COMMISSION REGULATION (EC) No 267/96

of 13 February 1996

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 organizations for distribution to the most deprived persons in the Community (1), as amended by Regulation (EC) No 2535/95 (2), and in particular Article 6 thereof,

Whereas, in order to deal with situations in which certain basic products are temporarily unavailable in intervention stocks at the time of adoption of an annual plan or during its implementation, Article 1 of Regulation (EEC) No 3730/87, as amended by Regulation (EC) No 2535/95, provides that the products concerned may be mobilized on the Community market, although only under conditions which do not conflict with the principle of supply from intervention stocks; whereas the rules for such mobilization must be fixed and Commission Regulation (EEC) No 3149/92 (3), as last amended by Regulation (EEC) No 2826/93 (4), should therefore be amended, incorporating the technical adjustments that have become necessary in the light of experience;

Whereas, in order to comply with the principle that priority should be given to intervention stocks when mobilizing products to supply to the most deprived persons in the Community, optimum distribution of existing public stocks among the Member States participating in the scheme should be ensured when the plan is adopted and intra-Community transfer operations made necessary by the non-availability of the products requested in one or more Member States should be coordinated; whereas, for the purposes of applying Article 1 of the abovementioned Council Regulation, a minimum quantity threshold should also be set beneath which, for reasons of good economic management, intra-Community transfers should not be implemented;

Whereas, in order to allow judicious management of the scheme and to organize the implementation of the annual Community plan, it is appropriate, firstly, to determine, when that plan is being adopted, for which products temporary non-availability justifies mobilization on the market of the same product or a product in the same category, and secondly to set the financial allocation to be made available to the Member State for this purpose; whereas, to meet the abovementioned objectives, that allocation should be made on the basis of the applications submitted by the Member State for the annual plan, the quantities of the products unavailable in the intervention stocks and the allocations made during previous financial years and their effective use;

Whereas, with the same objective of giving priority to the use of intervention stocks, it should be laid down that supplies using products to be withdrawn from those stocks must be allocated before operations to mobilize products of the same category on the Community market are undertaken;

Whereas the best conditions should be obtained for carrying out the different types of supply and it should be specified that invitations to tender must be published to ensure that all operators established in the Community have equal access;

Whereas the measures provided for in this Regulation are in accordance with the opinions of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 2 (1) is replaced by the following:

'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 acocount 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.'

(1) OJ No L 352, 15. 12. 1987, p. 1.
(2) OJ No L 260, 31. 10. 1995, p. 3.
(3) OJ No L 313, 30. 10. 1992, p. 50.
(4) OJ No L 258, 16. 10. 1993, p. 11.

2. Article 2 (3) is replaced by the following:

'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.'

3. Article 3 is replaced by the following:

'Article 3

1. Implementation of the plan shall run from 1 October to 30 September of the following year. Withdrawal of the products from the intervention stocks shall take place from 1 October to 31 August of the following year.

2. 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 distribution plan, the plan shall be revised.

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

4. Article 4 is replaced by the following:

'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.

However, where beef and veal are unavailable among intervention stocks, any meat product may be mobilized on the market. In such cases the meat product must constitute more than 50 % of the net weight of the food supplied to the most deprived persons.

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.

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.

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 (*) 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.

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.

(*) OJ No L 205, 3. 8. 1985, p. 5.'

5. Article 6 (1) is replaced by the following :

'1. On duly substantiated application to the competent authority in each Member State, the charitable organizations designated to distribute the products shall be reimbursed on the basis of the rates indicated in Annex II for transport costs on the territory of the Member State between the storage depots of the charitable organizations and the places of distribution to the beneficiaries.'

6. The last sentence of the first subparagraph of Article 7 (1) is replaced by the following :

'The transfer operations shall be authorized according to the procedure provided for in Article 6 of Regulation (EEC) No 3730/87.'

7. The second subparagraph of Article 7 (1) is replaced by the following :

'The Member State applying for and receiving the product 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. The provisions of Article 4 (4) shall apply in the context of this invitation to tender.'

8. The first indent in Article 9 is replaced by the following:

'— the intervention products, and, where appropriate, grants for mobilization on the market, are put to the use and serve the purposes laid down in Article 1 of Regulation (EEC) No 3730/87'.

9. The following sentence is added to Article 10:

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

Article 2

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

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

Done at Brussels, 13 February 1996.

For the Commission

Franz FISCHLER

Member of the Commission