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COMMISSION REGULATION (EEC) No 3149/92

of 29 October 1992

laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community

(OJ L 313, 30.10.1992, p. 50)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EEC) No 3550/92 of 9 December 1992	L 361	19	10.12.1992
►**M2**	Commission Regulation (EEC) No 2826/93 of 15 October 1993	L 258	11	16.10.1993
►**M3**	Commission Regulation (EC) No 267/96 of 13 February 1996	L 36	2	14.2.1996
►**M4**	Commission Regulation (EC) No 2760/1999 of 22 December 1999	L 331	55	23.12.1999
►**M5**	Commission Regulation (EC) No 1098/2001 of 5 June 2001	L 150	37	6.6.2001
►**M6**	Commission Regulation (EC) No 1921/2002 of 28 October 2002	L 293	9	29.10.2002
►**M7**	Commission Regulation (EC) No 2339/2003 of 30 December 2003	L 346	29	31.12.2003
►**M8**	Commission Regulation (EC) No 1903/2004 of 29 October 2004	L 328	77	30.10.2004
►**M9**	amended by Commission Regulation (EC) No 537/2005 of 7 April 2005	L 89	3	8.4.2005
►**M10**	Commission Regulation (EC) No 1608/2005 of 30 September 2005	L 256	13	1.10.2005
►**M11**	Commission Regulation (EC) No 133/2006 of 26 January 2006	L 23	11	27.1.2006

Corrected by:

►**C1** Corrigendum, OJ L 258, 4.10.2005, p. 8 (1903/2004)

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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COMMISSION REGULATION (EEC) No 3149/92

of 29 October 1992

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 Economic 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 organizations for distribution to the most deprived persons in the Community [1], and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [2], as last amended by Regulation (EEC) No 2205/90 [3], and in particular Articles 2 (4) and 12 thereof,

Whereas, in view of the experience of a number of years' management of the arrangements introduced by Regulation (EEC) No 3730/87, the implementing rules laid down by Commission Regulation (EEC) No 3744/87 [4], as last amended by Regulation (EEC) No 583/91 [5], should be amended; whereas, for the sake of clarity and convenience, the latter should be replaced by this Regulation;

Whereas the procedure and rules for establishing the annual distribution plan for products from intervention stocks drawn up by the Commission on the basis of information provided by the Member States should be simplified and the timetable should be adapted taking into account the requirements of distribution to the recipients and the need for financial management of public intervention stocks;

Whereas the supply of agricultural products and foodstuffs to the most deprived persons in the Community normally involves products processed or packaged from products withdrawn from Community intervention stores; whereas, however, the objective may also be achieved by the supply of agricultural products and foodstuffs beloging (SIC! belonging) to the same category of products placed on the Community market; whereas in such cases supply is reimbursed in the form of a withdrawal and transfer of products from the intervention stores;

Whereas, in order to manage the arrangements properly, when apply (SIC! supply) concerns products which have been processed or subject to a specific operation, there should be a call for tenders to determine the most favourable terms for the supply;

Whereas the terms for reimbursing charitable organizations for costs incurred by the transport of products and also, if appropriate, administrative costs should be determined, within the limits of available funds; whereas transport costs are to be reimbursed on the basis of standards (SIC! standard) rates; whereas, however, provision should be made for the possibility of determing such transport costs by an invitation to tender; whereas the rules for entering in the accounts the value of products withdrawn from intervention stores for the purposes of EAGGF, Guarantee Section, expenditure should also be laid down, along with the rules to be applied in the even that stocks are transferred from one Member State to another;

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[1] OJ No L 352, 15. 12. 1987, p. 1.
[2] OJ No L 164, 24. 6. 1985, p. 1.
[3] OJ No L 201, 31. 7. 1990, p. 9.
[4] OJ No L 352, 15. 12. 1987, p. 33.
[5] OJ No L 65, 12. 3. 1991, p. 32.

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Whereas the rates to be applied on the one hand for the conversion of the accounting value of the products, and on the other, for the conversion of transport and administrative costs should be determined; whereas in respect of these costs, in order to avoid currency distortions, a rate closer to economic reality than the agricultural conversion rate should be used, while applying the correcting factor referred to in Article 2 (2) of Regulation (EEC) No 1676/85; wereas (SIC! whereas) Article 3a of Commission Regulation (EEC) No 3152/85 ([1]), as last amended by Regulation (EEC) No 3237/90 ([2]), on detailed rules for the application of Regulation (EEC) No 1676/85, provides for such a rate to be published;

Whereas the purpose of these arrangements and the nature of the intervention product transfers justifies the non-application of the monetary compensatory amounts and, where necessary, the rules for applying the supplementary trade mechanism provided for by the Act of Accession of Spain and Portugal;

Whereas provision should be made for this Regulation to apply at the beginning of the period of execution of the distribution plan, namely 1 October 1992;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the relevant management committees,

HAS ADOPTED THIS REGULATION:

Article 1

1. Member States wishing to apply the measures introduced by Regulation (EEC) No 3730/87 on behalf of the most deprived persons in the Community shall inform the Commission each year no later than 15 February preceding the period of implementation of the annual plan referred to in Article 2.

