as those defined in the Commission’s provisions on electronic and digitised documents, set out by Commission Decision 2004/563/EC, Euratom<sup>(4)</sup>, and in its implementing rules.

2 A tender shall be valid if the following conditions are met:

- a it indicates a reference to the Regulation opening the tendering procedure and the expiry date for the sub-period of submission of the tenders;
- b it indicates the identification data of the tenderer: name, address and the VAT registration number;
- c it indicates the product with its relevant CN code, if applicable;
- d it indicates the storage period, if necessary;

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- e it indicates the quantity of products covered by the tender;
  - f where products are already stored, it indicates the name and address of the storage place, the storage lot/batch/vat/silo number and where appropriate the approval number identifying the factory;
  - g it indicates the amount of aid offered per unit and per day in euros and cents, exclusive of VAT;
  - h the tenderer has lodged a security before the end of the submission sub-period, in accordance with the provisions of Title III of Regulation (EEC) No 2220/85, and has provided proof thereof within the same period;
  - i it does not include any additional conditions introduced by the tenderer other than those laid down in this Regulation and in the Regulation opening the tendering procedure;
  - j it is presented in the official language, or one of the official languages of the Member State in which the tender is lodged.
- 3 Tenders shall not be withdrawn or amended after their submission.

#### *Article 11*

#### **Examination of tenders**

- 1 The competent authorities of the Member States shall decide on the validity of tenders on the basis of the conditions set out in Article 10(2).
- 2 Persons authorised to receive and examine the tenders shall be under an obligation not to disclose any particulars relating thereto to any unauthorised person.
- 3 Where the competent authorities of the Member States decide that a tender is invalid they shall inform the tenderer.

#### *Article 12*

#### **Notification of the tenders to the Commission**

- 1 All valid tenders shall be notified to the Commission by the competent authorities of the Member States.
- 2 The notifications shall not contain the data referred to in Article 10(2)(b).
- 3 The notifications shall be made by electronic means, using the method indicated to the Member States by the Commission, within a specific period fixed by the Regulation opening the tendering procedure in question.
- 4 The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States.
- 5 The competent authorities of the Member States shall notify nil returns to the Commission within the period referred to in paragraph 3.

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### Article 13

#### Decision on the basis of the tenders

1 On the basis of the tenders notified in accordance with Article 12(1), the Commission shall decide in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007:

- a not to fix a maximum amount of the aid; or
- b to fix a maximum amount of the aid.

2 Where Article 9(2)(f) applies, the Commission shall, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, fix a coefficient, applicable to the tenders which have been introduced at the level of maximum aid, if the award of the total quantities for which that amount has been offered would lead to the global quantity being exceeded.

By way of derogation from Article 10(3), a tenderer to which such a coefficient applies may decide to withdraw its tender within 10 days from the publication of the abovementioned Regulation fixing the coefficient.

3 Decisions on private storage aid referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Union*

### Article 14

#### Individual decisions on tenders

1 Where a maximum amount of aid has been fixed in accordance with Article 13(1) (b), the competent authorities of the Member States shall accept tenders which are equal to or lower than the maximum amount without prejudice to Article 13(2). All the other tenders shall be rejected.

2 Where no maximum amount of aid has been fixed all tenders shall be rejected.

The competent authorities of the Member States shall not accept tenders that have not been notified as provided for in Article 12(1).

3 The competent authorities of the Member States shall adopt the decisions referred to in paragraphs 1 and 2 of this Article after the publication of Commission's Decision on aid referred to in Article 13(1) and shall notify to tenderers the outcome of their participation within a deadline of three working days after the publication.

4 The rights and obligations of the successful tenderer shall not be transferable.

### Article 15

#### Primary requirements and securities

1 The primary requirements within the meaning of Article 20(2) of Regulation (EEC) No 2220/85 shall be:

- a not to withdraw a tender;

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- b to place and to keep in storage at least 99 %, respectively 90 % for meat products, 98 % for olive oil and 95 % for cheeses of the contractual quantity for the contractual storage period, at the risk of contracting party within the meaning of Article 19 of this Regulation and under the conditions referred to in Article 22(1)(a) of this Regulation;
  - c where Article 28(3) applies, to export the products in accordance with one of the three options listed therein.
- 2 Securities shall be released immediately where:
- a the tender is invalid or rejected, or it is withdrawn in case of application of the second subparagraph of Article 13(2);
  - b in case of application of the first subparagraph of Article 13(2) the amount of the released security shall correspond to the quantity not accepted.
- 3 Securities shall be released in respect of quantities for which the contractual obligations have been fulfilled.
- 4 Where the time limit for placing in storage, as set out in Article 25(1) of this Regulation is exceeded, the security shall be forfeit in accordance with Article 23 of Regulation (EEC) No 2220/85.

