COMMISSION REGULATION (EEC) No 3143/85

of 11 November 1985

on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1] as last amended by Regulation (EEC) No 1298/85 [2], and in particular Article 6 (7) and 28 thereof,

Having regard to Council Regulation (EEC) No 985/68 of 15 July 1968, laying down general rules for intervention on the market in butter and cream [3], as last amended by Regulation (EEC) No 3521/83 [4], and in particular Article 7 (a) thereof,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States [5], as last amended by Regulation (EEC) No 2055/85 [6], and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 1079/77 of 17 May 1977 on a coresponsibility levy and on measures for expanding the market in milk and milk products [7], as last amended by Regulation (EEC) No 1302/85 [8], and in particular Article 4 thereof,

Whereas the situation on the butter market in the Community is characterized by the existence of large stocks formed as a result of intervention on the butter market under Article 6 (1) and (2) of Regulation (EEC) No 804/68 ;

Whereas the entire quantity of the butter constituting these stocks cannot be disposed of in normal conditions during the milk marketing year ; whereas, in view of the attendant high costs, a prolongation of storage should be avoided ; whereas measures should therefore be taken to encourage the disposal of the butter ;

Whereas consumption of this product can be increased by means of sales at reduced prices in the form of concentrated butter ; whereas various Community measures containing provisions to this effect have been adopted since 1972 ;

Whereas the situation on the butter market warrants the continuation and amplification of such measures ; whereas, in the view of the size of public stocks, priority should be given to the disposal of the latter ;

Whereas Commission Regulation (EEC) No 649/78 [9], as last amended by Regulation (EEC) No 1741/84 [10], introduced a system of sales at reduced prices for intervention butter intended for direct consumption in the form of concentrated butter ; whereas, in the light of experience gained in the application of the said Regulation, numerous amendments should be made to the latter ; whereas, for the sale of clarity, the said Regulation should be repealed and replaced by a new text ;

Whereas the reduction in the price of butter should be such as to result in an increase in its consumption in the form of concentrated butter and whereas, for this reason, the effect of the reduction should be felt fully at the level of direct consumption ;

Whereas measures should be taken to ensure differentiation at all stages of marketing between butter disposed of under the terms of this Regulation and other butters ; whereas, to this effect, provisions should be adopted concerning the composition and description of concentrated butter ; whereas, in order to ensure compliance with the aims of this Regulation, a time limit for the processing of this butter into concentrated butter and for its packaging should be fixed ;

Whereas, moreover, a sufficiently high rate for the butterfat content should be laid down ;

Whereas a supervisory system should be applied to ensure that the butter is not used for purposes other than those stipulated ; whereas this Regulation should be included in the Annex to Commission Regulation (EEC) No 1687/76 of 30 June 1976 laying down common detailed rules for verifying the use and/or destination of products from intervention [11], as last amended by Regulation (EEC) No 2602/85 [12] ; whereas additional supervisory conditions should also be laid down in view of the specific character of the operation, particularly in connection with the processing of the butter and as regards the keeping of stock records by the parties concerned ; whereas, however, these supervisory measures should take place at the stage immediately preceding the taking over by the retail sector ;

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(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 137, 27. 5. 1985, p. 5.
(3) OJ No L 169, 18. 7. 1968, p. 1.
(4) OJ No L 352, 15. 12. 1983, p. 4.
(5) OJ No L 106, 12. 5. 1971, p. 1.
(6) OJ No L 193, 25. 7. 1985, p. 33.
(7) OJ No L 131, 26. 5. 1977, p. 6.
(8) OJ No L 137, 27. 5. 1985, p. 9.
(9) OJ No L 86, 1. 4. 1978, p. 33.
(10) OJ No L 164, 22. 6. 1984, p. 20.
(11) OJ No L 190, 14. 7. 1976, p. 1.
(12) OJ No L 248, 17. 9. 1985, p. 12.