2. By 31 May at the latest, the Member States concerned shall notify the Commission of:

(a) the quantities of each type of product (expressed in tonnes) required to implement the plan on their territory for the year in question;

(b) the form in which the products are to be distributed to the recipients;

(c) the eligibility criteria to be met by recipients;

(d) the rate of charges, if any, which may be imposed on the recipients pursuant to Article 1 of Regulation (EEC) No 3730/87.

▼M8

3. For the purposes of this Regulation, ‘the most deprived persons’ means physical persons, whether individuals, families or groups composed of such persons, whose social and financial dependence is recorded or recognised on the basis of eligibility criteria adopted by the competent authorities, or is judged to be so on the basis of the criteria used by charitable organisations and which are approved by the competent authorities.

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Article 2

▼M3

1. Before 1 October each year the Commission shall adopt an annual plan for the distribution of food for the benefit of the most deprived persons, broken down by Member State concerned. For the purposes of allocating the resources among Member States, the Commission shall take account of the best estimates of the number of most deprived persons in the Member States concerned. It shall also take

([1]) OJ No L 310, 21. 11. 1985, p. 1.
([2]) OJ No L 310, 9. 11. 1990, p. 18.

▼M3

account of how operations were carried out and the uses to which resources were put in previous financial years, on the basis in particular of the reports provided for in Article 10 of this Regulation.

▼B

2. Before drawing up the annual plan, the Commission shall consult the major organizations familiar with the problems of the most deprived persons in the Community.

▼M3

3. The plan shall include in particular:

1. for each of the Member States applying the measure, the following:

   (a) the maximum financial resources available to carry out its part of the plan;

   (b) the quantity of each type of product to be withdrawn from the stocks held by the intervention agencies;

   (c) the grant made available for each product for purchase on the Community market where the product concerned is found to be temporarily unavailable among the stocks held by the intervention agencies when the annual plan is adopted.

   This grant shall be determined for each product taking account firstly of the quantity indicated in the Member State notification referred to in Article 1 (2), secondly of the quantities not available in intervention stocks and thirdly of the products applied for and allocated during previous financial years and the actual use made of them.

   This grant shall be expressed in ecus using the accounting value of the products not available among intervention stocks determined in accordance with Article 5 (1);

   (d) where appropriate, a grant for purchase on the Community market of one or more products, not available from the Member State where they are required, where the intra-Community transfer necessary to carry out the plan in that Member State would be in respect of a quantity of 60 tonnes or less of each product not available.

   This grant shall be expressed in ecus using the accounting value of the products concerned determined in accordance with Article 5 (1);

2. the appropriations needed to cover the intra-Community transfer costs of the intervention products held by an intervention agency in Member State other than that where the product is required.

▼B

4. The Commission shall publish the plan as quickly as possible.

▼M8

Article 3

1. The plan implementation period shall begin on 1 October and finish on 31 December of the following year.

2. Withdrawal of the products from intervention stocks shall take place from 1 October to 31 August of the following year on a regular basis and in accordance with the requirements for implementing the plan.

70 % of the quantities referred to in Article 2(3)(1)(b) must be withdrawn from stock before 1 July in the year of implementation; this requirement shall not apply to allocations of 500 tonnes or less, however. Any quantities that have not been withdrawn from intervention stocks by 30 September in the year of plan implementation shall no longer be allocated to the Member State to which they were assigned under the plan in question.

▼C1

However, in the case of butter and skimmed-milk powder, 70 % of the products must be withdrawn from intervention storage before 1 March in the year of implementation in the case of the 2005 plan, and before 1 February with effect from the 2006 plan. This requirement shall not, however, apply to allocations of 500 tonnes or less. ►M11 In the case of butter allocated to Member States under the 2006 annual plan, where the allocations involve amounts in excess of 500 tonnes, 70 % of the butter must be withdrawn from intervention stocks before 1 March 2006. ◄

▼M8

The products to be withdrawn must be removed from intervention stocks within 60 days of the award of the tender to the successful tenderer.

