

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selling of agricultural products under public intervention (repealed)

TITLE I

**COMMON RULES AND CONDITIONS RELATED TO PUBLIC INTERVENTION**

CHAPTER I

**Scope, definition and approval of intervention centres and storage places**

*Article 1*

**Scope and definition**

1 This Regulation lays down common detailed rules for buying-in for intervention and selling of products from intervention for the products listed in Article 10(1)(a), (b), (d), (e) and (f) of Regulation (EC) No 1234/2007.

It shall apply without prejudice to the specific provisions laid down in Commission Regulations on opening a tendering procedure for buying-in of products or in the Commission Regulations on sales of products from intervention.

2 For the purposes of this Regulation, ‘intervention agency’ shall mean the paying agency or the agency delegated by the paying agency in accordance with Article 2(1) of Regulation (EC) No 884/2006.

*Article 2*

**Designation and approval of intervention centres and storage places**

1 Intervention centres and storage places where products bought-in are stored shall be under the responsibility of the intervention agencies in accordance with this Regulation and Regulation (EC) No 884/2006, in particular with regard to matters of responsibility and controls, as provided for in Article 2 of that Regulation.

2 The intervention centres to be designated for cereals and rice by the Commission pursuant to Article 41 of Regulation (EC) No 1234/2007 shall be subject to prior approval by the intervention agencies. An intervention centre can consist of one or several storage places located in a region of a Member State.

3 The storage places of an intervention centre shall be subject to approval by the intervention agencies. The intervention agencies shall ensure that the intervention centres or the storage places fulfil at least the conditions laid down in Article 3.

4 Information concerning the intervention centres and their storage places shall be updated and made available to the Member States and the public, in accordance with Article 55 of this Regulation.

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### Article 3

#### Requirements for intervention centres and storage places

- 1 For cereals and rice:
  - a each intervention centre shall have a minimum storage capacity of:
    - (i) 20 000 tonnes for cereals, for the sum of all storage places;
    - (ii) 10 000 tonnes for rice, for the sum of all storage places;
  - b each storage place shall:
    - (i) have a minimum storage capacity of 5 000 tonnes in respect of purchases from the intervention period starting in 2012/2013;
    - (ii) be built or suitable for the storage and keeping in good condition of cereals and rice, as referred to in paragraph 3;
    - (iii) have available the necessary technical equipment to take over cereals and rice;
    - (iv) be able to remove the quantities in order to comply with the removal period determined in Article 51(2).

For the purpose of this paragraph, the ‘minimum storage capacity’ for an intervention centre means a minimum capacity which may not be available permanently, but a readily achievable capacity during the period when buying-in might take place. The minimum storage capacity shall apply for all the cereals and varieties of rice to be bought in.

Where storage places have ready access to a river, a sea or a railway connection, the minimum storage capacity fixed in point (b)(i) of the first subparagraph shall not apply.

2 For butter or for skimmed milk powder, each storage place shall have a minimum storage capacity of 400 tonnes. The minimum storage capacity requirement shall not apply where the storage place has ready access to a river, sea or railway connection.

3 In the case of skimmed milk powder, butter, cereals and rice, the storage places must:

- a be dry, well maintained and free of vermin;
- b be free of extraneous odours;
- c permit good ventilation, except for cold stores.

4 In the case of butter, the intervention agencies shall lay down technical standards, providing in particular for a storage temperature equal or lower than - 15 °C, and shall take any other measures necessary to ensure that the butter is properly conserved.

5 In the case of products of the beef and veal sector, hereinafter referred to as ‘beef’, the storage places shall be selected by the Member States with a view to ensuring the effectiveness of intervention measures. The facilities at those storage places shall permit:

- a bone-in meat to be taken over;
- b freezing of all meat to be preserved without further processing;
- c storage of such meat for at least three months under technically satisfactory conditions.

Only storage places whose cutting plants and refrigeration plants are unconnected with the slaughterhouse and/or the successful tenderer and which are operated, managed and staffed independently of the slaughterhouse and/or the successful tenderer may be selected for bone-in meat intended for boning. However, where practical difficulties occur in meeting these requirements within the processing chain, Member States may

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derogate from these requirements, provided that they tighten controls at the time of acceptance in accordance with Part III(5) of Annex III.

Save for specific derogations provided for in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, the cold stores located in the Member State exercising jurisdiction over the intervention agency shall be capable of holding all boned beef allocated by the intervention agency for at least three months under technically satisfactory conditions.

## CHAPTER II

### Access to public intervention

#### Article 4

##### Eligibility of operators

1 Any operator established and registered for VAT purposes in the Community can submit an offer or a tender under a public intervention scheme.

However, for the purposes of buying-in, for cereals and rice, registration in a farm register is sufficient if the operator has no VAT registration.

2 In the case of beef for buying-in only the following operators may submit tenders:

- a slaughterhouses for bovine animals registered or approved in accordance with Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council<sup>(1)</sup>, whatever their legal status; and
- b livestock or meat traders who have slaughtering undertaken therein on their own account.

3 For butter and skimmed milk powder, approved undertakings as referred to in Article 10(1)(e) and (f) of Regulation (EC) No 1234/2007 are eligible only if they fulfil the conditions referred to in Part III of Annex IV and Part III of Annex V.

#### Article 5

##### Procedure for submitting offers or tenders

1 Offers or tenders submitted in accordance with this Regulation shall use the method made available to the operators by the Member State concerned.

2 The intervention agencies may require that electronic offers or tenders be accompanied by an advance electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council<sup>(2)</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 applied by the Commission in accordance with its provisions on electronic and digitised documents, set out by Decision 2004/563/EC, Euratom<sup>(3)</sup>, and in its implementing rules.

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## TITLE II

### PROCEDURE OF BUYING-IN

#### Article 6

##### Type of procedure for buying-in

1 Buying-in of products listed in Article 10(1)(a),(b),(d),(e) and (f) of Regulation (EC) No 1234/2007 shall be carried out either through buying-in at a fixed price or via a tendering procedure in accordance with Articles 12, 13 and 18 of that Regulation.

2 Offers or tenders for common wheat, butter and skimmed milk powder may be submitted in accordance with the provisions of this Title during the intervention periods fixed in Article 11 of Regulation (EC) No 1234/2007.

## CHAPTER I

### General rules

#### Section I

##### Common conditions for buying-in

#### Article 7

##### Eligibility of products

1 In order to be eligible for public intervention, in addition to the requirements laid down in Regulation (EC) No 1234/2007, the products shall be of sound, fair and of marketable quality.

In particular, they shall fulfil the requirements laid down in this Regulation:

- for cereals: in Annex I, Parts I, II and III,
- for rice: in Annex II, Parts I and III,
- for beef: in Annex III, Parts I, III, V and VI,
- for butter: in Article 28 and Annex IV, Parts I and IV,
- for skimmed milk powder: in Article 28 and Annex V, Parts I, IV and V.

2 In order to establish the eligibility of products, tests shall be carried out in accordance with the methods laid down in:

- [<sup>F1</sup>for cereals: in Annex I, Parts III, IV, V, VII and XII,]
- for rice: in Annex II, Part VI,
- for beef: in Annex III, Part III,
- for butter: in Annex IV, Part IV,
- for skimmed milk powder: in Annex V, Part IV.