## CHAPTER III

### Aid fixed in advance

#### *Article 16*

#### **Fixing the amount of aid in advance**

- 1 The amount of aid for private storage shall be fixed in advance in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007 by way of Regulation, hereinafter referred to as 'Regulation fixing the amount of aid in advance'.
- 2 The Regulation fixing the amount of aid in advance may contain the following information:
- a the products covered with their relevant CN codes, if applicable;
  - b the amount of aid for private storage per unit of weight for the products covered;
  - c the unit of measurement of the quantities (lots, batches, vats, silos);
  - d the minimum quantity per application;
  - e the period of application for private storage aid;
  - f the periods of placing into store and of removal from store;
  - g the minimum and the maximum period of storage;
  - h the specifications that have to appear on the packaging;
  - i the amount of the security per unit, if applicable.

#### *Article 17*

#### **Applications for aid**

- 1 Applications shall be lodged using the method made available to the operators by the Member State concerned.

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The competent authorities of the Member States may require that electronic applications be accompanied by an advance electronic signature within the meaning of Article 2, point (2) of Directive 1999/93/EC or by an electronic signature offering equivalent assurances with regard to the functionalities attributed to a signature by applying the same rules and conditions as those defined in the Commission's provisions on electronic and digitised documents, set out by Decision 2004/563/EC, Euratom, and in its implementing rules.

- 2 Applications shall be valid if the following conditions are met:
  - a it indicates a reference to the Regulation fixing the amount of aid in advance;
  - b it indicates the identification data of the applicants name, address and the VAT registration number;
  - c it indicates the product with its relevant CN code, if applicable;
  - d it indicates the quantity of products;
  - e it indicates the period of storage, if applicable;
  - f where products are already stored, it indicates the name and address of the storage place, the storage lot/batch/vat/silo number and where appropriate the approval number identifying the factory;
  - g it does not include any additional conditions introduced by the applicant other than those laid down in this Regulation and in the Regulation fixing the amount of aid in advance;
  - h it is presented in the official language, or one of the official languages of the Member State in which the application is lodged;
  - i the applicant has lodged a security, in accordance with the provisions of Title III of Regulation (EEC) No 2220/85, and provided proof thereof, if applicable.
- 3 The content of the applications shall not be amended after their submission.

#### *Article 18*

#### **Primary requirements and securities**

- 1 Where Article 17(2)(i) applies the primary requirements within the meaning of Article 20(2) of Regulation (EEC) No 2220/85 shall be the following:
  - a not to withdraw a contract application;
  - b to place and to keep in storage at least 99 %, respectively 90 % for meat products, 98 % for olive oil and 95 % for cheeses of the contractual quantity for the contractual storage period, at the risk of contracting party within the meaning of Article 19 of this Regulation and under the conditions provided for in Article 22(1)(a);
  - c where Article 28(3) applies, to export the products in accordance with one of the three options listed therein.
- 2 Securities shall be released immediately where contract applications are not accepted.
- 3 Securities shall be released in respect of quantities for which the contractual obligations have been fulfilled.
- 4 Where the time limit for placing into storage as set out in Article 25(1) of this Regulation is exceeded, the security shall be forfeit in accordance with Article 23 of Regulation (EEC) No 2220/85.



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## CHAPTER IV

### Contracts

#### Article 19

#### Conclusion of contracts

Contracts shall be concluded between the competent authority of the Member State on whose territory the products are stored or will be stored and the successful tenderer or applicant who fulfils the requirements laid down in Article 8, hereafter referred to as the 'contracting party'.

#### Article 20

#### Information related to the place of storage

After the reception of the notification from the Member State referred to in Article 14(3) or after the conclusion of the contract referred to in Article 23(1) or after the notification or the publication of the decisions referred to in Article 23(2), the successful tenderer or applicant shall send to the competent authority of the Member State:

- (a) the name and address of the storage place or places and, for each storage place, details of the precise location of the silos or lots or vats or batches with the corresponding quantities;
- (b) notification of the date of entry into store of each of the lots which are not yet in place and the necessary time framework for placing the contractual quantity into store; for each lot entering the place of storage, the quantity and the precise location have to be indicated.