3. During the implementation period the Member States shall notify to the Commission any changes that they make to the implementation of the plan on their territory within the strict limits of the financing available to them. The notification shall be accompanied by all appropriate information. Where substantiated changes concern 5 % or more of the quantities or values entered per product in the Community plan, the plan shall be revised.

4. The Member States shall inform the Commission immediately of foreseeable reductions in expenditure on applying the plan. The Commission may allocate the available resources to other Member States on the basis of their applications and their actual use of products made available and allocations made during previous financial years.

▼M3

Article 4

1. Implementation of the plan shall involve:

(a) the supply of products withdrawn from intervention stocks;

(b) the supply of products mobilized on the Community market in application of Article 2 (3) (c) and (d).

The product mobilized on the market must belong to the same product group as the product temporarily unavailable among intervention stocks.

▼M10

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

▼M11

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

▼M3

A given product may be mobilized 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 mobilization procedures on the market.

2. Where the supply concerns:

(a) products withdrawn from intervention stocks, the competent national authority shall issue or arrange to have issued an invitation to tender to determine the most advantageous conditions of supply. The invitation to tender shall specify precisely the nature and characteristics of the product to be supplied. ►M7 The product to be supplied shall be either the product withdrawn from intervention stocks in unprocessed form or after packaging and/or processing,

▼M3

or a product mobilised on the market by withdrawing a product from intervention stocks in payment for the supply. ◄

The invitation to tender shall concern:

— the charges for processing and/or packaging of the products coming from intervention stocks,

— or the quantity of processed or, where appropriate, packaged agricultural products or of foodstuffs which may be obtained by the use of products from intervention stocks supplied in payment for such products,

— or the quantity of processed agricultural products or foodstuffs available or obtainable on the market by supplying for payment products belonging to the same group of products from intervention stocks.

▼M7

In the case referred to in the third indent of the second subparagraph, where supply involves cereals or cereal products, the invitation to tender shall specify that the product to be withdrawn is a specific cereal held by an intervention agency. Where the supply involves milk products, the invitation to tender shall specify which product, butter or milk powder, must be withdrawn from the stocks held by an intervention agency depending on the stocks held by that agency.

▼M10

In the case referred to in the third indent of the second subparagraph, where supply involves rice or rice products in exchange for cereals withdrawn from intervention stocks, the invitation to tender shall specify that the product to be withdrawn is a specific cereal held by an intervention agency. ►M11 Similarly, where supply involves cereals or cereal products in exchange for rice withdrawn from intervention stocks, the invitation to tender shall specify that the product to be withdrawn is a specific rice held by an intervention agency. ◄

▼M3

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 to the benefit of the intervention agency in accordance with Title III of Commission Regulation (EEC) No 2220/85 ([1]) 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 application of Title V of that Regulation, the principle requirement is that the product should be supplied to the destination laid down; this subparagraph does not apply where the product withdrawn from the intervention stocks is made available to the supply contractor as payment for supply already carried out;

(b) agricultural products or foodstuffs to be mobilized on the Community market, the competent national authority shall issue an invitation to tender to determine the most advantageous conditions of supply. The invitation to tender shall specify precisely the nature and characteristics of the product or foodstuff to be mobilized, specifications concerning packaging and marking and other obligations associated with the supply.

The invitation to tender shall concern all the supply charges and shall call for the submission of tenders concerning, according to case:

— the maximum quantity of the agricultural product or foodstuff to be mobilized on the market for a monetary amount fixed in the notice,

— or the monetary amount needed to mobilize on the market a quantity fixed in the notice.

([1]) OJ No L 205, 3. 8. 1985, p.5.

▼M10

2a. Products from intervention 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. In such cases, products from intervention stocks must represent at least 40 % of the net weight of the food product to be supplied.

In the case referred to in the first subparagraph, the invitation to tender shall clearly indicate the requirement that products from intervention stocks must represent at least 40 % of the net weight of the food product to be supplied.

▼M3

3. The transport costs shall by determined by an invitation to tender. Member States may specify that supply must also include the transport of products to the depots of the charitable organization. In such cases transport shall be the subject of a specific provision in the invitation to tender and shall constitute a particular item in the tender submitted.

Tenders concerning transport shall be submitted in monetary values.

The payment of transport costs may in no case be made in products.

4. Invitations to tender shall guarantee equal access to all operators established in the Community. To this end they shall be the subject of notices published in official administrative publications as well as being made available in complete form on request from interested operators.