[<sup>F23</sup> To determine the quality of cereals offered for, or placed in, intervention, the methods to be used shall be those described in Annex I, established by the latest versions of the relevant

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European and/or international standards, as the case may be, in force on the first day of each marketing year.]

#### **Textual Amendments**

- F1** Substituted by [Commission Regulation \(EU\) No 742/2010 of 17 August 2010 amending Regulation \(EU\) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.](#)
- F2** Inserted by [Commission Regulation \(EU\) No 742/2010 of 17 August 2010 amending Regulation \(EU\) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.](#)

### *Article 8*

#### **Minimum quantities of products offered**

- 1 The minimum quantity offered or tendered for buying-in shall be:
- for common wheat, barley, maize and sorghum: 80 tonnes;
  - for durum wheat: 10 tonnes;
  - for rice: 20 tonnes;
  - for beef: 10 tonnes;
  - for butter: 20 tonnes;
  - for skimmed milk powder: 20 tonnes.
- 2 For buying-in products at a fixed price, a Member State may require minimum quantities greater than those laid down in paragraph 1 if justified by the conditions and practices of the wholesale trade or environmental rules in force in the Member State.

### *Article 9*

#### **Security**

When submitting an offer or a tender for buying-in, the following security shall be lodged in favour of the intervention agency to which the offer or tender is submitted, in accordance with Regulation (EC) No 2220/85:

- for cereals: EUR 20/tonne;
- for paddy rice: EUR 30/tonne;
- for beef: EUR 300/tonne;
- for butter: EUR 50/tonne;
- for skimmed milk powder: EUR 50/tonne.

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## Article 10

### Conditions for submission and admissibility of offers and tenders

1 To be admissible by the intervention agency the offer or tender shall be submitted in the official language or one of the official languages of the Member State in which the offer or tender is submitted, and shall include:

- a a form made available by the Member States providing, at least, the following information:
  - (i) the offerer's or tenderer's name, address and VAT registration number in the Member State where the offerer or tenderer carries out his main activity or, failing this, his farm registration number;
  - (ii) the product offered with, for cereals and rice, its relevant CN code and, for rice, an indication of the type and variety;
  - (iii) except for beef, the place where the product is held at the time of the offer or tender;
  - (iv) for cereals and rice, the approved storage place of an intervention centre for which the offer or tender is made, at the lowest cost taking into account Article 29; this storage place shall not be the storage place where the product is held at the time of the offer or tender;
  - (v) the year of harvest and the area or areas of production in the Community for cereals and rice;
  - (vi) the date of production for butter and skimmed milk powder;
  - (vii) the quantity offered or tendered within the limits laid down in Article 8;
  - (viii) for cereals and rice the main characteristics of the product offered;
  - (ix) for butter and skimmed milk powder, the name and the approval number of the undertakings.
- b the following annexed documents:
  - (i) proof that the security referred to in Article 9 has been lodged by the offerer or tenderer;
  - (ii) for cereals and rice a declaration by the offerer or tenderer that the quantity offered is actually present in the place of storage specified in point (a)(iii) of this paragraph;
  - (iii) for cereals and rice a declaration by the offerer or tenderer that the products are of Community origin and that the offer or tender refers to a homogeneous lot which, for rice, must comprise paddy rice of the same variety; and
  - (iv) for cereals and rice, a declaration specifying whether any post-harvest treatment has been carried out or not, 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 Council Directive 91/414/EEC<sup>(4)</sup>.

2 Notwithstanding, paragraph 1(a)(iv) of this Article, an offerer or tenderer can request on the form referred to in paragraph 1(a) thereof that the product is taken over at the storage place

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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 3 and, in respect of cereals and rice, has been approved in accordance with Article 2(3).

3 Where the time limit for the submission of offers or tenders is a public holiday, the offers or tenders shall be submitted at the latest in the last working day preceding the public holiday.

4 Offers or tenders submitted on a Saturday, Sunday or public holiday shall be deemed to be received by the intervention agency on the first working day following the day on which they were submitted.

5 Offers or tenders shall not be withdrawn or amended after their submission.

6 The intervention agency shall register the admissible offers or tenders the day on which the offer or tender was received and the quantities concerned.

7 The rights and obligations resulting from the acceptance of the offer or tender shall not be transferable.

#### *Article 11*

#### **Verification of offers or tenders by the intervention agency**

1 The intervention agencies shall check that the offers or tenders are admissible, on the basis of the elements required, as set out in Article 10(1).

If the offer or tender is not admissible, the operator concerned shall be informed by the intervention agency within three working days. For offers, if the operator does not receive such information, the offer is considered as being admissible.

2 The documents referred to in Article 10(1)(b)(ii), (iii) and (iv) can be checked for compliance after the intervention agency has verified that the offers or tenders are admissible, if necessary with the assistance of the intervention agency competent for the storage place indicated by the offerer or tenderer, in accordance with Article 32(3).

#### *Section II*

#### ***Specific conditions for buying-in at fixed price***

#### *Article 12*

#### **Procedure for buying-in of products at fixed price**

1 Buying-in of common wheat, butter and skimmed milk powder at fixed price as referred to in Article 18(1) of Regulation (EC) No 1234/2007 shall be carried out in accordance with the provisions of Section I and this Section.

2 Offers can be submitted to the intervention agency from the beginning of the periods laid down in Article 11 of Regulation (EC) No 1234/2007.

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### Article 13

#### Notifications to the Commission

1 The intervention agencies shall notify the Commission of the quantities of common wheat, butter and skimmed milk powder which, during the preceding week, have been the subject of an offer and of the related information.

2 The notifications shall be sent:

- a for butter and skimmed milk powder: not later than 14.00 (Brussels time) each Monday;
- b for common wheat: not later than 12.00 (Brussels time) each Wednesday, as part of the notification referred to in Article 56(1).

3 When for common wheat, butter and skimmed milk powder, the quantities offered approach the limits fixed in Articles 13(1)(a), (c) or (d) or 18(1)(a) of Regulation (EC) No 1234/2007, the Commission shall inform the Member States as of which date they shall notify the Commission of the quantities as referred to in paragraph 1 of this Article each working day before 14.00 (Brussels time) for the quantities of common wheat, butter and skimmed milk powder offered for intervention during the preceding working day.

4 The notifications shall not contain the data referred to in Article 10(1)(a)(i) and 10(1)(a)(ix).

5 The notifications shall be made in accordance with Article 58.

### Article 14

#### Measures for respecting the intervention ceilings

1 In order to comply with the limits referred to in Article 13(1)(a), (c) and (d) and Article 18(1)(a) of Regulation (EC) No 1234/2007, the Commission shall decide, without the assistance of the Committee referred to in Article 195(1) of that Regulation:

- a to close intervention buying-in at fixed price;
- b where acceptance of the full quantity offered on a certain day 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 on that day from each offerer;
- c where appropriate, to reject pending offers submitted to the intervention agencies of the Member States.

The Commission shall decide within 2 working days following the notification referred to in Article 13(1) and within 5 working days following the notification referred to in Article 13(3).

2 For common wheat, butter and skimmed milk powder, an offerer to whom an allocation coefficient as referred to in paragraph 1, point (b) applies may withdraw his offer within 5 working days from the date of entry into force of the regulation fixing the allocation coefficient.



