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# Commission Regulation (EC) No 1127/2007 of 28 September 2007 amending Regulation (EEC) No 3149/92 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community

## COMMISSION REGULATION (EC) No 1127/2007

## of 28 September 2007

## amending Regulation (EEC) No 3149/92 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3730/87 of 10 December 1987 laying down the general rules for the supply of food from intervention stocks to designated organisations for distribution to the most deprived persons in the Community[(1)], and in particular Article 6 thereof,

Whereas:

(1) In recent years the free distribution of foodstuffs under Regulation (EEC) No 3730/87 has proved highly successful and of huge value to beneficiaries in a growing number of participating Member States. However, audits have shown the need for certain amendments to the wording of Commission Regulation (EEC) No 3149/92[(2)]. In addition, the circumstances of the agricultural market have changed, making it necessary to amend a number of the rules governing the implementation of the programme.

(2) Article 1(1) of Regulation (EEC) No 3149/92 lays down that those Member States wishing to take part in the next annual plan for the distribution of food for the most deprived persons must inform the Commission by 15 February. To facilitate budget planning, that date should be brought forward to 1 February.

(3) The first, second and third subparagraphs of Article 3(2) of Regulation (EEC) No 3149/92 specify certain time limits for the withdrawal of products from intervention stocks with which the Member State to which these stocks were assigned must comply. In order to improve compliance with these time limits it should be laid down that, in the event of failure to comply with the time limit, storage charges will no longer be covered by the Community budget. The fourth subparagraph of Article 3(2) of that Regulation stipulates that intervention products must be withdrawn within sixty days from the date of the award of the tender to the successful tenderer. Given that some language versions contain ambiguities regarding the act signalling the start of that period, the wording of that provision should be made more precise.

(4) Regulation (EEC) No 3149/92 does not specify a time limit for operations to mobilise products on the market under Article 2(3)(c) and (d) thereof. Products may therefore be mobilised until the end of the programme implementation period. A time limit which

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ensures consistency with the budget year should be established for these operations. It is also appropriate, within the framework of these operations, to lay down provisions regarding securities in order to ensure the satisfactory performance of the supply contract.

(5) Given that the third indent of the second subparagraph of Article 4(2)(a) of Regulation (EEC) No 3149/92 provides for the possibility of obtaining processed agricultural products or foodstuffs on the market by the use of products from intervention stocks, it should be specified that this possibility is part of the normal implementation of the plan. Due to the sharp reduction in intervention products available in stock, it should be specified that it is sufficient for the foodstuffs obtained to contain an ingredient belonging to the same product group as the intervention product.

(6) To respond more effectively to the needs of charitable organisations and expand the range of foodstuffs supplied, it has been laid down that products from intervention stocks may be incorporated into other products for the purposes of manufacturing foodstuffs. Due to the sharp reduction in the range of intervention products available in stock, the obligation to maintain a minimum content of intervention product in the final product should be rescinded.

(7) Article 4(1)(b) of Regulation (EEC) No 3149/92 provides for the possibility of mobilising on the market a product belonging to the same group as the product temporarily unavailable in the intervention stocks. Under the third indent of the second subparagraph of Article 4(2)(a) of the abovementioned Regulation, processed agricultural products or foodstuffs may be obtained by supplying for payment products belonging to the same group of products from intervention stocks. These possibilities should be included in the rules on the processing of intervention products laid down in Article 4(2a) of that Regulation. At the same time, and in the interests of clarity, the structure of Article 4(1) should also be amended.

(8) To clarify the application of the provisions concerning the release of securities in the event of failure to comply with the second requirement, the rules on the application of reductions, in accordance with Article 23(2)(a) and the third indent of Article 23(2)(b) of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products[(3)], should be defined.

(9) Under the second subparagraph of Article 4(4) of Regulation (EEC) No 3149/92, the Member States are required to send the Commission the models of the invitations to tender before the commencement of the plan implementation period. This requirement unnecessarily complicates the management of the scheme and should be abolished.

(10) As a result of changes to the wording of Article 2(3) of Regulation (EEC) No 3149/92 certain references to that paragraph should be changed in order to ensure clarity.

(11) Article 7 of Regulation (EEC) No 3149/92 lays down the procedures to be followed in the event of transfers. Since transfers require close cooperation between the Member State of destination and the supplier Member State, the supplier Member State should facilitate the operations in question as far as possible so that the time limits laid down

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in Article 3(2) of that Regulation can be met and that operations can be carried out in accordance with Article 2 of Commission Regulation (EC) No 884/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the financing by the European Agricultural Guarantee Fund (EAGF) of intervention measures in the form of public storage operations and the accounting of public storage operations by the paying agencies of the Member States[(4)]. In that context, it should be specified that a removal order issued by the intervention agency of the Member State of destination is the document required for placing the products at the disposal of the supply contractor by the intervention agency of the supplier Member State. Furthermore, in order to ensure that withdrawal from stocks is controlled, it should be laid down that the intervention agency of the supplier Member State must inform the competent authority of the Member State of destination of the end of the operation to withdraw products from intervention stocks.