The competent national authorities shall notify the Commission in due time and before the commencement of the implementation period the models of the invitations to tender used to allocate the different types of supply from intervention stocks and mobilization on the market.

▼M4

5. The invitations to tender shall include the necessary provisions on the supply operation, especially as regards the products' quality, packaging and marking. They shall also include a provision to the effect that if the quality, packaging or marking of the products noted at the time fixed for their supply does not correspond exactly to what was stipulated, but does not prevent the goods from being accepted for their intended use, the competent authorities can apply reductions when calculating the amoung payable.

▼M6

Article 5

1. For EAGGF Guarantee Section accounting purposes, and notwithstanding the provisions of Article 8 of Regulation (EEC) No 1883/78 ([1]), the accounting value of the products made available from intervention under this Regulation shall be the intervention price applicable on 1 October of each year.

▼M10

▼M6

For the Member States which have not adopted the euro, the accounting value of intervention products shall be converted into national currency at the exchange rate applicable on 1 October.

2. Where intervention products are transferred from one Member State to another, the supplier Member State shall record the product delivered as a zero entry in the accounts and the Member State of destination shall record it as a receipt in the month of dispatch, using the price calculated in accordance with paragraph 1.

▼M8

Article 5a

With a view to distributing foodstuffs to the most deprived persons and to performing checks, the charitable organisations directly looking after

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([1]) OJ L 216, 5.8.1978, p. 1.

▼M8

the beneficiaries shall be deemed to be the final recipients of this distribution is they are the ones actually distributing the foodstuffs. Foodstuffs which, without any other intervention, are locally delivered direct to the beneficiaries as food packages or appropriate meals, depending on the circumstances, either daily or weekly, shall be deemed to have been distributed.

▼B

Article 6

▼M4

1. On duly substantiated application to the competent authority in each Member State, the charitable organisations designated to distribute the products shall be reimbursed for transport costs on the territory of the Member State between the storage depots of the charitable organisations and the points of distribution to the beneficiaries.

▼B

3. Administrative costs generated by the supplies provided for in this Regulation shall, on duly substantiated application to the competent authority in each Member State, be reimbused to the charitable organizations subject to a limit of 1 % of the value of the products made available to them, calculated in accordance with Article 5 (1).

▼M2

4. The costs referred to in paragraphs 1, 2 and 3 shall be reimbursed to the Member States within the limits of the financial resources available to implement the plan in each Member State.

The costs referred to in paragraphs 1, 2 and 3 may not be the subject of a payment in the form of products.

Article 7

▼M4

1. When products included in the plan are not available from intervention in the Member State where such products are required, the Commission shall authorise, in accordance with the procedure laid down in Article 6 of Regulation (EEC) No 3730/87, the transfer of the product in question from a Member State in which it is present in intervention stocks to the Member State where it will be used to implement the plan.

The Member State receiving the products shall publish or have published an invitation to tender to establish the most favourable conditions of supply. The costs of intra-Community transport shall be the subject of a tender submitted in money value and may not be paid for in products. Article 4(4) shall apply in the context of this invitation to tender.

▼M2

2. ►M4 The intra-Community transport costs shall be borne by the Community and repaid to the Member State. ◄ ►M11 The application for reimbursement shall include all necessary supporting documents, particularly those concerning the transport. ◄ The expenditure shall be set off against the appropriations referred to in Article 2 (3) (c). Where the appropriations have been fully allocated, any additional Community financing to cover intra-Community transport costs shall be provided in accordance with Article 6 (4).

3. The call for tenders shall mention the option whereby an operator may submit a bid for placement on the Community market of the agricultural products or foodstuffs to be supplied and for takeover of the products from the supplying intervention agency, without transfer to the applicant Member State. In these circumstances, no intra-Community transport costs shall be paid to the person awarded the supply contract.

The applicant Member State shall provide the supplier Member State with the name of the person contracted to supply the products.

▼M2

4. Before the goods are removed, the contractor undertaking the supply operation shall lodge a security equal to the intervention buying-in price applicable on the day fixed for taking over the products, plus 10 %.

The security shall be lodged in accordance with Title III of Commission Regulation (EEC) No 2220/85 ([1]).

For the purposes of Title V of that Regulation, the primary requirement shall be completion of the supply operation in the Member State of destination.

Presentation of a takeover document issued by the intervention agency of destination shall constitute proof of supply of the products.

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 responsible authority shall ensure that the goods have been insured appropriately.

Dispatch declarations issued by the supplier intervention agency shall include one of the following inscriptions:

— Transferencia de productos de intervención — aplicación del apartado 5 del artículo 7 del Reglamento (CEE) nº 3149/92.