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### *Section III*

#### ***Specific conditions for buying-in via a tendering procedure***

##### *Article 15*

#### **Procedure for buying-in of products via a tendering procedure**

Buying-in of products referred to in Article 18(2) of Regulation (EC) No 1234/2007 shall be carried out in accordance with the provisions of Section I and of this Section.

##### *Article 16*

#### **Tendering procedure**

1 A tendering procedure for buying-in of products may 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 Commission shall open without the assistance of the Committee referred to in Article 195(1) of Regulation (EC) No 1234/2007:

a the tendering procedure for buying-in of common wheat for amounts in excess of the maximum quantity offered of 3 million tonnes;

[<sup>F3</sup>b the tendering procedure for buying-in beef by category and Member State, or region thereof, on the basis of the two most recent weekly market prices recorded, in accordance with Article 12(1)(c) of Regulation (EC) No 1234/2007. That tendering procedure shall be closed by the Commission, in accordance with the same procedure, by category and Member State, or region thereof, on the basis of the most recent weekly market prices recorded.]

3 The Regulation opening the tendering procedure shall, in particular, contain the following information:

a the products covered with their relevant CN codes, for cereals and rice, with an indication for rice of the type and variety;

b the period covered (tendering period) and, if necessary the different sub-periods during which the tenders can be submitted.

4 In accordance with the second subparagraph of Article 18(2) of Regulation (EC) No 1234/2007, a restricted tendering procedure may be opened in special circumstances in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007. In such a case, the Regulation shall refer to the specific Member State or region of a Member State covered by the tendering procedure.

5 With regard to rice, the tendering procedure may be restricted to one or more types of rice as defined in Part I, I.2 of Annex III of Regulation (EC) No 1234/2007 (‘round grain rice’, ‘medium grain rice’, ‘long grain rice A’ or ‘long grain rice B’).

6 [<sup>F3</sup>For the purposes of Article 12(1)(c), Article 12(2) and Article 18(3)(b) of Regulation (EC) No 1234/2007, 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

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- the coefficients set out in Part II of Annex III to this Regulation in the Member State or intervention region concerned;
- (b) the average market prices shall be recorded in accordance with the conditions and in respect of the qualities laid down in Commission Regulation (EC) No 1249/2008<sup>(5)</sup>;
- (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 represents of total slaughterings in that Member State or region.

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

- region I: Great Britain,
- region II: Northern Ireland.

7 For the purposes of paragraphs 2 and 6 of this Article, the competent authority of the Member State shall notify to the Commission the average market prices in accordance with Article 17 of Regulation (EC) No 1249/2008 and Article 58 of this Regulation.

#### **Textual Amendments**

- F3** Substituted by [Commission Regulation \(EU\) No 549/2010 of 23 June 2010 amending and correcting Regulation \(EU\) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.](#)

### *Article 17*

#### **Submission and admissibility of tenders**

1 In addition to the general conditions laid down in Article 10, a tender shall be admissible if it indicates a proposed price in euro per unit of measurement rounded to no more than two decimal places, exclusive of VAT.

In the case of cereals and rice the price proposed per tonne for the products shall be a price corresponding to the minimum quality for cereals or to the standard quality for rice, delivered to the storage place indicated by the tenderer, not unloaded.

In the case of butter and skimmed milk powder, the proposed price shall be the price per 100 kg of products delivered to the loading bay of the storage place to be designated by the intervention agency in accordance with Articles 25 and 30(1).

[<sup>X1</sup>In the case of beef, tenders shall state the price quoted in accordance with Article 16(6)(a) and the second subparagraph of Article 19(2), expressed per 100 kg of products of quality R3.]

2 Without prejudice to Article 20(1) of this Regulation, the price tendered shall at most be equal for cereals, rice, beef and skimmed milk powder to the reference price set out in Article 8 of Regulation (EC) No 1234/2007 or, for butter to 90 % of the reference price as referred to in Article 18(3) of that Regulation.

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#### **Editorial Information**

- X1** Substituted by [Corrigendum to Commission Regulation \(EU\) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention \(Official Journal of the European Union L 349 of 29 December 2009\)](#).

### *Article 18*

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

- 1 All admissible tenders shall be notified to the Commission by the intervention agencies, within the time limits set in the Regulation opening the tendering procedure, containing the related information.
- 2 The notifications shall not contain the data referred to in Article 10(1)(a)(i) and 10(1)(a)(ix).
- 3 The intervention agencies shall notify nil returns to the Commission within the time limits referred to in paragraph 1.
- 4 The notifications shall be made in accordance with Article 58.

### *Article 19*

#### **Decisions on the basis of tenders**

- 1 On the basis of the tenders notified as provided for in Article 18, the Commission shall, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, fix a maximum buying-in price or decide not to fix a maximum buying-in price.
- 2 In the case of beef:
  - a the maximum buying-in price relating to quality R3 shall be fixed per category;
  - b a different buying-in price may be set per Member State or region thereof to reflect the average market prices recorded, in application of Article 12(1)(c) of Regulation (EC) No 1234/2007.

Where qualities other than quality R3 are taken over, the price to be paid to successful tenderers shall be adjusted by applying the coefficient for the quality bought in as set out in Part II of Annex III.

- 3 Decisions on public intervention referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Union*.

### *Article 20*

#### **Individual decisions on tenders**

- 1 Where a maximum buying-in price has been fixed pursuant to Article 19(1), the intervention agencies shall accept tenders which are equal to or lower than the maximum amount. All the other tenders shall be rejected.
- 2 Where no maximum buying-in price has been fixed all tenders shall be rejected.

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The intervention agencies shall not accept tenders that have not been notified as provided for in Article 18.

3 The intervention agencies shall take the decisions referred to in paragraphs 1 and 2 of this Article after the publication of the Commission's decision on public intervention referred to in Article 19(3) and shall notify tenderers of the outcome of their participation within a deadline of three working days after the entry into force.

### Article 21

#### Specific criteria in the beef sector

1 For beef, tenders shall not be considered if the price offered is higher than the average market price recorded by category in each Member State or region thereof, converted into quality R3 using the coefficients set out in Part II of Annex III, plus EUR 10 per 100 kg carcass weight.

2 Without prejudice to paragraph 1, tenders shall be rejected if the price offered is higher than the maximum buying-in price as referred to in the first subparagraph of Article 19(2) for the tendering sub-period concerned.

3 Where the buying-in price awarded to tenderers is higher than the average market price as referred to in paragraph 1, the price awarded shall be adjusted by multiplying it by the coefficient obtained by applying formula A in Part VII of Annex III. However, that coefficient may not:

- a be greater than 1;
- b result in a reduction in the price awarded that is greater than the difference between that price and the average market price.

Should the Member State possess reliable data and have suitable means of verification, it may decide to calculate the coefficient for each tenderer using *formula B* in Part VII of Annex III.

### Article 22

#### Limitation of buying-in for beef

[<sup>X1</sup>Where the intervention agencies are offered beef in quantities greater than they are able to take over forthwith, they may limit the buying-in to the quantities they can take over in their territory or in one of their intervention regions as defined in the second subparagraph of Article 16(6).]

Member States shall ensure equal access for all parties concerned in the event of such limitation.

#### Editorial Information

- X1** Substituted by [Corrigendum to Commission Regulation \(EU\) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention \(Official Journal of the European Union L 349 of 29 December 2009\)](#).

