COMMISSION REGULATION (EEC) No 1157/91

of 3 May 1991

amending Regulation (EEC) No 570/88 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs and amending Regulation (EEC) No 569/88

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 3641/90 (2), and in particular Articles 6 (7), 7a (3), 12 (3) and 28 thereof,

Whereas Commission Regulation (EEC) No 570/88 (3), as last amended by Regulation (EEC) No 1048/89 (4), provides for the sale of butter at reduced prices and the possibility of obtaining aid for butter and concentrated butter intended for use in the manufacture of pastry products, ice-cream and other foodstuffs; whereas it has been decided, pursuant to Article 7a of Regulation (EEC) No 804/68, that until the end of the eighth 12-month period of application of the additional levy system the intervention arrangements for butter could be amended and whereas, in this case, the Commission could take special measures to increase the possibilities for disposing of milk products, including cream; whereas in view of the current milk market situation, characterized by the continued existence of milk fat surpluses, it is justified to encourage even more the use of this fat;

Whereas cream is suitable for the manufacture of ice-cream and preparations for the manufacture of ice-cream as referred to in Article 4 (2) of Regulation (EEC) No 570/88; whereas, in addition, there is a risk that amendments to national legislation on ice-cream in some Member States may lead to a reduction in the use of butterfat in the form of butter incorporated in the said products; whereas it is therefore justified to include cream in the list of raw materials that may qualify for the aid for the manufacture of the final products referred to in Article 4 (2) of Regulation (EEC) No 570/88; whereas, in view of the specific characteristics of the product, certain provisions applicable to it alone should be laid down;

Whereas Article 4 of Regulation (EEC) No 570/88 sets out the final products in which the butter or concentrated butter must be incorporated according to formulae A, B, C and D; whereas the aid for formulae A, C and D has always been fixed at the same level; whereas, as a result, the three latter formulae should be merged;

Whereas, in order to simplify the fixing of the aid and the minimum price for each invitation to tender, tenderers should be obliged to draw up their tenders in ecus per 100 kilograms and provision should be made for the possibility of fixing a mathematical relation between the aid and the prices of the various categories of butter, concentrated butter and cream;

Whereas experience gained justifies, where this will have no negative consequences regarding checks, the easing of some of the requirements relating, on the one hand, to quantities of butter or concentrated butter to which no tracers have been added and which must be used during a given period for the manufacture of final products and, on the other hand, to the quantities to be declared when establishing each manufacturing programme and, lastly, to the repackaging of concentrated butter;

Whereas Article 23 (1) of Regulation (EEC) No 570/88 provides for the implementation of checks on the manufacture of concentrated butter, whether or not tracers are added, under the responsibility of the competent body; whereas it has become apparent that a system of self-checking in certain approved establishments could, under certain conditions, significantly lighten the administrative burden while guaranteeing compliance with the objectives of that Regulation; whereas, in addition, with a view to ensuring the full effectiveness of the control measures as a whole, those measures should be supplemented in certain respects;

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

Regulation (EEC) No 570/88 is hereby amended as follows:

1. The title is replaced by the following:

'Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 362, 27. 12. 1990, p. 5.
(3) OJ No L 55, 1. 3. 1988, p. 31.
(4) OJ No L 111, 22. 4. 1989, p. 24.

and the grant of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs'.

2. In Article 1 :

(a) the first paragraph is replaced by the following :

'Subject to the conditions laid down hereinafter, butter bought in pursuant to Article 6 (1) of Regulation (EEC) No 804/68 and taken into storage before a date to be determined shall be sold and aid shall be granted for the use of butter, concentrated butter and cream as referred to in the second paragraph.' ;

(b) the following point (c) is added to the second paragraph :

'(c) cream covered by CN codes ex 0401 30 39 and ex 0401 30 99 with a fat content not less than 35 % and not more than 49 %, in which tracers have been incorporated as provided in the second subparagraph of Article 6 (1) and directly used in the final products referred to in Article 4, point 2.'

