Commission Delegated Regulation (EU) 2016/1238 of 18 May 2016 supplementing 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 DELEGATED REGULATION (EU) 2016/1238

of 18 May 2016

supplementing 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 Articles 19(1), (2), (3), (4)(a) and (5) and 223(2)(a) 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 Articles 64(6) and 66(3)(c) and (e) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 replaced Council Regulation (EC) No 1234/2007[(3)] 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.

(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 meat of the beef and veal sector, butter and skimmed milk powder, in accordance with the conditions set out in that Regulation and additional requirements determined by the Commission.

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

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(4) 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 eligible products should be laid down.

(5) As a general rule, in order to facilitate management and control, participation in the public intervention and aid for private storage schemes should be allowed only to operators established and registered for VAT purposes in a Member State.

(6) In order to provide for effective control of the production of olive oil and sugar, operators eligible for aid for private storage should fulfil additional conditions.

(7) Since products covered by public intervention and aid for private storage have a different nature as to production or harvest time and storage requirements, specific conditions of eligibility for each product should be provided for. In order to give the operators the time to adapt to the new system, some conditions should be applicable only from the 2017/18 marketing year with regard to cereals.

(8) In order to guarantee the seriousness of the offer or tender or application and to ensure that the measure will have the desired effect on the market, both in the case of intervention buying-in, sales and disposal under the scheme for the most deprived in the Union, and in respect of aid for private storage, requirements relating to the lodging of a security should be laid down.

(9) Provisions should also be laid down for the release and forfeiture of the security for intervention buying-in, sales and disposal under the scheme for the most deprived in the Union, and in respect of aid for private storage.

(10) In respect of intervention sales, the tendering procedure can take place properly only if genuine tenders are submitted. To achieve that objective, it should be required that the security be released subject to the payment of the selling price within the time limit laid down.

(11) In order to ensure that the public intervention scheme operates as simply and efficiently as possible throughout the Union, as regards the buying-in of eligible products on the one hand and the selling of products taken over by paying agencies on the other hand, the storage places should fulfil certain conditions.

(12) It is necessary to provide that the paying agencies in charge of public intervention in the Member States, in accordance with Commission Delegated Regulation (EU) No 907/2014[(4)], ensure that those conditions relating to the storage places are complied with.

(13) In the event that the allocation of beef for buying-in exceeds the cold storage capacity available in a Member State, it is necessary to provide for the possibility for a Member State to utilise cold storage capacity in another Member State.

(14) In order to ensure that aid for private storage is managed efficiently, specific rules related to the payment of the aid for private storage should be laid down.

(15) As the aim of this Regulation and the implementing act to be adopted in respect of public intervention and private storage is to simplify and adapt the provisions applicable to

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the products covered by public intervention and aid for private storage to the new legal framework established by Regulation (EU) No 1308/2013 and Council Regulation (EU) No 1370/2013[(5)], it should replace the provisions contained in Commission Regulations (EEC) No 3427/87[(6)], (EEC) No 2351/91[(7)], (EC) No 720/2008[(8)], (EC) No 826/2008[(9)], (EC) No 1130/2009[(10)], (EU) No 1272/2009[(11)] and (EU) No 807/2010[(12)]. For the sake of clarity, those latter Regulations should therefore be repealed,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISION

Article 1

Scope

This Regulation lays down rules supplementing Regulation (EU) No 1308/2013 as regards:

(a) the buying-in and selling from public intervention of products listed in Article 11 of that Regulation; and

(b) the granting of aid for private storage for products listed in Article 17 of that Regulation.

CHAPTER II

GENERAL RULES

Article 2

Eligibility of operators

1 Operators shall be established and registered for VAT purposes in the Union in order to submit:

a an offer or a tender for the buying-in, or a tender for the selling, of products under public intervention; or

b a tender for aid for private storage or an application for aid for private storage fixed in advance.

2 In the case of buying-in of beef, only the following operators referred to in paragraph 1 may submit tenders:

a slaughterhouses for bovine animals approved in accordance with Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council[(13)];

b livestock or meat traders who have slaughtering undertaken therein on their own account.

3 In the case of aid for private storage, only the following operators referred to in paragraph 1 may apply or submit tenders:

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a in the olive oil sector, operators who fulfil the requirements laid down in Annex VII;
b in the sugar sector, operators who are sugar manufacturers.