The competent authority may require that the information referred to above is given at least two working days before the placing in storage of each lot.

#### Article 21

#### Elements of the contract

The contract shall include the elements provided for in Article 22 of this Regulation, and either the elements provided for in the relevant provisions of the Regulation opening a tendering procedure and in the tender, or the elements provided for in the relevant provisions of the Regulation fixing the amount of aid in advance and in the application.

#### Article 22

#### Obligations of the contracting party

- 1 Contracts shall stipulate at least the following obligations for the contracting party:
  - a to place and to keep the contractual quantity in storage, during the contractual storage period, at his own risk and expense in conditions ensuring the maintenance of the characteristics of the products referred to in Annex I, without substituting the stored products or transferring them to another storage place. However, for cheeses where the

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contracting party submits a reasoned request, the competent authority may authorise a relocation of the stored products. For other products, where the contracting party submits a reasoned request the competent authority may authorise a relocation of the stored products only in exceptional cases;

- b to retain the weighting-in documents established at the time of entry into the storage place;
- c to send the documents relating to the operations for placing in storage to the competent authority not later than one month after the date of placing into storage referred to in Article 25(1);
- d to allow the competent authority to check at any time that all the obligations laid down in the contract are being observed;
- e to make the products stored easily accessible and individually identifiable: each unit individually stored shall be marked so that date of placing in storage, the contract number, the product and the weight are shown.

2 The contracting party shall make available to the authority responsible for checking all documentation, for each contract, allowing in particular the following information on the products placed in private storage to be verified:

- a the approval number identifying the factory and the Member State of production, if necessary;
- b the origin and the date of manufacture of the products or for sugar, the marketing year of manufacture and when appropriate the day of slaughtering;
- c the date of placing into storage;
- d the weight and the number of pieces packaged;
- e the presence in the store and the address of the store;
- f the expected date of the end of the contractual storage period and completed by the actual date of removal.

As regards point (d) of the first subparagraph, where meat is placed in storage after cutting, partial deboning or deboning, weighing shall be carried out on products actually placed in storage and may be done at the place of cutting, partial deboning or deboning. The determination of weights of products to be placed in storage shall not take place before the contract is concluded.

3 The contracting party or, where applicable the operator of the storage place, shall keep stock accounts available at the warehouse covering, by contract number:

- a the identification of the products placed in private storage by lot/batch/vat/silo;
- b the dates of placing in and removal from storage;
- c the quantity indicated per storage in lot/batch/vat/silo;
- d the location of the products in the store.

### *Article 23*

#### **Conclusion of contracts for the aid fixed in advance**

1 For products already placed in storage, contracts shall be concluded within 30 days of the date of receipt of the information referred to in Article 17(2)(f) subject, where appropriate, to subsequent confirmation of the eligibility of the products as referred to in the second subparagraph of Article 36(2). If eligibility is not confirmed, the contract concerned shall be considered as null and void.

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2 For products which are not yet stored, decisions on applications shall be notified by the competent authority to each applicant on the fifth working day following the day on which the application is submitted, provided that the Commission does not adopt special measures in accordance with paragraph 3 in the intervening period; the contract shall be deemed to have been concluded on the day of despatch of the notification of the decision referred to in this paragraph.

3 In the case of an aid fixed in advance for beef meat, pigmeat, sheepmeat and goatmeat, where an examination of the situation reveals that excessive use has been made of the aid scheme established by this Regulation, or that there is a risk of excessive use, the Commission may:

- a suspend the application of the scheme for not more than five working days; applications to conclude contracts submitted during that period shall not be accepted;
- b set a single percentage by which the quantities in the applications to conclude contracts are reduced, subject to observance of the minimum contractual quantity where appropriate;
- c reject applications made before the period of suspension whose acceptance would have been decided during the period of suspension.

#### *Article 24*

### **Conclusion of contracts for the aid granted by tendering procedure**

After the complete transmission of information referred to in Article 20, the competent authority of the Member State shall notify the successful tenderer that all the necessary information has been provided and that from that moment on a contract is considered as being concluded.

The date of conclusion of the contract shall be that on which the competent authority of the Member States notifies the contracting party.