3. Article 3 is replaced by the following :

'Article 3

Tenders may not be entertained unless the tenderer gives a written undertaking to incorporate, or have incorporated, the butter, concentrated butter or cream referred to in Article 1, exclusively and without prejudice to the intermediate products referred to in Article 9, in the final products referred to in Article 4 or, as regards cream, in Article 4 (2), in one of the following ways :

(a) either by adding the tracers referred to in Article 6 (1),

— after processing of the butter awarded into concentrated butter, in accordance with Article 5,

or

— without further processing ;

(b) or by providing a written undertaking to use, at the establishment where incorporation into the intermediate and/or final products is effected, a minimum of 5 tonnes of butter-equivalent per month, or a minimum quantity of 45 tonnes of butter-equivalent per year or the same quantities in intermediate products,

— after processing of the butter awarded into concentrated butter, in accordance with Article 5,

or

— without further processing.'

4. Article 4 is amended as follows :

(a) in paragraph 1 (a), CN code '1905 90 50' is replaced by the codes '1905 90 45, 1905 90 55' ;

(b) in paragraph 2 (a), the figure '5 %' is replaced by '4,5 %,'.

(c) in paragraph 2 (b), CN code '1806 20 90' is repalced by the codes '1806 20 80, 1806 20 95' ;

(d) paragraph 3 (a) (iii) is deleted ;

(e) paragraph 3 (b) (i) is replaced by the following :

'(i) uncooked dough must be put up in units packed in outer cartons' ;

(f) in the second indent of paragraph 4, CN code '2103 90 90' is replaced by the code 'ex 2103 90 90'.

5. The following second subparagraph is added to Article 6 (1) :

'if the product is cream, the products listed in Annex IIa must be added to it as provided for in the first subparagraph.'

6. Article 8 is amended as follows :

(a) the first paragraph is replaced by the following :

'if the manufacture of the concentrated butter, to which tracers have or have not been added, or the addition of the tracers to butter or, as the case may be, to cream, and the incorporation in final products or, where applicable, in the intermediate products referred to in Article 9, are carried out in different places, the concentrated butter, butter or cream shall be put up in sealed packages weighing not less than 10 kilograms net as regards concentrated butter or butter, without prejudice to any subpackaging, and 25 kilograms net as regards cream.' ;

(b) the introductory sentence of the second paragraph is replaced by the following :

'Packages and any subpackages shall bear in clearly visible and legible characters an indication of the Regulation and the intended use (formula A/C/D of formula B) and :' ;

(c) the last sentence of point (a) in the second paragraph is replaced by the following :

'The concentrated butter may also be transported by tank or container ; in this case :

— the abovementioned wording shall be marked on the tank or container in letters at least 5 centimetres high,

— the concentrated butter, before incorporation in the final products, may be repackaged in sealed packages as provided for in the first and second paragraph in an establishment approved for this purpose in accordance with Article 10.';

(d) the following points (c) and (d) are added to the second paragraph:

'(c) In the case of cream, one or more of the following:

— Nata marcada destinada exclusivamente a la incorporación en uno de los productos contemplados en el artículo 4 fórmula B del Reglamento (CEE) nº 570/88

— Fløde tilsat råbestof udelukkende bestemt til forarbejdning til et af de produkter, som er nævnt i artikel 4, formel B, i forordning (EØF) nr. 570/88

— Gekennzeichneter Rahm, ausschließlich zur Verarbeitung zu einem der in Artikel 4 Formel B der Verordnung (EWG) Nr. 570/88 genannten Enderzeugnisse bestimmt

— Κρέμα γάλακτος που προορίζεται αποκλειστικά για την ενσωμάτωση στα τελικά προϊόντα όπως αναφέρονται στο άρθρο 4 τύπος Β του κανονισμού (ΕΟΚ) αριθ. 570/88

— Cream to which tracers have been added for incorporation exclusively into one of the products listed in Article 4 formula B of Regulation (EEC) No 570/88