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## CHAPTER II

### Primary requirements and release or forfeiture of the security

#### Article 23

##### Primary requirements

The following shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85:

- (a) maintenance of the offer or tender;
- (b) delivery of the products to the storage place designated by the intervention agencies within the time limit laid down in the delivery order in accordance with Article 25;
- (c) compliance with the requirements referred to in Article 7;
- (d) for cereals and rice, the presence of the products in the storage place indicated at the time the offer or tender was submitted.

#### Article 24

##### Release and forfeiture of the security

1 The security referred to in Article 9 shall be released as soon as the offerer or tenderer has delivered the quantity indicated on the delivery order under Article 25 within the time limit laid down therein and conformity with the requirements referred to in Article 7 has been established.

2 Where the products do not conform with the requirements referred to in Article 7, the products shall not be accepted and the security shall be forfeit in respect of the quantities not accepted.

3 Except in cases of force majeure, where the offerer or tenderer fails to deliver the products within the time limit laid down in the delivery order, the security shall be forfeit in proportion to the quantities not delivered and buying-in shall be cancelled in respect of the quantities not yet delivered.

4 Where offers or tenders are not admissible or have not been accepted, the securities shall be released.

5 For cereals and rice, if the intervention agency has not received satisfactory evidence that the quantities offered or tendered were present in the storage place, as provided for in Article 10(1)(b)(ii), the security shall be forfeited.

For the purposes of the first subparagraph, the intervention agency shall carry out checks on the quantities present in the places of storage by applying *mutatis mutandis* the rules and conditions laid down in Regulation (EC) No 884/2006 as regards checks on the physical presence of products stored under public storage operations, and more specifically those provided for under Part B(III) of Annex I to that Regulation. These checks shall be carried out on at least 5 % of the tenders and 5 % of the quantities offered, on the basis of a risk analysis.

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*Changes to legislation: There are outstanding changes not yet made to Commission Regulation (EU) No 1272/2009 (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)*

6 In the case of cereals and rice, if the quantity actually delivered and accepted is less than the quantity awarded, the security shall be released in full where the difference is not more than 5 %.

7 In the case of beef, if the quantity actually delivered and accepted is less than the quantity awarded, the security shall:

- a be released in full where the difference is not more than 5 % or 175 kg;
- b except in cases of *force majeure*, be forfeited:
  - (i) in part, corresponding to the quantities not delivered or not accepted where the difference is not more than 15 %;
  - (ii) in full in other cases, pursuant to Article 29 of Regulation (EEC) No 2220/85.

8 The security shall be released in case of application of Article 14(2).

## CHAPTER III

### Common rules for deliveries

#### Section I

#### Deliveries

#### Article 25

#### Deliveries and delivery orders

[<sup>F3</sup>After having checked the admissibility of the offer or tender as referred to in Article 11(1) and after having notified in accordance with Article 20(3), the intervention agency shall issue a delivery order, without prejudice to the measures adopted in accordance with Articles 14(1) and 19(1). The delivery order shall be dated and numbered and shall show:

- (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.]

Delivery orders shall not be issued for quantities not notified to the Commission as provided for in Articles 13(1) and 18(1).

#### Textual Amendments

- F3** Substituted by Commission Regulation (EU) No 549/2010 of 23 June 2010 amending and correcting Regulation (EU) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation (EC) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.

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## Article 26

### Specific provisions for the delivery of cereals and rice

1 If cereals or rice cannot be delivered to the storage place of the intervention centre indicated by the offerer or tenderer, referred to in Article 10(1)(a)(iv), the intervention agency shall designate another storage place of the same intervention centre or a storage place of another approved intervention centre, to which delivery must take place, at the lowest cost.

2 Delivery to the storage place shall occur not later than the end of the third month following the date of issue of the delivery order referred to in Article 25 and in any case not later than 30 June for cereals and 31 August for rice.

However in cases referred to in Article 35(2), the delivery shall take place not later than 31 August for cereals and 31 October for rice.

3 The quantity delivered shall be weighed in the presence of the offerer or tenderer and a representative of the intervention agency who is independent vis-à-vis the offerer or tenderer.

However, the representative of the intervention agency may also be the storekeeper. In that case, the intervention agency itself shall, within 30 days from the date of conditional takeover referred to in Article 31(1), conduct an inspection involving at least a volumetric check; any difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %.

Where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on when the cereals or rice were taken over.

Where the tolerance is exceeded, the cereals or rice shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the Member State, where it is more.

## Article 27

### Specific provisions for the delivery of beef

1 The costs of unloading shall be borne by the successful tenderer.

2 Successful tenderers shall deliver the products not later than 17 days after the first working day following publication of the regulation fixing the maximum buying-in price.

However, depending on the quantities awarded, the intervention agency may extend that period by one week. Deliveries may be divided into more than one consignment.

3 Specific requirements for the delivery of beef are laid down in Annex III, Part III.

## Article 28

### Specific provisions for the delivery of butter and skimmed milk powder

1 [<sup>XI</sup>Butter shall be packed and delivered in blocks of at least 25 kilograms net.] Butter shall be packed in new, strong material in such a way as to ensure it is protected throughout

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transportation, entry into storage, storage and removal from storage. The packing shall show at least the following particulars, where appropriate in code:

- a the approval number identifying the factory and the Member State of production;
- b the date of production;
- c the date of entry into storage;
- d the production batch number and the package number; the package number may be replaced by a pallet number marked on the pallet;
- e the words 'sweet cream' if the aqueous phase of the butter has the corresponding pH.

Member States may waive the obligation to show the date of entry into storage on the packaging, provided that the store manager undertakes to keep a register in which the particulars referred to in the first subparagraph are recorded on the date of entry into storage.

2 [X<sup>1</sup>The skimmed milk powder shall be put up in bags of a net weight of 25 kilograms net meeting the requirements laid down in Part V of Annex V, and showing the following particulars, where appropriate in code:]

- a the approval number identifying the factory and the Member State of manufacture;
- b the date or, where appropriate, the week of manufacture;
- c the number of the manufacturing batch;
- d the description 'spray skimmed-milk powder'.

3 The successful offerer or tenderer shall deliver the butter or skimmed milk powder to the loading bay of the storage place within 28 days following the date of issue of the delivery order. Delivery may be in several consignments.

The skimmed milk powder and butter shall be delivered on pallets of a quality suitable for long-term storage, to be exchanged against equivalent pallets.

[F<sup>4</sup>The cost incurred in unloading the butter or skimmed milk powder at the loading bay of the storage place shall be borne by the paying agency.]

#### **Editorial Information**

- X1** Substituted by [Corrigendum to Commission Regulation \(EU\) No 1272/2009 of 11 December 2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention \(Official Journal of the European Union L 349 of 29 December 2009\)](#).

#### **Textual Amendments**

- F4** Substituted by [Commission Implementing Regulation \(EU\) No 957/2011 of 26 September 2011 amending Regulation \(EU\) No 1272/2009 as regards the buying-in and sale of butter and skimmed milk powder](#).



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## Section II

### Transport costs

#### Article 29

#### Transport costs for cereals and rice

1 The cost of transporting the cereals or rice to the storage place indicated by the offerer or tenderer as being at the lowest cost, in accordance with Article 10(1)(a)(iv), shall be borne by the offerer or tenderer, where the distance involved is equal to or less than 100 km. Once this distance has been exceeded, the transport costs over 100 km shall be borne by the intervention agency.