#### *Article 25*

### **Placing into storage for products not yet in storage**

1 For products for which placing in storage takes place after the conclusion of a contract, the contractual quantity shall be placed into storage within 28 days following the date of conclusion of the contract.

2 The products shall be placed in storage in individual lots/batches/vats/silos, each lot/batch/vat/silo representing the quantity placed in storage on a given day by contract and by storage place.

3 Placing in storage shall end on the day on which the last individual lot/batch/vat/silo of the contractual quantity is placed in storage.

#### *Article 26*

### **Additional provisions concerning placing into storage for meat products**

1 In the case of beef, contracting parties may, under the permanent supervision of the competent authority and during the period of placing in storage, cut, partially debone or debone all or part of the products, provided that a sufficient quantity of carcasses is employed to ensure that the tonnage for which the contract has been concluded is stored and that all the meat

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resulting from such operation is placed in storage. Contracting parties wishing to make use of this option shall notify the competent authority no later than the day on which placing in storage begins.

However, the competent authority may require that the notification referred to in the first subparagraph takes place at least two working days before the placing in store of each individual lot.

The large tendons, cartilages, bones, pieces of fat and other scraps left over from cutting, partial deboning or deboning shall not be stored.

2 For meat products, placing in storage shall begin, for each individual lot of the contractual quantity, on the day on which it comes under the control of the competent authority. That day shall be the day on which the net weight of the fresh chilled product is determined:

- a at the place of storage, where the product is frozen on the premises;
- b at the place of freezing, where the product is frozen in suitable facilities outside the place of storage;
- c at the place of deboning or cutting, where the meat is placed in storage after deboning or cutting.

#### *Article 27*

### **Contractual storage period**

1 Where products are placed in storage after the conclusion of a contract, the contractual storage period starts on the day following that in which the last lot/batch/vat/silo has been placed into storage.

2 For products already placed in storage, the contractual storage period shall start on the day following that of receipt by the competent authorities of the information referred to in Articles 10(2)(f) and 17(2)(f).

3 For olive oil the contractual storage period shall not start until the vats are sealed after the taking of samples.

4 The last day of the storage period may be fixed in the Regulation opening the tendering procedure or in the Regulation fixing the amount of aid in advance, as referred to in Articles 9(2)(i) and 16(2)(f).

#### *Article 28*

### **Removal from storage**

1 Removal from storage may start on the day following the last day of the contractual storage period or, as the case may be, from the date specified in the Regulation fixing the amount of aid in advance or opening the tendering procedure.

2 Removal from store shall be in whole storage lots or, if the competent authority so authorises, in smaller quantities.

However, in the case referred to in Article 27(3) and in Article 36(5)(a), only a sealed quantity may be removed from store.

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3 It may be provided that on the expiry of a storage period of two months the contracting party may remove from storage all or part of the quantity of products under a given contract, subject to a minimum of 5 tonnes per contracting party and per storage place or, if less than 5 tonnes is available, the total quantity under contract in a storage place, provided that, within 60 days following their removal from storage, one of the following conditions is met:

- a the products left the Community's customs territory without further processing;
- b the products reached their destination without further processing, in the cases referred to in Article 36(1) of Commission Regulation (EC) No 800/1999<sup>(5)</sup>; or
- c the products are placed without further processing in a victualling warehouse approved pursuant to Article 40(2) of Regulation (EC) No 800/1999.

The contractual storage period shall end for each individual lot intended for export on the day before:

- a the day of removal from storage; or
- b the day of acceptance of the export declaration, where a product has not been moved.

The amount of aid shall be reduced in proportion to the reduction in the storage period by applying daily amounts to be fixed by the Commission in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

For the purposes of this paragraph, proof of export shall be furnished in accordance with Articles 7 and 8 of Regulation (EC) No 800/1999 in the case of products qualifying for a refund.

In the case of products not qualifying for a refund, proof of export shall be furnished in the cases provided for in Article 8 of Regulation (EC) No 800/1999 by producing the original T5 control copy, in accordance with Articles 912a, 912b, 912c, 912e and 912g of Commission Regulation (EEC) No 2454/93<sup>(6)</sup>. In box 107 of the control copy the number of this Regulation shall be mentioned.

#### *Article 29*

#### **Notification of the removal**

The contracting party shall notify the competent authority before it intends to begin removing products from storage, in accordance with the provisions laid down in Article 36(6).