Whereas, in particular, butter purchased under this Regulation should not be diverted to the uses provided for by Commission Regulation (EEC) No 262/79 of 12 February 1979 on the sale of butter at reduced prices for processing into pastry products, ice cream and other foodstuffs (1), as last amended by Regulation (EEC) No 3021/85 (2), and by Commission Regulation (EEC) No 1932/81 of 13 July 1981 on the granting of aid for butter or concentrated butter for the manufacture of pastry products, ice cream or other foodstuffs (3), as last amended by Regulation (EEC) No 453/85 (4);

Whereas the Member States should communicate to the Commission data relating to the disposal of butter under this Regulation;

Whereas account should be taken of the value of the butter or concentrated butter as regards the monetary compenatory amounts fixed by virtue of Regulation (EEC) No 974/71; whereas, to this effect, provision should be made for the application of a coefficient to the said amounts applicable to the butter and concentrated butter as currently set out in Commission Regulation (EEC) No 343/85 of 24 May 1985 fixing the monetary compensatory amounts and certain coefficients and rates required for their application (5);

Whereas, as regards financing, the expenditure occasioned by this additional disposal operation should be considered as resulting from one of the measures referred to in the first indent of Article 4 (2) of Regulation (EEC) No 1079/77;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. Butter purchased in accordance with Article 6 (1) of Regulation (EEC) No 804/68 which was placed in storage before a date to be determined shall be put up for sale at reduced prices for the purposes of direct consumption in the Community in the form of concentrated butter.

Within the meaning of this Regulation, direct consumption shall mean purchases by consumers for the purposes of final utilization, including those made by hotels, restaurants, hospitals, homes, boarding schools, prisons and all similar establishments for the preparation of food for direct consumption.

2. The sales arrangements provided for in this Regulation shall continue to apply for as long as public stocks of butter allow and at all events for a period ending no earlier than one year after the date on which notice of expiry, decided on in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, has been published in the *Official Journal of the European Communities.*

Article 2

1. Butter covered by Article 1 shall be sold ex-storage depot at a price equal to the buying-in price applied by the intervention agency concerned on the day on which the contract of sale is concluded, less 224 ECU per 100 kilograms.

2. Purchase applications may relate only to butter with the same fat content, either 82 % or more or less than 82 %.

3. The butter shall be sold in quantities of not less than 1 tonne. However, where the quantity available in a storage depot is less than 1 tonne, the quantity available shall constitute the minimum quantity for the contract of sale.

4. On the day on which the contract of sale is concluded, the purchaser shall:

— furnish proof that he has lodged a security guaranteeing the proper destination of the butter, as provided for in Article 13 of Regulation (EEC) No 1687/76, in the amount of 234 ECU per 100 kilograms,

— pay the purchase price of the butter.

The contract of sale shall name the stablishment where all the butter will be processed and packaged in accordance with Articles 4 and 5 and, where appropriate, the establishment where all the concentrated butter will be packaged for marketing in accordance with Article 4 (3).

The butter shall be removed within a maximum of 12 days from the day on which the contract of sale is concluded. After the said deadline, the cost of storing the butter shall be charged to the purchaser.

Article 3

1. The butter referred to in Article 1 shall remain in its original wrappings until it is processed into concentrated butter.

It shall be accompanied by a list of packages enabling the butter to be identified.

2. The wrappings of butter removed from storage shall bear one or more of the following statements in clear and legible print:

— 'Smør bestemt til forarbejdning til koncentreret smør [forordning (EØF) nr. 3143/85]',

— 'Butter zur Verarbeitung zu Butterfett [Verordnung (EWG) Nr. 3143/85]',

— 'Βούτυρο που προορίζεται να μεταποιηθεί σε συμπυκνωμένο βούτυρο [κανονισμός (ΕΟΚ) αριθ. 3143/85]',

(1) OJ No L 41, 16. 2. 1979, p. 1.
(2) OJ No L 289, 31. 10. 1985, p. 14.
(3) OJ No L 191, 14. 7. 1981, p. 6.
(4) OJ No L 52, 22. 2. 1985, p. 22.
(5) OJ No L 138, 27. 5. 1985, p. 2.