[<sup>F3</sup>2 If the storage place indicated by the offerer or tenderer is changed by the intervention agency, in accordance with Article 26(1), the additional transport costs, except for the first 20 km, shall be borne by the intervention agency. However, the transport costs over 100 km shall still be borne totally by the intervention agency. This paragraph shall not apply in case of application of Article 31(2).]

3 The costs to be borne by the intervention agency referred to in paragraphs 1 and 2 shall be reimbursed by the Commission, on a non-flat-rate basis, in accordance with Article 4(1)(c) of Regulation (EC) No 884/2006.

4 The transport costs inherent in the replacement of products referred to in Article 35(2) shall be borne solely by the offerer or tenderer.

#### Textual Amendments

- F3** Substituted by [Commission Regulation \(EU\) No 549/2010 of 23 June 2010 amending and correcting Regulation \(EU\) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.](#)

#### Article 30

#### Transport costs for butter and skimmed milk powder

1 The intervention agency shall choose the nearest available storage place to the place where the butter or skimmed milk powder is stored.

However, the intervention agency may choose another storage place situated within a distance of 350 km, provided that the choice of that storage place does not result in additional storage costs.

The intervention agency may choose a storage place situated beyond that distance if the resulting expenditure, including storage and transport costs, is lower. In that case, the intervention agency shall notify the Commission of its choice forthwith.

2 Where the intervention agency which buys-in the butter or skimmed milk powder is in a Member State other than the one in whose territory the offered butter or skimmed milk powder is stored, no account shall be taken, in calculating the maximum distance referred to in

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paragraph 1 of the distance between the store of the offerer or tenderer and the border of the Member State of the purchasing competent body.

3 Beyond the maximum distance referred to in paragraph 1, the additional transport costs shall be borne by the intervention agency at a rate per tonne and per kilometre of EUR 0,05 for skimmed milk powder and EUR 0,065 for butter. The additional costs shall be borne by the intervention agency only if the temperature of the butter does not exceed 6 °C on arrival at the cold store.

## CHAPTER IV

### Takeover, initial controls and sampling

#### Article 31

##### Conditional takeover

- 1 The date of conditional takeover shall be:
  - a for cereals, rice, butter and skimmed milk powder on the day on which the whole quantity entered the storage place designated but not earlier than the day following that on which the delivery order was issued;
  - b for each consignment of beef as referred to in Article 27, on the day of entrance at the weighing point of the intervention storage place's cutting plant.
- 2 The intervention agency may decide that the takeover of cereals, rice, butter or skimmed milk powder may take 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 3 and, in respect of cereals and rice, that it has been approved in accordance with Article 2(3). In that case, conditional takeover takes place on the day following the issue of the delivery order.
- 3 The products shall be taken over by the intervention agency or its representative, who has to be a person who is independent from the offerer or tenderer.

#### Article 32

##### Control measures

- 1 Without prejudice to the checks required by this Regulation for the takeover of products, the checks of the intervention stocks shall be carried out under the conditions set out in Article 2 of Regulation (EC) No 884/2006.
- 2 For cereals, where the checks provided are to be carried out on the basis of the risk analysis referred to in Part I third subparagraph of Annex I to this Regulation, the Member States shall be liable for the financial consequences of any failure to comply with the maximum admissible contaminant level in accordance with the rules set out in Article 2 of Regulation (EC) No 884/2006.

However, in the case of ochratoxin A and aflatoxin, if the Member State concerned is able to prove to the Commission's satisfaction that the standards were met on entry, that normal storage conditions were observed and that the storekeeper's other commitments were respected, the financial liability shall be borne by the Community budget.

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3 For cereals and rice, where the storage place indicated in accordance with Article 10(1)(a)(iii) is in a Member State other than that where the offer or tender is submitted, and the intervention agency that received the offer or tender decides to make an on-site check to verify the effective presence of the products, this agency shall send a request for a check and a copy of the offer or tender to the intervention agency responsible for that storage place. The on-site check shall be carried out within the period set by the intervention agency that received the offer or tender.

4 Provisions relating to checks laid down in the Annexes to this Regulation may be amended in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, notably if the market situation is seriously disrupted by contaminants or where the control of the level of the radioactive contamination of products requires specific monitoring.

5 The tenderer or offerer shall bear the costs relating to the tests carried out for cereals, in accordance with the methodology referred to in Annex I, Part XII, as follows:

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

6 In cases of dispute concerning the results, the tenderer or offerer shall bear the costs relating to the necessary relevant tests carried out again, only if he is the losing party.

### *Article 33*

#### **Specific provisions for the takeover in storage place of the storekeeper for cereals and rice**

1 If the takeover of cereals or rice takes place at the storage place where the products are held at the time the offer or tender is submitted, the quantity taken over shall be established on the basis of the stock records, which shall fulfil professional standards which allow to guarantee compliance with Community legislation, in particular Annex II to Regulation (EC) No 884/2006, and provided that:

- a the stock records show:
  - (i) the weight recorded on weighing carried out within a period of no more than 10 months before the takeover;
  - (ii) the physical quality characteristics at the time of weighing and, in particular, the moisture content;
  - (iii) trans-silages if any, and treatments carried out;
- b the storekeeper declares that the lot offered corresponds in all respects to the details contained in the stock records;
- c the quality characteristics established at the time of weighing are the same as those of the representative sample made up from the samples taken by the intervention agency or its representative at a rate of one for every 60 tonnes.

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2 If paragraph 1 applies, the weight to be recorded, in accordance with article 5 of Regulation (EC) No 884/2006, shall be that entered in the stock records, adjusted, where appropriate, to take account of any difference between the moisture content and/or the percentage of miscellaneous impurities (*Schwarzbesatz*) recorded at the moment of weighing and those determined on the basis of the representative sample. A difference between the percentages of miscellaneous impurities may only be taken into account to reduce the weight entered in the stock records.

Within 45 days of takeover the intervention agency shall make a further volumetric check. The difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %.

Where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on takeover.

Where the tolerance is exceeded, the cereals or rice shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the European Agricultural Guarantee Fund, where it is more, account being taken of the tolerances provided for in paragraph 1 of Annex XI of Regulation (EC) No 884/2006.

#### *Article 34*

### **The takeover record**

1 The takeover record shall be issued by the intervention agency after the checks and analyses have established that the requirements laid down in Article 7 have been fulfilled, at the latest 60 days following the final date for the delivery of the products referred to in Article 25(b). It shall indicate:

- a the date on which the quantity and minimum characteristics were checked;
- b the weight delivered and for rice the variety;
- c the number of samples taken to make up the representative sample for cereals and rice;
- d the characteristics of the products as resulting from the analyses;
- e the entity responsible for the analyses and the results;
- f the date of conditional takeover as referred to in Article 31(1);
- g if applicable, for cereals and rice, the quantities that have not been taken over. In this case, the offerer or tenderer shall be notified accordingly.

2 The record shall be dated and sent to the offerer or tenderer and to the storekeeper.

However, this record may be registered in the accounting system of the intervention agency and sent by electronic means.

#### *Article 35*

### **Obligations of the offerer or tenderer**

1 Where the checks show that the products do not meet the requirements set out in Article 7, the offerer or tenderer shall:

- a take back at his expense the products concerned,

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- 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 offerer or tenderer shall be determined on the basis of standard amounts for entry, removal and storage costs in accordance with Article 4(1) of Regulation (EC) No 884/2006.