Where the requirement in the first paragraph is not complied with but the competent authority is satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, the aid shall be reduced by 15 % and shall only be paid in respect of the period for which the contracting party supplies to the competent authority satisfactory proof that the product has been maintained in contractual storage.

Where the requirement in the first paragraph is not complied with and the competent authority is not satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, no aid shall be paid in respect of the contract concerned, and where applicable, the whole of the security shall be forfeit in respect of the contract concerned.

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## CHAPTER V

### Payment of aid

#### Article 30

#### Application for payment of aid

1 The aid, or, where an advance payment has been granted pursuant to Article 31, the balance of aid, shall be paid on the basis of an application for payment lodged by the contracting party within three months after the end of the contractual storage period.

2 Where the contracting party was unable to produce supporting documents within the time limit of three months despite acting promptly to obtain them on time, he may be given extensions, which may not exceed a total of three months.

3 Where the first subparagraph of Article 28(3) of this Regulation applies, the necessary proof shall be produced within the time limits specified in Article 49(2), (4) and (6) of Regulation (EC) No 800/1999.

#### Article 31

#### Advance payment of the aid

1 After 60 days of storage, a single advance payment of the aid may be made, at the contracting party's request, provided that he lodges a security equal to the advance payment plus 10 %.

2 The advance payment shall not exceed the amount of aid corresponding to a storage period of 90 days or three months, where appropriate. The security referred to in paragraph 1 shall be released as soon as the balance of aid has been paid.

#### Article 32

#### Payment of aid

Payment of the aid or of the balance of aid shall be carried out within 120 days following the day when an application for the payment of aid has been lodged provided that the obligations of the contract have been met and the final check has been carried out. However, if an administrative inquiry is under way, payment shall not be made until entitlement has been recognised.

#### Article 33

#### Payment of aid in case of deboning in the beef meat sector

1 In the case of boning, if the quantity actually stored does not exceed 67 kilograms of boneless meat per 100 kilograms of bone-in meat employed, no aid shall be paid.

2 If the quantity actually stored exceeds 67 kilograms but is lower than 75 kilograms of boneless meat per 100 kilograms of bone-in meat employed, the amount of aid shall be reduced proportionally.

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*Status: Point in time view as at 01/07/2010.*

*Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EC) No 826/2008 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)*

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3 No reduction or increase of the amount of aid shall apply where the quantity actually stored is 75 kilograms or more of boneless meat per 100 kilograms of bone-in meat employed.

#### Article 34

##### **Reduction of the amount or exclusion of the payment**

1 Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the contractual quantity and not less than 99 % of that quantity, the aid shall be paid for the quantity actually stored. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.

For pigmeat, beef, sheepmeat and goatmeat, the aid shall be paid for the quantity actually stored if this represents not less than 90 % of the contractual quantity.

For olive oil, the aid shall be paid for the quantity actually stored if this represents not less than 98 % of the contractual quantity.

For cheese the aid shall be paid for the quantity actually stored if this represents not less than 95 % of the contractual quantity.

2 Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the percentages indicated in paragraph 1, but not less than 80 % of the contractual quantity, the aid for the quantity actually stored shall be reduced by half. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.

3 Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than 80 % of the contracted quantity, no aid shall be paid.

4 If the time limit referred to in Article 25(1) is exceeded by more than 10 days, no aid shall be granted.

5 If checks during storage or on removal reveal defective products, no aid shall be paid for those quantities. The remainder of the storage lot which is still eligible for aid shall be not less than the minimum quantity provided in the Regulation opening the tendering procedure or in the Regulation fixing the amount of aid in advance. The same rule shall apply where part of a storage lot/batch is removed for that reason before the minimum storage period or, before the first date allowed for removal operations, where such a date is provided for in the Regulation opening the tendering procedure or in the Regulation fixing the amount of aid in advance.

Defective products shall not be included in the calculation of the quantity actually stored referred to in paragraphs 1, 2 and 3.

6 Except in cases of *force majeure*, where the contracting party fails to respect the end of the contractual storage period, if any has been fixed in accordance with Article 27(4), or the two-month time limit referred to in Article 28(3) for the totality of the quantity stored, each calendar day of non-compliance shall entail a reduction of 10 % in the amount of aid for the contract in question. However, this reduction shall not exceed 100 % of the amount of the aid.