— 'Butter for processing into butteroil or concentrated butter [Regulation (EEC) No 3143/85]',

— 'Beurre destiné à être transformé en beurre concentré [règlement (CEE) n° 3143/85]',

— 'Burro destinato ad essere trasformato in burro concentrato [regolamento (CEE) n. 3143/85]',

— 'Boter bestemd voor verwerking tot bak- en braadboter [Verordening (EEG) nr. 3143/85]' or 'Boter bestemd voor verwerking tot boterconcentraat [Verordening (EEG) nr. 3143/85]'.

Article 4

1. The total quantity of butter must be concentrated and packed, in accordance with this Article and Article 5, in an establishment approved for that purpose by the Member State on whose territory the said establishment is situated.

In the case of concentrated butter with a minimum butterfat content of 99,8 %, the processing of the butter must yield at least 100 kilograms of such concentrated butter per :

— 122,5 kg of butter where the butter used has a fat content of 82 % or more,

— 125,5 kg of butter where the butter used has a fat content of less than 82 %.

In the case of concentrated butter with a minimum butterfat content of less than 99,8 %, the aforesaid quantities shall be reduced proportionally by 1,23 kg and 1,26 kg respectively per percent difference between the minimum butterfat content of the concentrated butter produced and the aforesaid figure of 99,8 %.

2. Approval as an establishment within the meaning of paragraph 1 may only be granted to an establishment :

(a) which has the appropriate technical installations to process an average quantity of at least two tonnes of butter per month ;

(b) which has premises on which any stocks of non-butter fat can be stored separately and identified as such ;

(c) which undertakes to keep permanent records of the origin of the raw materials used, the quantities used, the quantities and composition of the products obtained, the exit date of such products and the names and addresses of purchasers ; and

(d) undertakes to forward its manufacturing programme in accordance with the arrangements decided on by the Member State concerned to the body responsible for the inspection referred to in Article 6.

If the establishment also processes butter sold under Regulation (EEC) No 262/79 or which has qualified for the aid provided for in Regulation (EEC) No 1932/81, it must also undertake :

— to keep the records referred to in (c) above as a separate entity,

— to process successively the butter sold under Regulation (EEC) No 262/79 or which has received aid under Regulation (EEC) No 1932/81 and the total quantity of butter purchased under this Regulation and stored on the premises of the establishment. However, at the request of the party concerned, the Member States may agree to waive this obligation if the establishment has premises ensuring that the stocks of the butter in question can be stored separately and identified as such.

Approval shall be withdrawn in the event of failure to comply with these provisions ; approval may also be withdrawn where the undertaking concerned is found not to have complied with any other obligation arising from this Regulation.

3. The entire quantity of concentrated butter satisfying the requirements of Article 5 (1) and (2) may be packed for marketing, in accordance with Article 5 (4) and (5) at another establishment approved for this purpose by the Member State on whose territory such establishment is located.

4. Processing and packaging, including the packaging referred to in paragraph 3, must take place within a maximum period of 60 days from the day on which the contract of sale referred to in Article 2 (4) is concluded.

Article 5

1. The concentrated butter must :

— contain at least 96 % butterfat ;

— have undergone, to the exclusion of any processing other than that referred to in paragraph 3, the incorporation provided for in paragraph 2.

However, the concentrated butter may be subjected to the incorporation of not more than 2 % components of the fat-free dried matter of milk and with 0,5 % lecythin (E 322).

