

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selling of agricultural products under public intervention (repealed)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 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.

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.

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*Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EU) No 1272/2009 (repealed), TITLE III. (See end of Document for details)*

## 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.

F15 .....

#### Textual Amendments

- F1** Deleted by Commission Regulation (EU) No 519/2013 of 21 February 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, right of establishment and freedom to provide services, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, fisheries, transport policy, energy, taxation, statistics, social policy and employment, environment, customs union, external relations, and foreign, security and defence policy, by reason of the accession of Croatia.

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## 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>F2</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>(1)</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.

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

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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**

- F2** 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.

### *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.

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

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## 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;
- b for rice: 1 000 tonnes;

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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>F21</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        [<sup>F2</sup>Any 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

- F2** 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.

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(1) [OJ L 114, 26.4.2008, p. 3.](#)

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