- 2 In cases where the analyses and controls do not allow the cereals or rice offered to be accepted for intervention, the offerer or tenderer may replace the quantity that does not meet the requirements. In that case, the intervention agency may change the date for delivery, without prejudice to the final date for delivery laid down in Article 26(2).

#### *Article 36*

### **Specific condition for beef — boning requirement**

The intervention agency shall have all the beef bought-in boned in accordance with Part IV of Annex III.

## CHAPTER V

### **Intervention price, buying-in price and payments**

#### *Article 37*

### **Buying-in price for beef**

The buying-in price for beef shall be the price free at the entrance weighing point of the storage place's cutting plant.

#### *Article 38*

### **Intervention prices and buying-in price for cereals and rice**

- 1 For the purposes of Articles 13(3), 18(1) and 18(2) of Regulation (EC) No 1234/2007 as regards the cereals sector the intervention price to be taken into consideration for fixing the buying-in fixed price shall be the reference price set out in Article 8(1)(a) of that Regulation.

- 2 For cereals and rice, the price to be paid is as follows:
  - a to the offerer, in case of buying-in at fixed price, it shall be the price referred to in paragraph 1;
  - b to successful tenderer, in case of tendering procedure, it shall be the price calculated by the intervention agency on the basis of the tendered price.

In both cases the price shall be adjusted to take into account the quality of the products, in accordance with Parts IX, X and XI of Annex I, as regards cereals and in Parts II and III of Annex II as regards rice.

- 3 For cereals and rice, if the intervention agency, in accordance with Article 31(2), takes over and stores the products at the storage place at which they are located at the time the offer or tender is submitted, a reduction shall be made to the buying-in price to be paid. This reduction shall consist of:

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- [<sup>F3</sup>a the transport costs between the actual place of takeover designated by the intervention agency and the storage place referred to in Article 10(1)(a)(iv) where the products should have been delivered at the lowest cost, but not exceeding the 100 km limit referred to in Article 29(1); and]
- b the removal costs from the intervention storage place.

The costs referred to in points (a) and (b) of the first subparagraph shall be assessed on the basis of the rates actually recorded in the Member State concerned.

#### Textual Amendments

- F3** Substituted by [Commission Regulation \(EU\) No 549/2010 of 23 June 2010 amending and correcting Regulation \(EU\) No 1272/2009 laying down common detailed rules for the implementation of Council Regulation \(EC\) No 1234/2007 as regards buying-in and selling of agricultural products under public intervention.](#)

### Article 39

#### Payments

- 1 Payments for the quantities taken over in accordance with Article 34 shall be made no later than the 65th day following the date of conditional takeover referred to in Article 31.
- 2 Only the quantity actually delivered and accepted shall be paid for. However, if the quantity actually delivered and accepted is greater than the quantity awarded, only the quantity awarded shall be paid for.

## TITLE III

### PROCEDURE OF SALE OF PRODUCTS FROM INTERVENTION

#### CHAPTER I

##### Tendering procedure

### Article 40

#### Opening of the tendering procedure

- 1 The products taken over and available for sale shall be sold through a tendering procedure.
- 2 The 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 sale'.

The first closing date for submission of tenders shall be fixed not earlier than six days after the publication of the Regulation opening the sale.

- 3 Tendering procedures may be open for reselling products stored in one or several regions of the Community or the Member State.

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- 4 The Regulation opening the sale shall contain, in particular, the following information:
- a the products covered with, for cereals and rice, their relevant CN code, for rice, an indication of the type and variety and, for beef, the relevant description;
  - b the period covered (tendering period) and the different sub-periods during which the tenders can be submitted.

In addition, that Regulation may contain the following information:

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

5 Tendering procedures may be restricted to specified uses and/or destinations, in particular for the processing of cereals into ethyl alcohol (bioethanol) to be used to produce fuels in the Community.

#### *Article 41*

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

1 Each intervention 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 shall indicate in particular:

- a the name and address of the intervention agency issuing the notice to tender;
- b the reference to the Regulation opening the sale;
- c the closing dates for the submission of tenders for each partial invitation to tender;
- d the storage places, the names and addresses of the storekeepers, the quantities available and,
  - (i) for cereals and rice, presented in sales lots determined in such a way to ensure equal access to tenderers, together with the quality for each sales lot;
  - (ii) for beef, by product and cold store, the date on which the beef was bought in;
- e the delivery stage as referred to in Article 42(1)(e) and, if applicable, the type of packaging;
- f any facilities at the storage place for loading onto a means of transport;
- g in the case of tendering for export of cereals and rice, the port or place of exit which may be reached at the lowest transport costs and which has adequate technical equipments for exporting the products put up for tender;
- h for butter, the notice of invitation to tender shall indicate, if appropriate, the kind of butter referred to in Article 28(1)(e) for which the tender is being submitted.

3 The intervention agency shall ensure that notices of invitation to tender are properly publicised, in particular by displaying them at their head offices and on their website or the website of the competent ministry.

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

- a to inspect and except for beef, to take and examine samples of the product put up for sale at their own expense before submitting a tender;
- b to consult the results of the analyses referred to in Part XII of Annex I, Part VI of Annex II, Part V of Annex IV and Part VI of Annex V.

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5 For the purpose of paragraph 2(g), the ports of Rijeka and Split may be regarded as places of exit.

## Article 42

### Submission and admissibility of tenders

- 1 A tender shall be admissible if the following conditions are met:
- a it indicates a reference to the Regulation opening the sale 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 VAT registration number;
  - c it indicates the products with the relevant CN code, if necessary, for cereals and rice and with the relevant description for beef;
  - d it indicates the quantity tendered for and for cereals and rice the sales lot;
  - [<sup>F4</sup>e it indicates the price in euro tendered per unit of measure, rounded to no more than two decimal places, exclusive of VAT:
    - (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 this concerns a lorry or railway wagon; or
    - (iii) for the other products delivered to the loading-bay of the storage place;]
  - f it relates to at least the minimum quantity referred to in Article 43(2) for beef, butter and skimmed milk powder;
  - g it indicates the storage place where the product is held and for dairy products, as the case may be, a substitute storage place;
  - h proof is furnished that the tenderer has lodged the security referred to in Article 44;
  - 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 sale;
  - j it is presented in the official language, or one of the official languages, of the Member State in which the tender is submitted.

2 For cereals and rice, the tendered price shall refer to minimum or standard quality defined respectively in Part II of Annex I to this Regulation and in Section A of Annex IV to Regulation (EC) No 1234/2007.

In case of tendering procedure for exports of cereals referred to in Annex II, Part II of Commission Regulation (EC) No 376/2008<sup>(6)</sup>, tenders shall be admissible only if they are accompanied by an application for an export licence.

Provision may be made for tenders submitted pursuant to Article 47 of Regulation (EC) No 376/2008 not to be admissible.

By way of derogation from Article 22(1) of Regulation (EC) No 376/2008, export licences issued pursuant to this Regulation shall be considered, for the purposes of determining their term of validity, as having been issued on the closing date for the submission of tenders.



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3 For beef, butter and skimmed milk powder, the tendered price shall apply to net weight. For beef, the net weight shall be regarded as the difference between the gross weight ascertained at the loading bay of the cold store and the average weight of packaging determined before its use.