— Crème tracée destinée exclusivement à l'incorporation dans les produits finaux visés à l'article 4 formule B du règlement (CEE) nº 570/88

— Crema contenente rivelatori destinata esclusivamente all'incorporazione in uno dei prodotti di cui all'articolo 4 formula B del regolamento (CEE) n. 570/88

— Room, waarin verklikstoffen zijn bijgemengd, uitsluitend bestemd voor verwerking tot een van de in artikel 4, formule B, van Verordening (EEG) nr. 570/88 bedoelde produkten

— Nata marcada destinada exclusivamente à incorporação num dos produtos finais referidos no artigo 4º, fórmula B, do Regulamento (CEE) nº 570/88.

If the cream is transported by tank or container, the abovementioned wording shall be marked on the tank or the container in letters at least 5 centimetres high;

(d) in the case of concentrated butter or butter to which tracers have been added, the words 'concentrated butter' or 'butter' referred to under (a) and (b) shall be qualified by the words 'to which tracers have been added'.'

7. The first sentence of Article 9 (1) (d) is replaced by the following:

'(d) as regards transport of the intermediate product, Article 8 shall apply and the package shall bear, in addition to the intended use (formula A/C/D or formula B) and, where applicable, the words "to which tracers have been added", one or more of the following:'.

8. Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The manufacture of concentrated butter referred to in the second paragraph of Article 1, under (b), the processing of butter into concentrated butter as referred to in Article 5, the addition of tracers as referred to in Article 6, the incorporation of butter and concentrated butter as referred to in Article 7, the repackaging of the concentrated butter as referred to in the second paragraph of Article 8 under (a) and the incorporation in the intermediate products as referred to in Article 9 shall be effected in approved establishments.'

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

'(a) it has suitable technical equipment the processing or incorporation capacity of which is at least 5 tonnes of butter per month or its equivalent in concentrated butter or cream, or, where appropriate, in intermediate products;';

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

'(d) it undertakes to forward to the agency responsible for inspection referred to in Article 23 its manufacturing programme for each tender as defined in Article 16, in accordance with the detailed rules laid down by the Member State.';

(d) the second indent of paragraph 4 is replaced by the following:

'— addition to the butter or cream of the tracers,'.

9. Article 12 (1) is amended as follows:

(a) point (b) is replaced by the following:

'(b) keep accounts showing, for each delivery, the names and addresses of the purchasers and the corresponding quantities, specifying their intended use (formula A/C/D or formula B);';

(b) the third indent of point (c) is replaced by the following :

'— an obligation to incorporate in final products, indicating the intended use (formula A/C/D or formula B), within the period referred to in Article 11,'.

10. Article 16 is amended as follows :

(a) the second subparagraph of paragraph 1 is replaced by the following :

'Tenders shall be submitted to the intervention agency holding the butter or, in the case of aid, to the intervention agency of the Member State in whose territory the addition of tracers, or, as the case may be, the manufacture of concentrated butter or the incorporation of butter in final products or the incorporation of butter in intermediate products, will be carried out.' ;

(b) in paragraph 2 :

— point (c) is replaced by the following :

'(c) the intended use of the butter (formula A/C/D or formula B), and the incorporation procedure chosen, having regard to the relevant provisions of Article 3 ;' ;

— point (d) is replaced by the following :

'(d) the price offered per 100 kilograms of butter having the fat content required, exclusive of internal taxes, ex coldstore, expressed in ecus ;' ;

(c) paragraph 3 is replaced by the following :

'3. Tenders for the grant of aid shall state :

(a) the name and address of the tenderer ;

(b) the quantity of cream, butter or concentrated butter in respect of which aid is requested and, in the case of butter, the fat content ;

(c) the intended use (formula A/C/D or formula B) and the incorporation procedure chosen, having regard to the relevant provisions of Article 3 ;

(d) the proposed amount of the aid per 100 kilograms of cream, butter or concentrated butter, disregarding any tracers, expressed in ecus.' ;

(d) Paragraph 4 (a) and (b) is replaced by the following :

'(a) it relates to a single product only (awarded butter, cream or butter or concentrated butter), having a uniform fat content (82 % or more, or less than 82 %) in the case of butter, is intended for the same use (formula A/C/D or formula B) and is subject to the same incorporation procedure ;

(b) it relates to at least 5 tonnes of butter or 12 tonnes of cream or 4 tonnes of concentrated butter. However, if the quantity available in a store is less, the available quantity shall constitute the minimum quantity for tender ;'.