2. During the processing of the butter into concentrated butter there shall be incorporated per 100 kilograms of concentrated butter, in such a way as to ensure its homogeneous distribution and depending on the formula chosen :

Formula I :

15 grams of stigmasterol ($C_{29}H_{48}O$ = Δ 5,22-stigmastene-3-beta-ol) at least 95 % pure, calculated on the product ready to be incorporated, or

17 grams of stigmasterol ($C_{29}H_{48}O$ = Δ 5,22-stigmastene-3-beta-ol) at least 85 % pure, calculated on the product ready to be incorporated, containing not more than 7,5 % brassicasterol ($C_{28}H_{46}O$ = Δ 5,22-ergostene-3-beta-ol) and not more than 4 % sitosterol ($C_{29}H_{50}O$ = Δ 5-stigmastene-3-beta-ol), or

1,1 kg of triglycerides of enanthic (n-heptanoic) acid, at least 95 % pure, calculated as triglycerides on the product ready for incorporation, with a maximum acid value of 0,3 % , a saponification number between 385 and 395, and a 95 % minimum content of enanthic acid in the esterified acid part;

Formula II:

10 grams of ethyl ester of butyric acid and 15 grams of stigmasterol ($C_{29}H_{48}O$ = Δ 5,22-stigmastene-3-beta-ol) at least 95 % pure calculated on the product ready to be incororated, or

10 grams of ethyl ester of butyric acid and 17 grams of stigmasterol ($C_{29}H_{48}O$ = Δ 5,22-stigmastene-3-beta-ol) at least 85 % pure, calculated on the product ready to be incorporated, containing not more than 7,5 % brassicasterol ($C_{28}H_{46}O$ = Δ 5,22-ergostene-3-beta-ol) and not more than 4 % sitosterol ($C_{29}H_{50}O$ = Δ 5-stigmastene-3-beta-ol), or

10 grams of ethyl ester of butyric acid and 1,1 kg of triglycerides of enanthic (n-heptanoic) acid, at least 95 % pure, calculated as triglycerides on the product ready for incorporation, with a maximum acid value of 0,3 %, a saponification number between 385 and 395, and a 95 % minimum content of enanthic acid in the esterified acid part;

The competent agency shall ensure that the aforesaid requirements as to the quality and characteristics, in particular the degree of purity, of the products to be incorporated into the concentrated butter have been complied with.

3. Nitrogen gas may be added to concentrated butter meeting the requirements of paragraphs 1 and 2 immediately before packing to cause foaming; the increase in volume resulting from this treatment may not exceed 10 % of the volume of the concentrated butter before treatment.

4. Concentrated butter subjected to marking in accordance with formula I shall be put up in sealed packs. Depending on the products incorporated in accordance with paragraphs 1 and 2 and subject to the national provisions governing the description of food products, the packs shall bear, in identical, clear and legible print, one or more of the following statements:

— 'Bage- og stegesmør',

— 'Butterfett' or 'Butterkonzentrat',

— 'Συμπυκνωμένο βούτυρο' ή 'Συμπυκνωμένο βούτυρο για τη μαγειρική' ή 'Συμπυκνωμένο βούτυρο για τη μαγειρική και τη ζαχαροπλαστική',

— 'Butteroil' or 'concentrated butter for cooking and baking',

— 'Beurre concentré' or 'beurre concentré pour la cuisine' or 'beurre concentré pour la cuisine et la pâtisserie',

— 'Burro concentrato' or 'burro concentrato da cucina' or 'burro concentrato da cucina e pasticceria',

— 'Bak- en braadboter' or 'boterconcentraat'.

Concentrated butter subjected to marking in accordance with formula II shall be put up in hermetically sealed packs bearing, in identical clear and legible print, one or more of the following statements:

— 'Ghee',

— 'Aus Butter gewonnenes Ghee',

— 'Βούτυρο ghee',

— 'Butter ghee',

— 'Ghee obtenu de beurre',

— 'Ghee ottenuto da burro',

— 'Ghee'.

5. The packs referred to in paragraph 4 shall have a maximum net content of two kilograms.

Article 6

1. During the processing of the butter into concentrated butter, the competent agency shall carry out frequent and unannounced on-the-spot inspections based on the manufacturing programme of the establishment. The costs of inspection shall be borne by the undertaking concerned.