For butter, tenders shall contain, if appropriate, an indication of the kind of butter referred to in Article 41(2)(h) for which the tender is submitted.

4 Tenders submitted on a Saturday, Sunday or public holiday shall be deemed to be received by the competent body on the first working day following the day on which they were submitted.

5 Where the time limit for the submission of tenders is a public holiday, the tenders shall be submitted at the latest in the last working day preceding the public holiday.

6 Tenders shall not be withdrawn or amended after their submission.

#### **Textual Amendments**

- F4** Substituted by [Commission Implementing Regulation \(EU\) No 957/2011 of 26 September 2011 amending Regulation \(EU\) No 1272/2009 as regards the buying-in and sale of butter and skimmed milk powder.](#)

### *Article 43*

#### **Quantity per tender**

1 For cereals and rice, the tender is submitted for the total quantity of a sales lot, as indicated in the invitation to tender.

2 The tender is submitted for a minimum quantity of:

- a 2 tonnes for beef;
- b 10 tonnes for butter or for skimmed milk powder.

If the quantity available at the storage place is less than the minimum quantity, the quantity available shall constitute the minimum quantity.

### *Article 44*

#### **Securities**

When submitting a tender for the sale of products, the following security shall be lodged in favour of the intervention agency where the tender is submitted, in accordance with Regulation (EC) No 2220/85:

- (a) for rice and cereals: EUR 10/tonne;
- (b) for beef, for butter and for skimmed milk powder: EUR 60/tonne.

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#### Article 45

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

1 All admissible tenders shall be notified to the Commission by the intervention agencies, within the time limits set in the Regulation opening the sale.

2 The notifications shall not contain the data referred to in Article 42(1)(b).

3 The intervention agencies shall notify nil returns to the Commission within the time limits referred to in paragraph 1.

4 The notifications shall be made in accordance with Article 58.

#### Article 46

##### **Decision on the basis of the tenders**

1 On the basis of the tenders notified in accordance with Article 45(1), the Commission shall in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, fix a minimum selling price or decide not 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.

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

#### Article 47

##### **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 intervention agencies shall reject any tender lower than the minimum selling price.

The intervention agencies shall not accept tenders that have not been notified as provided for in Article 45.

3 The intervention agencies shall adopt the decision referred to in paragraphs 1 and 2 after the publication of Commission's decision referred to in Article 46(2). They shall notify the tenderers of the outcome of their participation in the tendering procedure, within three working days after the entry into force of the Commission's decision. They shall notify the successful tenderers of the accepted quantities and of the price to be paid, adjusted for cereals and rice, by increases or reductions determined in accordance with Parts IX, X and XI of Annex I, and Parts II and III(2) of Annex II where the quality of the product differs from the minimum or standard quality respectively.

4 In the case of export of cereals, where the export licence application submitted by the successful tenderer pursuant to Article 42(2) is based on Article 47 of Regulation (EC) No 376/2008, the intervention agency shall cancel the sale in respect of the quantities for which the licence is not issued in accordance with that Article.

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

#### *Article 48*

### **Specific rules for the allocation of dairy products and beef**

1 For butter and skimmed milk powder, the successful tenderer shall be the tenderer offering the highest price. If the full quantity available is not allocated, the remainder shall be awarded to the other tenderers 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 available at a particular storage place, only the quantity available shall be awarded to the tenderer in question. However, the intervention agency may designate other storage places to make up the quantity set out in the tender, provided the tenderer agrees.

3 Where acceptance of two or more tenders offering the same price for product at a particular storage place would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocating the quantity available in proportion to the quantities tendered for. However, should such allocation lead to the award of quantities of less than the quantity referred to in Article 43(2), the award shall be made by drawing lots.

4 Where after the acceptance of all successful tenders the quantity left at the storage place is less than the quantity referred to in Article 43(2), this remaining quantity shall be offered by the intervention agency to the successful tenderers starting with the one who offered the highest price. The successful tenderer shall be offered the option to buy the remaining quantity at the minimum selling price.

5 The intervention agency shall allocate the butter or the skimmed-milk powder 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 tenderer or, as the case may be, the oldest of the quantity of sweet or sour cream butter available in the cold storage place designated by the tenderer.

6 The intervention agencies concerned shall sell first beef which has been in store for the longest time.

#### *Article 49*

### **Payments**

Before removing the product and within the period specified in Article 51(2), successful tenderers shall pay the intervention agency the amount corresponding to their tender for each quantity that they withdraw, as it has been fixed and notified by the intervention agency in accordance with Article 47(3).

#### *Article 50*

### **Sales by Member States**

1 A Member State, where no tendering procedure is open in accordance with Article 40, may itself open a tendering procedure for sale when the total quantity remaining in its storage places is less than:

- a for each cereal: 5 000 tonnes;

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- b for rice: 1 000 tonnes;
- c for beef, butter or skimmed milk powder: 100 tonnes.

2 For a tendering procedure opened by a Member State, in accordance with paragraph 1, this title, with the exception of Articles 40(2), 41(2)(b), 42(1)(a) and (f), 43, 45, 46(2), and Title IV shall apply. Article 46(1) shall apply *mutatis mutandis* by way of a decision of the Member State.

3 Member States may put up for direct sales products which after visual examination by the intervention agencies in the context of the annual stocktaking or during the inspection may no longer be repackaged or are deteriorated referred to in paragraphs 1(d) et 1(f) of Article 5 of Regulation (EC) No 884/2006.

This paragraph shall apply within the quantities fixed in paragraph 1 of this Article.

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

## CHAPTER II

### Removal from the storage place

#### Article 51

##### Removal order

1 Once the amount referred to in Article 49 has been paid the intervention 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 successful tenderer shall remove the product awarded to them within 30 days following the notification referred to in Article 47(3).

3 At the request of the successful tenderer, the intervention agency may allow a longer period for removing from the storage place. However, except in cases of force majeure, if the product has not been removed by the deadline referred to in paragraph 2, the cost of storing shall be borne by the successful tenderer from the day following the final date for removal of the product. Moreover, storage shall be at tenderer's risk.

#### Article 52

##### Removal of butter and skimmed milk powder

[<sup>F41</sup> At the time of removal from the storage place, the intervention agency shall, in the case of delivery outside of the storage place, make the butter and skimmed milk powder available on pallets at the storage place loading bay, and loaded onto the means of transport where this is a lorry or a railway wagon. The costs involved shall be borne by the paying agency.]

2 The buyer shall return equivalent quality pallets to the intervention agency on removal from the storage place.

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3 [F4Any stowage and depalletising costs shall be borne by the buyer of the butter or skimmed milk powder.] These costs shall be fixed by the Member States on a flat-rate basis and notified on request to the interested parties.

#### Textual Amendments

- F4 Substituted by [Commission Implementing Regulation \(EU\) No 957/2011 of 26 September 2011 amending Regulation \(EU\) No 1272/2009 as regards the buying-in and sale of butter and skimmed milk powder.](#)

### CHAPTER III

#### Primary requirements and release or forfeiture of the security

##### *Article 53*

#### Primary requirements

Maintenance of the tenders after the time limit referred to in Article 40(4)(b) and the payment of the price in accordance with Article 49 shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

##### *Article 54*

#### Release and forfeiture of the security

- 1 For unsuccessful tenderers, the security as provided for in Article 44 shall be released immediately after the decision referred to in Article 46(2) and 50(2).
- 2 For successful tenderers, the security shall be released in respect of the quantities for which the selling price has been paid in accordance with Article 49.
- 3 Except in cases of force majeure, the security shall be forfeited in respect of quantities for which the payment has not been made in accordance with Article 49 and the sale shall be cancelled in respect of these quantities not paid.