(12) Article 8a of Regulation (EEC) No 3149/92 specifying rules for payment does not cover cases of incomplete payment requests. Rules and penalties to be applied in such cases should be laid down. Provision should also be made for Community measures to be taken in the event of late payment.

(13) Experience has shown that European Union citizens are not sufficiently aware of the role played by the Community in food aid for disadvantaged sections of the population. As a result, it should be laid down that the European Union flag must appear on the packaging.

(14) The stages of the distribution chain to which the checks provided for in the first subparagraph of Article 9(2) of Regulation (EEC) No 3149/92 apply should be more precisely stipulated. The penalties to be applied in the event of shortcomings or irregularities by the various bodies involved in distribution should also be specified.

(15) Regulation (EEC) No 3149/92 should be amended accordingly.

(16) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EEC) No 3149/92 is hereby amended as follows:

1. In Article 1(1), ‘15 February’ is replaced by ‘1 February’;

2. Article 3 is amended as follows:

   (a) in paragraph 2, the fourth subparagraph is replaced by the following subparagraphs:

   > If the time limits provided for in the first, second and third subparagraphs are exceeded, the costs of storing the intervention products shall no longer be covered by the Community. This provision shall not apply to products which have not been withdrawn from intervention stocks on 30 September of the year of implementation of the plan.

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The products to be withdrawn must be removed from intervention stocks within sixty days of the date on which the successful tenderer to whom the supply is assigned signs the contract or, in the case of transfers, within sixty days from the notification by the Member State of destination to the competent authority of the supplier Member State.;

(b) the following paragraph 2a is inserted:

2a. Payment operations for products to be supplied by the operator must, in the case of products to be mobilised on the market under Article 2(3)(c) and (d), be closed before 1 September of the year of implementation of the plan.;

3. Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following paragraphs 1 and 1a:

1. Implementation of the plan shall comprise:

a the supply of products withdrawn from intervention stocks;

b the supply of products mobilised on the Community market under Article 2(3)(c) and (d);

c the supply of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks.

1a Those products referred to in paragraph 1(b) which are mobilised on the market must belong to the same product group as the product temporarily unavailable in the intervention stocks.

However, where no rice is available in the intervention stocks, the Commission may authorise the removal of cereals from intervention stocks as payment for the supply of rice or rice products mobilised on the market.

Similarly, where no cereals are available in the intervention stocks, the Commission may authorise the removal of rice from intervention stocks as payment for the supply of cereals or cereal products mobilised on the market.

A given product may be mobilised on the market only if all the quantities of product in the same group to be withdrawn from intervention stocks for supply purposes in application of Article 2(3)(1)(b), including quantities to be transferred in application of Article 7, have already been allocated. The competent national authority shall inform the Commission of the opening of mobilisation procedures on the market.

(b) paragraph 2 is amended as follows:

i) point (a) is amended as follows:

— the third indent of the second subparagraph is replaced by the following:

— or the quantity of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products from intervention stocks; these foodstuffs must contain an ingredient

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belonging to the same group of products as the intervention product supplied as payment.;

— the fifth subparagraph is replaced by the following text:

Where the supply involves the processing and/or packaging of the product, the invitation to tender shall refer to the obligation of the successful bidder to lodge a security, before taking over the products, for the intervention agency in accordance with Title III of Commission Regulation (EEC) No 2220/85[(5)], for an amount equal to the intervention price applicable on the day fixed for taking over the product plus 10 % of that price. For the purposes of Title V of that Regulation, the primary requirement shall be to supply the product at the stipulated destination. In the event of delivery after the end of the implementation period of the plan specified in Article 3(1), the security forfeited shall be 15 % of the secured amount. The remainder of the security shall also be forfeited at an additional 2 % per day of delay. This subparagraph shall not apply where the product withdrawn from the intervention stocks is made available to the supply contractor as payment for supply already carried out.;

ii) the following is added to the first subparagraph of point (b):

The supply contract is awarded to the selected tenderer subject to the latter depositing a security equivalent to 110 % of the amount of his tender and established in the name of the intervention agency, in accordance with Title III of Regulation (EEC) No 2220/85.

(c) paragraph 2a is replaced by the following:

2a. Products from intervention or mobilised on the market under Article 2(3)(c) and (d) or point c of the first subparagraph of paragraph 1 of this Article may be incorporated into or added to other products mobilised on the market for the manufacture of food to be supplied for the purposes of implementing the plan.;

(d) in paragraph 4, the second subparagraph is deleted;

4. Article 7 is amended as follows:

(a) in paragraph 2, the third sentence is replaced by the following:

The expenditure shall be set off against the appropriations referred to in Article 2(3)(2).;

(b) paragraph 5 is replaced by the following:

5. In the case of transfer, the Member State of destination shall provide the supplier Member State with the name of the person contracted to carry out the operation.

The intervention agency of the Member State supplying the products shall make them available to the person contracted to carry out the supply or his/