The said inspections shall relate to the conditions of manufacture and the quantity and composition of the products obtained, with particular reference to the butter used and the packaging. They shall entail the taking of samples from each consignment of concentrated butter manufactured.

The inspections shall be accompanied periodically, depending on the quantities processed, by a thorough inspection of the records and verification of compliance with the conditions laid down for the approval of the establishment.

2. A 'consignment' shall mean a quantity of concentrated butter corresponding to a contract as referred to in Article 2, of homogeneous quality and produced continuously in the same processing premises.

Article 7

1. Until such time as it is taken over by the retail sector, any person holding concentrated butter must keep stock records showing for each delivery the names and addresses of purchasers of the concentrated butter and the quantities purchased in each case.

Where the holder of concentrated butter under this Regulation also holds concentrated butter manufactured from butter purchased under Regulation (EEC) No 262/79 or from butter for which aid was granted under Regulation (EEC) No 1932/81, separate stock records shall be kept for the products held by virtue of each of the said Regulations.

2. Where the concentrated butter is subsequently resold to an intermediary trader, the latter shall, on placing his first order, provide the vendor with a written undertaking that he will comply with the obligations concerning the destination of the product. The said undertaking, which shall apply automatically to all subsequent sales, shall state that the buyer is aware of the penalties imposed by the Member State in question for breaches of the aforesaid obligations.

3. Within the meaning of this Regulation, butter is also taken over by the retail trade where purchases are made by the establishments referred to in the second subparagraph of Article 1 (1) and by distributing establishments to which access is reserved to holders of a purchaser's card ('cash and carry').

4. To ensure compliance with the provisions of Article 2 of Regulation (EEC) No 1687/76 , the inspections provided for in Article 6 shall be supplemented by a thorough, unannouned inspection of the commercial documents and of the stock records of all holders of concentrated butter referred to in paragraph 1.

Article 8

The Member States shall adopt all necessary provisions to ensure that the amount of the price reduction is fully reflected at the level of direct consumption.

Article 9

1. In cases of *force majeure* where the measures specified in Article 11 (1) (a) and (b) of Regulation (EEC) No 1687/76 are inappropriate, the intervention agency shall decide what measures should be taken in the circumstances invoked.

2. In the event of failure to fulfil the obligations relating, on the one hand, to the processing of butter into concentrated butter up until its final packaging and, on the other, to the taking over thereof by the retail trade in the Community, the security referred to in Article 2 (4) shall be forfeited in its entirety.

However, if the infringement relates only to the concentration of the products referred to in Article 5 (2) being less than 20 % below the prescribed concentration, only 25 % of the amount of the security shall be forfeited.

3. In the event of failure to observe the processing period provided for in Article 4 (4), 5 % of the amount of the security remaining after 15 % has been deducted form the latter shall be forfeited per day by which the period is exceeded.

4. Member States shall inform the Commission each quarter of the cases in which they have applied paragraph 1 specifying the circumstances invoked, the quantity involved and the measures taken.

5. Except in cases of *force majeure,* the security shall be forfeited for the quantities in respect of which the proof required under Regulation (EEC) No 1687/76 has not been furnished within 12 months of the day on which the contract was concluded.

However, if the proof is furnished within 18 months of the said deadline, 85 % of the security shall be refunded.

Article 10

The Member States shall communicate to the Commission on the Tuesday of each week particulars of the quantities of butter sold giving in each case separate figures for the quantities to be processed in another Member State.

Article 11

The monetary compensatory amounts applicable to butter or concentrated butter shall be equal to the monetary compensatory amounts fixed pursuant to Regulation (EEC) No 974/71, weighted by the coefficient given in Part 5 of Annex I to the relevant Commission Regulation fixing the monetary compensatory amouns.