11. Article 18 is amended as follows :

(a) paragraph 1 is replaced by the following :

'1. In the light of the tenders received in response to each individual invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a minimum selling price shall be fixed for the butter and maximum aid shall be fixed for the cream, butter or concentrated butter. The price or aid thus fixed may vary according to :

— the intended use (formula A/C/D or formula B),

— the fat content of the butter,

— the incorporation procedure to be followed in accordance with Article 3.

However, the Commission may, in accordance with the procedure referred to above, fix a minimum basic selling price and/or maximum basic aid for the butter with differentials as given in Annex VII laid down in accordance with the intended use, the fat content of the butter and cream, and the incorporation procedure chosen.

In accordance with the same procedure, a decision may be taken to make no award in respect of an invitation to tender.' ;

(b) the opening sentences of paragraph 2 are replaced by :

'2. At the same time as the minimum selling price(s) or maximum amount(s) of aid are fixed and under the same procedure, the amount(s) of the processing security shall be fixed per 100 kilograms by reference either to the difference between the intervention price of butter and the minimum prices fixed or to the amounts of aid. If a minimum basic selling price or maximum basic aid are fixed, the processing security shall be lodged as given in Annex VII. The purpose of the processing security shall be to ensure fulfilment of the primary requirements concerning :' ;

(c) the first subparagraph of paragraph 3 is replaced by the following :

'3. The proof required for the purposes of the release of the processing security referred to in paragraph 2 must be produced for the competent agency within 12 months of the expiry of the period laid down in Article 11.'

12. Article 21 is amended as follows:

(a) paragraph 1 (e) is replaced by the following:

'(e) the incorporation procedure chosen, having regard to the provisions of Article 3, and the intended use (formula A/C/D or formula B).';

(b) the first subparagraph of paragraph 3 is replaced by the following:

'3. The butter shall be handed over by the intervention agency in packages bearing, in clearly visible and legible characters, an indication of the Regulation and of the intended use (formula A/C/D or formula B) and of the incorporation procedure chosen by reference to the relevant provisions of Article 3.'

13. Article 22 is amended as follows:

(a) in paragraph 2:

— point (a) is replaced by the following:

'(a) the amount of the aid awarded in respect of the quantity of butter, concentrated butter or cream concerned and the tender, identified by a serial number, to which it relates;';

— point (d) is replaced by the following:

'(d) the incorporation procedure chosen, having regard to the provisions of Article 3, and the intended use (formula A/C/D or formula B) without prejudice to the application, under this chapter, of the provisions of Article 21 (4).';

(b) the following point (c) is added to paragraph 3:

'(c) in respect of cream:

— that it has satisfied the conditions laid down in point (c) of the second paragraph of Article 1,

and

— that the processing security referred to in Article 18 (2) has been lodged.'

14. Article 23 is amended as follows:

(a) the first paragraph of point 1 is replaced by the following:

'1. During the manufacture of the concentrated butter, whether or not tracers are added, or during the addition of tracers to the cream or butter, or during the repackaging referred to in the second indent of point (a) of the second paragraph of Article 8, the competent agency shall ensure on-the-spot checks on the basis of the establishment's manufacturing programme as referred to in Article 10 (2) (d) in such a way that each tender, as described in Article 16, is checked at least once. However, for quality control purposes, Member States may, after obtaining the Commission's consent, establish under their supervision a system of self-checking for certain approved establishments.';

(b) the opening sentence of point 3 is replaced by the following:

'3. Checks on the use of the concentrated butter, cream, butter or the intermediate product in the final products must include at least the following:';

(c) the second subparagraph of point 5 is replaced by the following:

'This point shall apply only if the final user undertakes in writing to purchase over an annual period only a maximum quantity of 6 tonnes of butter or 5 tonnes of concentrated butter or the same quantity in intermediate products or 14 tonnes of cream. This point shall no longer apply to a final user who has not complied with this undertaking.';

(d) the following points 6 and 7 are added:

'6. The inspections carried out pursuant to this Article must be the subject of an inspection report specifying:

— the date of the inspection,

— its duration, and

— the operations carried out.