### TITLE IV

#### PROVISIONS CONCERNING NOTIFICATIONS

##### *Article 55*

#### Intervention agencies and centres for cereals and rice

- 1 For cereals and rice, Member States shall notify the Commission of:
  - a the approved intervention agencies;
  - b the approved intervention centres;
  - c the approved storage places of the intervention centres; and

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- d the minimum quantity required for buying-in products at a fixed price if different from the quantities specified in Article 8(1).
- 2 The notifications shall be made in accordance with Article 58.
- 3 The list of intervention agencies, the list of intervention centres and their storage places and their updates shall be made available to the Member States and to the public by every appropriate means via the information systems put in place by the Commission, including publication on the Internet.

### *Article 56*

#### **Weekly notifications for cereals and rice**

- 1 When intervention is open and until buying-in has been completed, for each cereal listed in Article 10(1)(a) of Regulation (EC) No 1234/2007 and for rice, Member States concerned shall notify the Commission not later than 12.00 (Brussels time) each Wednesday for the previous week of:
- a the quantities of common wheat offered pursuant to Article 13;
  - b the quantities accepted on tenders pursuant to Article 20(1);
  - c the quantities to which Article 24(5) applies;
  - d the quantities subject to conditional takeover, in accordance with Article 31(1)(a).
- 2 For each cereal listed in Article 10(1)(a) of Regulation (EC) No 1234/2007, and for rice, Member States concerned shall notify the Commission of the stock situation, no later than 12.00 (Brussels time) each Wednesday for the previous week of:
- a the quantities stored at the beginning of the marketing year;
  - b the cumulative quantities taken over since the beginning of the marketing year;
  - c the cumulative quantities which have left the storage places since the beginning of the marketing year, identified by type of use or destination, and the cumulative quantities lost;
  - d the cumulative quantities earmarked (committed), identified by type of use or destination;
  - e the quantities under offer at the end of the weekly reporting period.
- 3 For each of the cereals and the cereal qualities considered relevant for the Community market, Member States shall notify the Commission no later than 12.00 (Brussels time) each Wednesday for the previous week, of the representative market prices, expressed in national currency per tonne. Those prices shall be calculated regularly, independently and transparently and shall refer, in particular, to the qualitative properties, the place of quotation of each product and the stage of marketing.
- 4 For each of the varieties of rice considered relevant for the Community market, Member States shall notify the Commission no later than 12.00 (Brussels time) each Wednesday for the previous week, of the representative market prices, expressed in national currency per tonne. Those prices shall be calculated regularly, independently and transparently and shall refer, in particular, to the processing stage, the place of quotation of each product and the stage of marketing.
- 5 The notifications shall be made in accordance with Article 58.

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## Article 57

### Monthly notifications

1 The intervention agencies holding intervention stocks shall notify the Commission not later than the 15th of each month for the previous month of the following items:

- a for cereals, the weighted average results of specific weight, moisture content, percentage of broken grains and protein content recorded for the batches of each cereal taken over, at the regional levels defined in Annex III to Council Regulation (EEC) No 837/90<sup>(7)</sup>;
- b for butter and skimmed-milk powder:
  - (i) the quantities for each product in storage at the end of the month concerned and the quantities entering and leaving the storage places during that month;
  - (ii) a breakdown of the quantities of each product leaving the storage places during the month concerned, according to the regulations by which they are covered;
  - (iii) a breakdown by age of the quantities in storage at the end of the month concerned;
- c for beef:
  - (i) the quantities for each product in storage at the end of the month concerned and the quantities entering and leaving the storage places during that month;
  - (ii) a breakdown of the quantities of each product leaving the storage places during the month concerned, according to the regulations by which they are covered;
  - (iii) the quantities of each boned product covered by contracts of sale concluded in the month concerned;
  - (iv) the quantities of each boned product covered by withdrawal orders or similar documents issued in the month concerned;
  - (v) the quantities of each boned product obtained from bone-in beef bought in during the month concerned;
  - (vi) the uncommitted stocks and the physical stocks of each boned product at the end of the month concerned, with details of the length of time the uncommitted stocks have been in storage;
- d for all products, the opening of a tendering procedure, the quantities awarded and the minimum sale prices fixed in the case of application of Article 50.

2 For the purposes of paragraph 1(b):

- a 'quantities entering' means quantities physically placed in storage, whether or not taken over by the intervention agency;
- b 'quantities leaving' means quantities which have been removed or, if taken over by the purchaser before removal, quantities taken over.

3 For the purposes of paragraph 1(c):

- a 'uncommitted stocks' means stocks not yet covered by a contract of sale;

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b 'physical stocks' means uncommitted stocks plus stocks covered by a contract of sale but not yet taken over.

4 For the notifications under this Article, the intervention agencies shall notify nil returns to the Commission.

5 The notifications shall be made in accordance with Article 58.

#### *Article 58*

### **Method applicable to notification obligations**

1 When reference is made to this Article, the Member States shall notify the Commission by electronic means using the form made available to them by the Commission.

2 The form and content of the notifications shall be defined on the basis of models or methods made available to the competent authorities by the Commission. Those models and methods shall be adapted and updated after the Committee referred to in Article 195(1) of Regulation (EC) No 1234/2007 and the competent authorities concerned, as appropriate, have been informed.

3 The notifications shall be carried out under the responsibility of the competent authorities designated by the Member States.

## TITLE V

### **AMENDMENTS, REPEALS AND FINAL PROVISIONS**

#### *Article 59*

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

Chapter I of Regulation (EC) No 562/2005 is deleted.

#### *Article 60*

### **Repeals**

The following Regulations are repealed:

- (a) Regulation (EC) No 1669/2006 with effect from the date of entry into force of this Regulation;
- (b) Regulations (EC) No 214/2001 and (EC) No 105/2008 with effect from 1 March 2010;
- (c) Regulations (EC) No 687/2008, (EC) No 127/2009 and (EC) No 670/2009 with effect from 1 July 2010 as far as cereals are concerned;
- (d) Regulations (EC) No 75/91 and (EC) No 670/2009 with effect from 1 September 2010 as far as rice is concerned.



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Those repealed Regulations shall continue to apply in respect of offers or tenders submitted under these Regulations. However, this Regulation shall apply to the storage and disposal of products in all cases.

#### *Article 61*

#### **Entry into force**

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

However it shall apply from:

- (a) 1 March 2010 for butter and skimmed milk powder;
- (b) 1 July 2010 for cereals; and
- (c) 1 September 2010 for rice.

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

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- (1) OJ L 139, 30.4.2004, p. 55.
- (2) OJ L 13, 19.1.2000, p. 12.
- (3) OJ L 251, 27.7.2004, p. 9.
- (4) OJ L 230, 19.8.1991, p. 1.
- (5) OJ L 337, 16.12.2008, p. 3.
- (6) OJ L 114, 26.4.2008, p. 3.
- (7) OJ L 88, 3.4.1990, p. 1.

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