Article 12

The following point 33 and related footnote are hereby added to Part II of the Annex to Regulation (EEC) No 1687/76 'Products intended for a use and/or destination other than that referred to in Part I' :

'33. Commission Regulation (EEC) No 3143/85 of 11 November 1985 on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter (33) :

(a) On the dispatch of the butter in its natural state intended for concentration :

— Section 104 :

"bestemt til forarbejdning til koncentreret smør og senere umiddelbart forbrug [forordning (EØF) nr. 3143/85]",

"zur Verarbeitung zu Butterfett und zum anschließenden unmittelbaren Verbrauch [Verordnung (EWG) Nr. 3143/85]",

"προοριζόμενο να μεταποιηθεί σε συμπυκνωμένο βούτυρο και εν συνεχεία για άμεση κατανάλωση [κανονισμός (ΕΟΚ) αριθ. 3143/85]",

"for processing into butteroil or concentrated butter and subsequent private consumption [Regulation (EEC) No 3143/85]",

"destiné à être transformé en beurre et à la consommation directe ultérieure [règlement (CEE) n° 3143/85]",

"destinato ad essere trasformato in burro concentrato ed all'ulteriore consumo diretto [regolamento (CEE) n. 3143/85]",

"bestemd voor verwerking tot boterconcentraat en voor later onmiddellijk verbruik [Verordening (EEG) nr. 3143/85]".

— Section 106 :

date on which the butter was purchased.

(b) On the dispatch of the butter after concentration :

— Section 104 :

"til emballering for umiddelbart forbrug [forordning (EØF) nr. 3143/85]",

"zur Verpackung für den unmittelbaren Verbrauch [Verordnung (EWG) Nr. 3143/85]",

"προοριζόμενο να συσκευασθεί για άμεση κατανάλωση [κανονισμός (ΕΟΚ) αριθ. 3143/85]",

"for packaging for private consumption [Regulation (EEC) No 3143/85]",

"destiné à être emballé pour la consommation directe [Règlement (CEE) n° 3143/85 ",

"destinato a essere imballato per il consumo diretto [Regolamento (CEE) n. 3143/85]",

"bestemd om verpakt te worden voor onmiddellijk verbruik [Verordening (EEG) nr. 3143/85]".

— Section 106 :

the quantity of butter used to manufacture the quantity of concentrated butter indicated in Section 103.

(c) On the dispatch of the butter after concentration and packaging :

— Section 104 :

"til umiddelbart forbrug [forordning (EØF) nr. 3143/85]",

"für den unmittelbaren Verbrauch [Verordnung (EWG) Nr. 3143/85]",

"προοριζόμενο για άμεση κατανάλωση [κανονισμός (ΕΟΚ) αριθ. 3143/85]",

"for private consumption [Regulation (EEC) No 3143/85]",

"destiné à la consommation directe [Règlement (CEE) n° 3143/85]",

"destinato al consumo diretto [Regolamento (CEE) n. 3143/85]",

"voor onmiddellijk verbruik [Verordening (EEG) nr. 3143/85]".

— Section 106 :

the quantity of butter used to manufacture the quantity of concentrated butter indicated in Section 103.

([33]) OJ No L 298, 12. 11. 1985, p. 9'.

Article 13

For purposes of financing this Regulation shall, as regards the additional expenditure occasioned by the increase in the annual quantities of butter sold under it in relation to those sold hitherto under Regulation (EEC) No 649/78, constitute a measure as referred to in the first indent of Article 4 (2) of Regulation (EEC) No 1079/77.

Article 14

1. Regulation (EEC) No 649/78 is hereby repealed.

2. It shall continue to apply to authorizations granted and to contracts entered into prior to the date of entry into force of this Regulation. However, for quantities of butter which have not been processed into concentrated butter by the said date, the said contracts shall, at the request of the party concerned, be amended in such a way that the selling price of the butter is the same as that provided for in this Regulation on condition that the processing period has not yet expired at the date of the request.

Article 15

This Regulation shall enter into force on 25 November 1985.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 November 1985.

For the Commission

Frans ANDRIESSEN

Vice-President