7. After one year of application of the system provided for in this Regulation, each Member State shall draw up a report on the implementation of the provisions relating to the use of cream as referred to in the second paragraph of Article 1, under (c), and shall forward it to the Commission.'

15. Article 24 is replaced by the following:

'Article 24

The products referred to in the second paragraph of Article 1 shall also be subject to the control referred to in Article 2 of Commission Regulation (EEC) No 569/88 (*) from the beginning of the operations referred to in Article 6 and until incorporation in the final products.

The special entries to be made in box 44 of the Single Administrative Document or the most appropriate boxes of the document justifying the Community character of the products or in boxes 104, 106 and 107 of the control copy T 5 shall be those indicated in Part II of the Annex to Regulation (EEC) No 569/88, at point 25, under A (c), (d), (e) or (f).'

(*) OJ No L 55, 1. 3. 1988, p. 1.'

16. Annexes IIa and VII attached to this Regulation are added.

Article 2

Point 25 of Part II of the Annex to Regulation (EEC) No 569/88 is hereby amended as follows:

— the title of point 25 is replaced by the following:

'25. Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the grant of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [25]:',

— the following point (f) is added to point 25 (A):

'(f) on the dispatch of cream to which tracers have been added for incorporation in the final products:

— section 104 of the control copy T 5:

cream to which tracers have been added for incorporation in the products referred to in Article 4 (2) of Regulation (EEC) No 570/88,

— section 106 of the control copy T 5:

1. the latest date for incorporation in the final products:
2. the utilization (formula B).',

— the words 'formula A/C or formula B or formula D' are replaced by 'formula A/C/D or formula B' in the following points:

— A:

(a) (3),

(b) (3),

point (2) of the second indent of (c),

point (2) of the second indent of (d),

point (2) of the second indent of (e),

— B:

(a) (3),

(b) (I) (3) and second indent of (b) (II) (2),

(c) (I) (3) and second indent of (c) (II) (2),

(d) (I) (3) and second indent of (d) (II) (2).

Article 3

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply from the first invitation to tender following the date of its entry into force. However, up to 30 September 1991, in order to comply with the provisions of Article 1 (6) (b) and (d) (solely as regards the new point '(d)'), (7) and 12 (b), the old preprinted packaging may be used if it bears the new formula of utilization '(formula A/C/D or formula B)' or the new term 'with added tracers'), indicated by a stamp or by a glued label.

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

Done at Brussels, 3 May 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

'ANNEX II a

Products to be incorporated in cream

(Second subparagraph of Article 6 (1))

1. With the exclusion of any other product, including fats of non-milk origin, the following are to be incorporated in the cream referred to in Article 1 *et seq*:

   (a) either

   — a minimum proportion of 250 ppm of 4-hydroxy-3-methoxybenzaldehyde obtained either from vanilla or from synthetic vanillin,

   or

   — a minimum proportion of 20 ppm of ethyl ester of beta-apo-8'-carotenoic acid in the form of a compound soluble in the milk fat,

   and

   (b) either in a proportion of at least 1 %, the triglycerides of

   — n-heptanoic acid (C_7),

   or

   — n-undecanoic acid (C_{11}),

   at least 95 % pure, calculated as triglycerides on the product ready for incorporation, with a maximum acid value of 0,3, and a saponification number:

   — between 385 and 395 for the triglycerides of n-heptanoic acid,

   — between 275 and 285 for the triglycerides of n-undecanoic acid,

   the esterified acid part being composed of at least 95 %

   — of n-heptanoic acid,

   or

   — of n-undecanoic acid,

   or

   — in a proportion of at least 600 ppm, a compound containing at least 90 % sitosterol, more particularly 80 % beta-sitosterol (. . .) and a maximum of 9 % campesterol (. . .) and 1 % of other sterols present in traces, including stigmasterol (. . .).