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## CHAPTER VI

### Communications

#### Article 35

#### Obligations of communications from the Member States to the Commission

- 1 Member States shall notify the Commission:
  - a at least once a week the products and the quantities for which contracts have been concluded during the preceding week, broken down by storage period and where applicable, the quantities of products for which applications to conclude contracts have been submitted;
  - b not later than the end of the month for the previous month:
    - (i) the quantities of products placed into and leaving storage during the month concerned and where applicable, broken down by categories;
    - (ii) the quantities of products in storage at the end of the month concerned and where applicable, broken down by categories;
    - (iii) the quantities of products in respect of which the contractual storage period has ended;
    - (iv) if the storage period has been shortened or extended, in accordance with Article 43(d)(ii) and (iii) of Regulation (EC) No 1234/2007, the products and quantities in respect of which the storage period has been revised, and the initial and revised dates for removal from storage.
- 2 The Commission shall provide the Member States with models for all the notifications.
- 3 More detailed information on notifications shall be laid down in the Regulations fixing the amount of aid in advance or in the Regulations opening the tendering procedure.

## CHAPTER VII

### Checks and penalties

#### Article 36

#### Checks

- 1 Member States shall take all necessary measures to ensure compliance with this Regulation. Those 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 The authority responsible for checking shall conduct checks on the products entering storage:
  - a for meat products, at the time of placing into storage;
  - b for olive oil, prior to sealing of vats;



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- c for other products, within 30 days from the date of placing into storage or from the date of receipt of the information referred to in Articles 10(2)(f) or 17(2)(f) for the products already in storage.

Without prejudice to Articles 26, 27(3) and point (a) of the first subparagraph of paragraph 5 of this Article in order to ensure that the products stored are eligible for aid, a representative sample of at least 5 % of the quantities placed in storage shall be physically checked to ensure that, as regards, *inter alia*, the weight, identification, nature and composition of products, storage lots conform to the particulars in the application for concluding a contract.

3 Where the Member State can offer duly justified reasons, the 30-day limit laid down in paragraph 2 may be extended by 15 days.

4 If the checks show that the products stored do not correspond with the quality requirements mentioned in Annex I, the security referred to in Article 9(2)(h) and Article 16(2)(i), if lodged, shall be forfeit.

5 The authority responsible for checking shall:

- a seal the products by contract, storage lot/batch or a smaller quantity at the time of the check provided for in paragraph 2; or
- b make an unannounced check to ensure that the contractual quantity is present in the storage place.

The check referred to in point (b) of the first subparagraph shall correspond to at least 10 % of the total quantity under the contract and shall be representative. Such checks shall include an examination of the stock records as referred to in Article 22(3) and supporting documents, such as weigh tickets and delivery dockets, and a verification of weight, type of products and their identification relating to at least 5 % of the quantity subject to the unannounced check.

6 At the end of the contractual storage period, the authority responsible for checking shall, in respect of each contract, by sampling, verify weight and identification of the products in storage. For the purposes of this check, the contracting party shall inform the competent body, indicating the storage lots/batches/vats/silos involved, at least five working days before:

- a the end of the maximum contractual storage period; or
- b the start of removal operations where the products is removed before the expiry of the maximum contractual storage period.

The Member States may accept a shorter time limit than five working days.

7 Where the option in paragraph 5(a) applies, the presence and integrity of the seals applied shall be verified at the end of the contractual storage period. Sealing and handling costs shall be borne by the contracting party.

8 Any samples taken for verification of the quality and composition of the products shall be taken by the officials of the authority responsible for checking or in their presence.

A physical check or verification of weight shall be conducted in the presence of those officials at the weighing procedure.

For the purposes of audit trail, all stock and financial records and documents checked by those officials shall be stamped or initialled during the control visit. Where computer records are verified, a copy shall be printed and retained on the inspection file.

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## Article 37

### Reporting

1 The authority responsible for checking shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items checked.

The report shall set out:

- a the date and time of commencement of the check;
- b details of advance notice given;
- c the duration of the check;
- d the responsible persons present;
- e the nature and extent of the checks carried out, providing, in particular, details of the documents and products examined;
- f the findings and conclusions;
- g whether any follow-up is required.

The report shall be signed by the official responsible and countersigned by the contracting party or, where applicable, by the operator of the warehouse and shall be included in the payment file.

