

Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016
laying down rules for the application of Regulation (EU) No 1308/2013
of the European Parliament and of the Council with regard to public
intervention and aid for private storage (Text with EEA relevance)

TITLE IV

CHECKS AND PENALTIES

CHAPTER I

Checks

Article 56

General provisions on checks relating to public intervention and aid for private storage

1 Paying agencies shall take all necessary measures to ensure compliance with the requirements relating to public intervention and the granting of aid for private storage laid down in Delegated Regulation (EU) 2016/1238, this Regulation and the Implementing Regulations referred to in Article 1(2)(a) and (b) of this Regulation.

The measures shall include full administrative checking of offers and tenders for public intervention and tenders and applications for aid for private storage, which shall be supplemented by on-the-spot documentary and physical checks as specified in this Title.

2 The verification of the weight of products delivered to public intervention and, in the case of aid for private storage, of the contractual quantity shall be conducted in the presence of the officials of the paying agency.

3 Physical samples taken for the purposes of verifying the quality and composition of products for public intervention and aid for private storage shall be taken by the officials of the paying agency or in their presence.

4 For the purposes of the audit trail, all stock and financial records and documents checked by the paying agency shall be stamped or initialled during the control visit. Where computer records are verified, a record of the check undertaken shall be included in the inspection file, either in paper or in electronic form. Such records shall be made available to the Commission on request.

Article 57

Specific provisions on checks relating to public intervention

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 in accordance with Article 3 of Delegated Regulation (EU) No 907/2014.

2 Where the storage place referred to in Article 7(1)(a)(ii) is in a Member State other than that where the offer or tender is submitted, the paying agency that received the offer or tender

may request assistance from the paying agency responsible for that storage place, including an on-site check. The assistance shall be provided within the period requested by the paying agency that received the offer or tender.

3 For beef, the checks shall be carried out in accordance with Parts I and III of Annex III.

Article 58

Specific provisions on checks relating to public intervention for cereals and rice

1 Notwithstanding Article 56(2), the quantity delivered shall be weighed in the presence of the operator and a representative of the paying agency who is independent from the operator.

However, if the representative of the paying agency is also the storekeeper, the paying agency shall, within 30 days of the date of delivery, 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 shall not exceed 5 %.

Where the 5 % 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 5 % tolerance is exceeded, the cereals or rice shall be weighed forthwith. Where the weight determined is less than that recorded, the costs of weighing shall be borne by the storekeeper. Otherwise, the costs of weighing shall be borne by the paying agency.

2 Where the level of contaminants in cereals is to be checked on the basis of the risk analysis referred to in point 3 of Part I of Annex I to Delegated Regulation (EU) 2016/1238, the paying agency shall be liable for the financial consequences of any failure to comply with the maximum contaminant levels in accordance with the rules set out in Article 3(6) of Delegated Regulation (EU) No 907/2014.

However, in the case of ochratoxin A and aflatoxin, if the paying agency 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 Union budget.

Article 59

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 store register, which shall fulfil professional standards which allow to guarantee compliance with Union legislation, in particular with Annex III to Delegated Regulation (EU) No 907/2014, and provided that:

a the store register shows:

- (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 store register;
- 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 paying agency or its representative at a rate of one for every 60 tonnes.

2 If paragraph 1 applies, the weight to be recorded in the store register and financial accounts provided for in point (a) of the first subparagraph of Article 3(3) of Delegated Regulation (EU) No 907/2014 shall be that entered in the store register and adjusted, where appropriate, to take account of any difference between the moisture content 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 store register.

Within 30 days of takeover the paying agency shall make a volumetric check. Any difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method shall not exceed 5 %.

Where the 5 % 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 5 % tolerance is exceeded, the cereals or rice shall be weighed forthwith. Where the weight determined is less than that recorded, account being taken of the tolerance limits provided for in point 1 of Annex IV to Delegated Regulation (EU) No 907/2014, the costs of weighing shall be borne by the storekeeper. Otherwise, the costs of weighing shall be borne by the European Agricultural Guarantee Fund.

Article 60

Specific provisions on checks relating to aid for private storage

1 For all the lots put into storage, the paying agency shall undertake on-the-spot documentary checks within 30 days of the start of the contractual storage period referred to in Article 48(1) in order to verify the contractual quantity referred to in Article 49. Such checks shall include an examination of the store register referred to in Article 52(5) and of supporting documents, such as weigh tickets and delivery docketts, as well as physical verification of the presence of the lots and the identity of the products in the place of private storage.