Article 3

Eligibility of products

1 Products shall be of sound, fair and marketable quality and meet the requirements laid down in Regulation (EU) No 1308/2013.

2 In the case of buying-in, products shall fulfil the requirements laid down as follows:
a for cereals: in Annex I to this Regulation;
b for rice: in Annex II to this Regulation;
c for beef: in Annex III to this Regulation;
d for butter: in Parts I and II of Annex IV to this Regulation and Article 21 of Commission Implementing Regulation (EU) 2016/1240[14];
e for skimmed milk powder: in Parts I and II of Annex V to this Regulation and Article 21 of Implementing Regulation (EU) 2016/1240.

In addition, butter and skimmed milk powder must have been produced in an undertaking approved in accordance with Part III of Annex IV or Part III of Annex V to this Regulation, respectively.

3 In the case of aid for private storage, products shall fulfil the requirements laid down in Annex VI to this Regulation.

Article 4

Security

Operators shall lodge a security in favour of the relevant paying agency in accordance with Section 2 of Chapter IV of Delegated Regulation (EU) No 907/2014 when:

(a) submitting an offer or a tender for the buying-in or sale of intervention products, or the disposal of such products under the scheme for food distribution for the most deprived in accordance with Article 16(2) of Regulation (EU) No 1308/2013;

(b) submitting a tender or an application for aid for private storage unless an Implementing Regulation opening the tendering procedure or fixing the amount of aid in advance as referred to in Implementing Regulation (EU) 2016/1240 provides otherwise.

Article 5

Release and forfeiture of security

1 The security provided for in Article 4 shall be released where a tender, offer or application is inadmissible or has not been accepted.

2 In the case of intervention buying-in, the security shall be released when:
a the operator has delivered the quantity indicated by the final date for delivery set out in the delivery order referred to in Article 17 of Implementing Regulation (EU) 2016/1240; and

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b conformity with the product eligibility requirements referred to in Article 3 of this Regulation has been established; or

c an allocation coefficient as referred to in Article 11(1)(b) of Implementing Regulation (EU) 2016/1240 is applied. In that case, the amount of the released security shall correspond to the quantity not accepted; or

d the offer is withdrawn by an operator to whom an allocation coefficient as referred to Article 11(1)(b) of Implementing Regulation (EU) 2016/1240 applies.

3 In the case of sale of intervention products, the security shall be released:

a for unsuccessful operators, after the decision referred to in Article 32(1) or 36(2) of Implementing Regulation (EU) 2016/1240 has been taken;

b for successful operators, in respect of the quantities for which payment has been made in accordance with Article 35 of Implementing Regulation (EU) 2016/1240;

c where the obligations relating to the disposal of products under the scheme for food distribution for the most deprived have been met.

4 In the case of aid for private storage, the security shall be released when:

a an allocation coefficient as referred to in the first subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/1240 is applied. In that case, the amount of the released security shall correspond to the quantity not accepted;

b the tender is withdrawn by the reason of fixing of an allocation coefficient as referred to in the second subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/1240;

c the contractual obligations in respect of the contractual quantity have been fulfilled.

5 The security referred shall be forfeit where the offer, tender or application is:

a withdrawn by reasons other than fixing of an allocation coefficient pursuant to Article 11(1)(b) or the first subparagraph of Article 43(2) of Implementing Regulation (EU) 2016/1240; or

b amended after submission.

6 In the case of intervention buying-in, the security shall be forfeit where:

a the products do not conform with the requirements referred to in Article 3 in respect of the quantities not accepted;

b except in cases of *force majeure*, the operator fails to deliver the products by the final date set out in the delivery order, in proportion to the quantities not delivered and buying-in shall be cancelled in respect of those quantities.

However, in the case of cereals, rice and beef, if the quantity actually delivered and accepted is less than the quantity specified in the delivery order, the security shall be released in full where the difference is not more than 5 %.

7 In the case of sale of intervention products, except in cases of *force majeure*, the security shall be forfeit:

a in respect of quantities for which payment has not been made in accordance with Article 35 of Implementing Regulation (EU) 2016/1240 and the sale shall be cancelled in respect of those quantities;

b where the obligations relating to the disposal of products under the scheme for food distribution for the most deprived have not been fulfilled.

8 In the case of aid for private storage, the security shall be forfeit where: