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)

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)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[(1)], and in particular Article 20(a), (b), (d), (e), (i), (j), (k), (l), (m), (n) and (o), and Article 223(3)(a), (b) and (c) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008[(2)], and in particular Article 62(2)(a), (b), (c) and (i), and Article 64(7)(a) thereof,

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products[(3)], and in particular Article 2(3) and Article 3(4) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 replaced Council Regulation (EC) No 1234/2007[(4)] and lays down new rules regarding public intervention and aid for private storage. It also empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the public intervention and aid for private storage schemes in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace Commission Regulations (EEC) No 3427/87[(5)], (EEC) No 2351/91[(6)], (EC) No 720/2008[(7)], (EC) No 826/2008[(8)], (EC) No 1130/2009[(9)] and (EU) No 1272/2009[(10)]. Those Regulations are repealed by Commission Delegated Regulation (EU) 2016/1238[(11)].

(2) Article 11 of Regulation (EU) No 1308/2013 provides that public intervention applies in respect of common wheat, durum wheat, barley, maize, paddy rice, fresh or chilled

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meat of the beef and veal sector, butter and skimmed milk powder in accordance with the conditions set out in that Regulation.

(3) Article 17 of Regulation (EU) No 1308/2013 provides that aid for private storage may be granted in respect of white sugar, olive oil, flax fibre, fresh or chilled meat of bovine animals aged eight months or more, butter, cheese, skimmed milk powder, pigmeat, and sheepmeat and goatmeat in accordance with the conditions set out in that Regulation.

(4) Regulation (EU) No 1370/2013 lays down rules concerning public intervention prices, quantitative limitations for buying-in into public intervention and the establishment of the amount of aid for private storage.

(5) In order to simplify and improve the effectiveness of the management and control mechanisms related to the public intervention and aid for private storage schemes, common rules for all the products listed in Articles 11 and 17 of Regulation (EU) No 1308/2013 should respectively be laid down.

(6) In accordance with Article 13(1) of Regulation (EU) No 1308/2013, the Commission may decide that buying in of durum wheat, barley, maize and paddy rice is to take place if the market situation so requires. Public intervention may also be opened for beef if the average market price is over a representative period below 85 % of the reference threshold set out in Article 7(1) of Regulation (EU) No 1308/2013. In such cases buying-in takes place by means of tendering procedures.

(7) In accordance with Article 4(1) of Regulation (EU) No 1370/2013, the Commission may establish the amount of aid for private storage for the products listed in Article 17 of Regulation (EU) No 1308/2013 either by a tendering procedure or by fixing the aid in advance.

(8) To make the public intervention and aid for private storage schemes work efficiently, the operators should use the method made available by the paying agency with regard to the procedure for submitting offers, tenders and applications.

(9) In order to ensure proper management of the schemes, rules should be established on intervention at a fixed price, the tendering procedures for buying-in into intervention, sales from intervention or establishing the maximum amount of aid for private storage, and the aid for private storage fixed in advance as well as the submission and admissibility of tenders, offers and applications.

(10) In order to improve the efficiency of the way public intervention operates, by discontinuing the use of small storage facilities which may be spread throughout a region, a minimum capacity of storage should be fixed for the intervention storage places, but should not be applicable in case where a storage place has ready access to a river, sea or railway connection.

(11) Since products covered by the public intervention and aid for private storage schemes have a different nature as to production or harvest time and storage requirements, specific conditions concerning their eligibility should be provided for.

(12) For a sound management of the public intervention and aid for private storage schemes, it is necessary to fix a minimum quantity below which the paying agency cannot accept

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an offer or a tender, both for buying-in and sales, or decide whether to fix or not the maximum amount of aid for private storage. However, if the conditions and practices of the wholesale trade or environmental rules in force in a Member State justify the application of minimum quantities larger than those laid down in this Regulation, the paying agency concerned should be entitled to require such larger minimum quantities for buying-in at fixed price.

(13) In order to guarantee the seriousness of the offer or tender for intervention and to ensure that the measure will have its desired effect on the market, both in the case of intervention at fixed price and in the case of a tendering procedure, the level of the security should be established.

(14) To ensure an effective management of the public intervention scheme, notifications on submitted offers and tenders should be provided for between Member States and the Commission. Measures should be introduced to respect the quantitative limitations fixed in Article 3 of Regulation (EU) No 1370/2013.

(15) On the basis of the offers and tenders received a maximum buying-in price or a maximum amount of aid for private storage may be fixed. However, situations might arise on the market in which economic or other aspects make it necessary not to fix such a price or aid and to reject all the tenders received.

(16) In order to guarantee a clear and effective functioning of the public intervention scheme, it is necessary to lay down the general rules concerning the issuance of the delivery order and the delivery of the products to the storage place designated by the paying agency. In addition, given the specificities of the sectors of cereals and rice as well as beef and butter and skimmed milk powder, it is necessary to lay down specific rules for those sectors.

(17) With a view to the proper management of intervention stocks in storage and given the specificities of the sectors of cereals and rice, the obligations of the Member States should be specified as regards the maximum distance to the place of storage and the costs to be borne when this distance is exceeded.

(18) In order to apply the common rules of Commission Delegated Regulation (EU) No 907/2014[(12)], it is appropriate to provide that the checks on products during storage have to be carried out as laid down in Article 3 of that Regulation. A takeover record should be issued on the basis of those checks and analyses.

(19) In order to ensure good quality of products stored under public intervention, in case the products do not fulfil the applicable eligibility requirements, it should be provided for an obligation of the operator to take back the products and bear all the costs during the period the products have been stored in the storage places.

(20) Where deboning is required for beef, it is necessary to lay down special rules for that sector to complement the general ones.

(21) Rules should be established for payments, subject to price adjustment related to the quality of the product or to the location of the storage place. In order to give the operators the time to adapt to the new public intervention scheme, some conditions relating to

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price adjustment with regard to cereals should be applicable only from the start of the 2017/18 marketing year.

(22) In order to give the necessary information on the characteristics of the products and on the site where they are stored, notices of invitation to tender should be drawn up and published by the paying agency holding intervention stocks available for sale. To this end, it should be provided for that a reasonable time period should elapse between the date of such publication and the first closing date for the submission of tenders.

(23) On the basis of the tenders and of the situation on the Union market, the Commission should decide to fix or not a minimum intervention selling price. According to that decision, the paying agencies will accept or reject the tenders on products available for sale. Specific rules should be adopted for the allocation of beef, butter and skimmed milk powder.

(24) In order to facilitate the sale of small quantities remaining in storage places in a Member State and to assure a sound management of the system, it is appropriate to provide that the paying agency, under its own responsibility, is entitled to open the tendering procedure for the resale of such quantities of intervention products, by applying *mutatis mutandis* the rules laid down in respect of tendering procedures opened by the Union, with a view to ensure equal access for all parties concerned. For the same reasons the paying agency should be authorised to put up for direct sale quantities which after checking by visual examination in the context of the annual stocktaking or during the inspection after taking into intervention may no longer be repackaged or are deteriorated.

(25) To ensure that the aid for private storage scheme can be monitored properly, the information needed to conclude the storage contract should be specified as well as the obligations of the contracting parties and the conditions for placing into storage, in particular those enabling the competent authority responsible for checking storage operations to make an effective inspection of the storage conditions. The rules with regard to the contractual storage period should also be defined.

(26) In order to ensure an efficient functioning of the aid for private storage scheme, it is necessary to lay down the general rules concerning the removal of the products from storage and the payment of aid for private storage. For butter and skimmed milk powder, given the specific nature of these products, special rules are necessary to complement the general ones.

(27) When the amount of aid for private storage is fixed in advance, it is appropriate to provide for a reflection period in order to allow the market situation to be assessed before decisions on applications for aid are notified. Furthermore, where appropriate, provisions should be made for special measures applying in particular to pending applications to prevent excessive or speculative use of the private storage scheme. Such measures require swift action and the Commission should be empowered to act without applying the procedure referred to in Article 229(2) or (3) of Regulation (EU) No 1308/2013 and to take all necessary measures without delay.

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(28) To protect the Union's financial interests, adequate control measures should be adopted to combat irregularities and fraud. These control measures should involve full administrative checking supplemented by on-the-spot checks. The scope, content, timing and reporting of such control measures should be specified so as to ensure an equitable and uniform approach between Member States.

(29) Amounts unduly paid should be recovered in accordance with Commission Implementing Regulation (EU) No 908/2014[(13)].

(30) For an effective management of the public intervention and aid for private storage schemes, it is necessary to provide that the Member States inform the Commission periodically of the situation of stocks, of the products entering and leaving storage places and of the situation regarding prices and production for the products listed in Articles 11 and 17 of Regulation (EU) No 1308/2013.

(31) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

CHAPTER I

Introductory provision

Article 1

Scope

1 This Regulation lays down rules for the application of Regulation (EU) No 1308/2013 and Regulation (EU) No 1370/2013 as regards:

a the buying-in and selling from public intervention of products listed in Article 11 of Regulation (EU) No 1308/2013;

b the granting of aid for private storage for products listed in Article 17 of Regulation (EU) No 1308/2013.

2 This Regulation shall apply without prejudice to specific provisions laid down in Implementing Regulations:

a opening a tendering procedure for buying-in of products or opening the sale of products from intervention; or

b opening a tendering procedure or fixing the amount of aid for private storage in advance.