2 In case of significant irregularities affecting at least 5 % of the quantities of products covered by a single contract subject to the check, the verification shall be extended to a larger sample to be determined by the authority responsible for the checking.

3 The authority responsible for checking shall record any case of non-compliance on the basis of the criteria of gravity, extent, duration and repetition that may result in exclusion in accordance with Article 38(1), and/or in the repayment of an unduly paid aid, including interests where applicable, in accordance with paragraph 4 of that Article.

## Article 38

### Penalties

1 Where the competent authority of a Member State finds that a document presented by a tenderer or applicant for the attribution of the rights deriving from this Regulation provides incorrect information and where the incorrect information concerned is decisive for the attribution of that right, the competent authority shall exclude the tenderer or applicant from the procedure of granting private storage aid for the same product for which the incorrect information has been given for a period of one year from the moment when a final administrative decision establishing the irregularity has been taken.

2 The exclusion provided for in paragraph 1 shall not apply if the tenderer or applicant proves, to the satisfaction of the competent authority, that the situation referred to in that paragraph is due to *force majeure* or obvious error.

3 Unduly paid aid shall be recovered, with interest from the operators concerned. The rules laid down in Article 73 of Commission Regulation (EC) No 796/2004<sup>(7)</sup> shall apply *mutatis mutandis*.

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4 Implementation of administrative penalties and recovery of unduly paid amounts, as provided for in this Article, are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006<sup>(8)</sup>.

## CHAPTER VIII

### Amendments, repeals and final provisions

#### Article 39

#### Amendment to Regulation (EC) No 562/2005

Paragraph 2 of Article 1 and Article 3 of Regulation (EC) No 562/2005 are deleted.

#### Article 40

#### Amendment to Regulation (EC) No 952/2006

Chapter VIa of Regulation (EC) No 952/2006 is deleted.

However, it shall continue to apply in respect of contracts concluded in 2008 under the deleted Chapter.

#### Article 41

#### Amendment to Regulation (EC) No 105/2008

Chapter III of Regulation (EC) No 105/2008 is deleted.

However, it shall continue to apply in respect of contracts concluded in 2008 under the deleted Chapter.

#### Article 42

#### Repeals

Regulations (EEC) No 3444/90, (EC) No 907/2000, (EC) No 2153/2005, (EC) No 6/2008 and (EC) No 85/2008 are repealed. However, they shall continue to apply in respect of contracts concluded under the repealed Regulations before the entry into force of this Regulation.

Regulation (EC) No 2659/94 is repealed. [<sup>F2</sup>However, it shall continue to apply in respect of contracts concluded under that repealed Regulation before 1 April 2009.]

Regulation (EC) No 414/2008 is repealed. However, it shall continue to apply in respect of contracts concluded under that repealed Regulation during the marketing year 2008/2009.

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#### **Textual Amendments**

- F2** Substituted by [Commission Regulation \(EC\) No 138/2009 of 18 February 2009 amending Regulation \(EC\) No 826/2008 laying down common rules for the granting of private storage aid for certain agricultural products.](#)

#### *Article 43*

#### **Entry into force**

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

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

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**Status:** Point in time view as at 01/07/2010.

**Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 826/2008 (repealed). Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)

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- (1) OJ L 209, 11.8.2005, p. 1.
- (2) [<sup>F1</sup>OJ L 228, 1.9.2009, p. 3.]
- (3) OJ L 13, 19.1.2000, p. 12.
- (4) OJ L 251, 27.7.2004, p. 9.
- (5) OJ L 102, 17.4.1999, p. 11.
- (6) OJ L 253, 11.10.1993, p. 1.
- (7) OJ L 141, 30.4.2004, p. 18.
- (8) OJ L 355, 15.12.2006, p. 56.

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#### **Textual Amendments**

- F1** Substituted by Commission Regulation (EU) No 557/2010 of 24 June 2010 amending Regulations (EC) No 1518/2003, (EC) No 596/2004, (EC) No 633/2004, (EC) No 1345/2005, (EC) No 2014/2005, (EC) No 239/2007, (EC) No 1299/2007, (EC) No 543/2008, (EC) No 589/2008, (EC) No 617/2008 and (EC) No 826/2008 as regards the notification obligations within the common organisation of agricultural markets.

**Status:**

Point in time view as at 01/07/2010.

**Changes to legislation:**

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