2. The homogeneous and stable dispersion in the cream of the products referred to in paragraph 1, which are incorporated in one another beforehand, is to be ensured by premixing and using mechanical, thermal and refrigeration treatment, etc.

3. Notwithstanding paragraphs 1 and 2, cream used exclusively in the territory of the United Kingdom for the manufacture of ice-cream marketed exclusively in that Member State may be marked by directly incorporating, in a proportion of 2 %, a mixture containing one part free n-tridecanoic acid (C_{13}), two parts milk fat, 2,5 parts sodium caseinate and 94,5 parts mineral salts obtained from milk.

4. The concentrations expressed in percent or in ppm referred to in paragraphs 1 and 3 are calculated by reference to the part of the cream made up exclusively of fat.

5. The homogeneousness of composition, in particular as regards the products referred to in paragraphs 1 and 3, is to be checked by taking representative samples from the top and bottom layers of each lot of cream stored in a tank. The relative values resulting from the analysis must not deviate from the minimum content values referred to in paragraphs 1 and 3 by more than 5 %.

ANNEX VII

(Article 18)

A. MARKET BUTTER

Maximum basic aid established for each individual invitation to tender for unprocessed butter with a fat content of 82 % with no added tracers used in formula A/C/D and the levels of aid based on the intended use (formula A/C/D or formula B), the fat content and the incorporation procedure chosen in accordance with Article 3

(ECU/100 kilograms)

		Unprocessed butter		Concentrated butter	Cream
		82 % fat content	80 % fat content		
With no added tracers	Formula A/C/D	X	X × 0,9756	(X × 1,22) + P 1	
	Formula B	X − Y	(X × 0,9756) − Y	[(X − Y) × 1,22] + P 1	
With added tracers	Formula A/C/D Processing security	X + V 110 %	(X × 0,9756) + V 110 %	(X × 1,22) + P 1 + V 110 %	
	Formula B Processing security	X + W − Y 110 %	(X × 0,9756) + W − Y 110 %	[(X − Y) × 1,22] + P 1 + W 110 %	(X − Y) × Q + W 1 110 %

Y : Difference in the level of aid for formula A/C/D and formula B.
V : Cost of adding tracers, formula A/C/D.
W : Cost of adding tracers, formula B.
P 1 : Compensation for cost of manufacturing concentrated butter.
Q : Factor determining the difference between the aid for butter and cream.
W 1 : Cost of adding tracers in cream (formula B).

B. INTERVENTION BUTTER

Minimum basic price established for each individual invitation to tender for unprocessed butter with a fat content of 82 % with no added tracers used in formula A/C/D and the price levels based on the intended use (formula A/C/D or formula B), the fat content and the incorporation procedure chosen in accordance with Article 3

(ECU/100 kilograms)

		Unprocessed butter		Concentrated butter
		82 % fat content	80 % fat content	
With no added tracers	Formula A/C/D	Z	Z × 0,9756	(Z − P 2)
	Formula B	Z + Y	(Z × 0,9756) + Y	Z + Y − P 2
With added tracers	Formula A/C/D	Z − V	(Z × 0,9756) − V	Z − P 2 − V
	Formula B	Z − W + Y	(Z × 0,9756) − W + Y	Z + Y − P 2 − W

The processing securities represent 110 % of the difference between the intervention price and the selling prices of the butter.
Y : Difference in the level of aid for formula A/C/D and formula B.
V : Cost of adding tracers, formula A/C/D.
W : Cost of adding tracers, formula B.
P 2 : Compensation for the cost of manufacturing concentrated butter.'