— Overførsel af interventionsprodukter — Anvendelse af artikel 7, stk. 5, i forordning (EØF) nr. 3149/92.

— Transfer von Interventionserzeugnissen — Anwendung von Artikel 7 Absatz 5 der Verordnung (EWG) Nr. 3149/92.

— Μεταφορά προϊόντων παρεμβάσεως — εφαρμογή του άρθρου 7 παράγραφος 5 του κανονισμού (ΕΟΚ) αριθ. 3149/92.

— Transfer of intervention products — Application of Article 7 (5) of Regulation (EEC) No 3149/92.

— Transfert de produits d'intervention — Application de l'article 7 paragraphe 5 du règlement (CEE) nº 3149/92.

— Trasferimento di prodotti di intervento — Applicazione dell'articolo 7, paragrafo 5 del regolamento (CEE) n. 3149/92.

— Overdracht van interventieprodukten — toepassing van artikel 7, lid 5, van Verordening (EEG) nr. 3149/92.

— Transferência de produtos de intervenção — aplicação do nº 5 do artigo 7º do Regulamento (CEE) nº 3149/92.

6. The calculation of any losses shall be entered in the accounts in accordance with the provisions of Article 2 (2) of Commission Regulation (EEC) No 3597/90 ([2]).

▼M6

▼M2

Article 8a

Requests for payment shall be submitted to the competent authorities of each Member State within a period of four months following the completion of the operation in question. A 20 % reduction shall be made in the case of requests submitted beyond the time limit, except in the case of force majeure. Requests made more than ten months after the completion of the operation shall not be accepted.

The competent authorities shall make the payment within a period of two months following receipt of the payment request.

([1]) OJ No L 205, 3. 8. 1985, p. 5.
([2]) OJ No L 350, 14. 12. 1990, p. 43.

▼M8

Article 9

1. The Member States shall take all necessary measures to ensure that:

(a) the intervention products and, where appropriate, grants for mobilising foodstuffs on the market, are put to the use and serve the purposes laid down in Article 1 of Regulation (EEC) No 3730/87;

(b) the goods which are not delivered in bulk to the beneficiaries have the following inscription on their packaging 'EC aid';

(c) the designated charitable organisations for implementing the measures maintain appropriate accounts and supporting documents and allow the competent authorities access to them to carry out whatever checks they deem necessary;

(d) the invitations to tender are in accordance with Articles 3 and 4 and the supplies are implemented in accordance with this Regulation; in particular, the Member States shall establish the applicable penalties if the products have not been withdrawn in the period laid down in Article 3(2).

2. Checks by the competent authorities shall be carried out when the foodstuffs are taken over open their release from intervention storage, at all stages of plan implementation and in particular at all levels of the distribution chain. The checks shall be performed throughout the plan implementation period, at all stages and including local level.

The checks shall cover at least 5 % of the quantity of each type of product referred to in Article 2(3)(1)(b). This checking rate shall apply to each implementation stage, except for the stage of actual distribution to the most deprived, with account being taken of the risk criteria.

The purpose of the check is to verify the entry and exit of the products and their transfer to successive actors. Checks shall include a comparison of the stocks as shown in the accounts and the actual stocks of products chosen for inspection.

3. The Member States shall take all the measures needed to ensure that the plan is properly implemented and to anticipate and penalise irregularities. To this end they may suspend the participation of operators in the competitive tendering procedure, depending on the nature and seriousness of the shortcomings or irregularities noted in the performance of a supply.

▼M2

Article 10

►M11 No later than 30 June each year, the Member States shall send the Commission a report on the implementation of the plan on their territory during the previous year. ◄ The progress report shall include:

— the amounts of the various products withdrawn from intervention stocks,

— the type, quantity and value of goods distributed to the recipients, specifying separately unprocessed goods, processed goods and goods obtained by substitution together with the processing coefficients,

— the transport and transfer costs,

— administrative costs,

— the number of recipients over the course of the year.

▼M8

The report shall specify the verification measures that have been applied to ensure that the goods have achieved their intended objective and have reached the final recipients. This report shall mention in particular the type and the number of checks carried out, the results obtained and any cases were the penalties referred to in Article 9(3) are imposed.

▼M8

The report shall be taken into account as a decisive factor when drawing up subsequent annual plans.

Article 10a

This Regulation shall apply without prejudice to Commission Regulation (EEC) No 3002/92.

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Article 11

Regulation (EEC) No 3744/87 is hereby repealed.

Article 12

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

It shall apply with effect from 1 October 1992.

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

▼M10

▼M4