In the case of meat, the checks shall take place at the time of placing into private storage, and for olive oil, prior to the official sealing of the vats.

In duly justified circumstances, the paying agency may extend the period referred to in the first subparagraph by up to 15 days. In such cases, the paying agency shall inform the affected operators.

2 In addition to the checks required under paragraph 1, a representative statistical sample of at least 5 % of the lots covering at least 5 % of the total quantities placed in storage shall be physically checked to ensure that the quantity, nature and composition, packaging and marking

of the products and storage lots conform to the requirements for private storage and to the particulars specified by the operator in their tender or application.

In the case of cheese, physical checks shall be undertaken on all lots in order to verify the contractual quantity.

3 During the storage period, the paying agency shall also undertake unannounced on-the-spot checks to ensure the presence and identity of the contractual quantity in the place of private storage, and that sugar stored in bulk is present in the silo designated by the operator. The check shall be undertaken on the basis of a random statistical sample of at least 5 % of the lots covering at least 5 % of the total quantities for which contracts have been concluded. This sample shall not include more than 25 % of lots already checked in accordance with paragraph 2, unless it would not be possible to conduct the on-the-spot check of at least 5 % of the lots covering at least 5 % of the total quantities for which contracts have been concluded.

The unannounced check referred in the first subparagraph shall not be necessary where the paying agency, with the agreement of the operator, has sealed the products in such a way that the contractual quantities cannot be removed from the place of storage without breaking seal.

4 At the end of the contractual storage period, or before the start of the removal of products where Article 53(3) applies, the paying agency shall undertake on-the-spot checks to verify that the contractual commitment has been met based on a documentary check of the store register and supporting documents, as well as a verification of the presence of the lots and the identity of the products in the place of private storage.

In addition to the checks referred to in the first subparagraph, a representative statistical sample of at least 5 % of the lots covering at least 5 % of the total quantities for which contracts have been concluded shall be physically checked to verify the quantity, type, packaging and marking and identity of the products in the place of private storage.

5 Where the paying agency, with the agreement of the operator, has sealed the products in such a way that the stored quantity cannot be removed from the individual lot without breaking seal, the checks referred to in paragraphs 3 and 4 may be limited to verifying the presence and integrity of the seals.

Article 61

Reporting of checks

1 The paying agency shall draw up a control report within five working days of the completion of each on-the-spot check undertaken and, if appropriate, of the checks referred to in Article 56(3). The report shall describe precisely the different items checked and shall set out:

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

The report shall be signed by the responsible paying agency official and either countersigned by the operator or, where applicable, by the storekeeper, or sent to the operator by registrable means. The report shall be included in the payment file.

2 In case of non-compliance of products subject to the check, the verification shall be extended to a larger statistical sample to be determined by the paying agency.

3 The paying agency shall record any cases of non-compliance on the basis of the criteria of gravity, extent, duration and repetition that may result in exclusion in accordance with Article 62(1), or in the repayment of unduly paid, aid for private storage, including interest where applicable, in accordance with Article 62(4).

CHAPTER II

Penalties and administrative measures

Article 62

Penalties and administrative measures in relation to aid for private storage

1 Where the paying agency finds that a document presented by an operator, which is required under Delegated Regulation (EU) 2016/1238, this Regulation or an Implementing Regulation referred to in Article 1(2)(b) of this Regulation, provides incorrect information, and where the incorrect information concerned is decisive for the granting of aid for private storage, the paying agency shall exclude the operator from the procedure of granting aid for the product for which the incorrect information has been given for a period of one year from the date of adoption of a final administrative decision establishing the irregularity.

2 The exclusion provided for in paragraph 1 shall not apply if the operator proves, to the satisfaction of the paying agency, that the situation referred to in that paragraph is due to force majeure or obvious error.

3 Unduly paid aid shall be recovered, with interest, from the operators concerned. The rules laid down in Article 27 of Implementing Regulation (EU) No 908/2014 shall apply *mutatis mutandis*.

4 Implementation of administrative penalties and recovery of unduly paid amounts, as provided for in this Article, are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006⁽¹⁾.

- (1) Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91 (OJ L 355, 15.12.2006, p. 56).