COMMISSION REGULATION (EC) No 1903/2004

of 29 October 2004,

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Commission Regulation (EEC) No 3149/92 [2] lays down the application rules of Regulation (CEE) No 3730/87 for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community by charitable organisations designated by the Member States.

(2) In order to ensure more standardised implementation in the Member States participating in this scheme, the concepts of 'beneficiaries' and 'final recipients' of the measure need to be clarified. In order to facilitate the management and control of the implementation of the annual plan as laid down in Article 2 of Regulation (EC) No 3149/92, the charitable organisations designated by the competent national authorities can be deemed final recipients if they are actually engaged in the local distribution of the foodstuffs (in various forms) where the most deprived persons live.

(3) Implementation of the plan in each participating Member State must be programmed, phased and regular both as regards withdrawals of the products from intervention stocks and the performance of the later phases until distribution to the beneficiaries or final recipients, in order to satisfy both the aim of the Community measure and the requirement to manage intervention stocks well. To this end, most withdrawals from intervention stocks should occur before 1 July of the year in which the plan is implemented. In the case of milk products, the characteristics of this sensitive market and in particular the impact of re-introducing products onto the market require provision to be made for limiting withdrawals of these products from public storage as part of the measure concerned, during periods when buying-in by intervention agencies is possible and, with effect from the implementation of the 2006 plan, even during the weeks preceding these buying-in periods. Appropriate measures must be implemented by the Member States, to include sanctions in line with the length of the delay in taking over the products.

(4) The most appropriate types of check of the implementation of the annual plan should be specified and in particular the rate of checks to be made by the competent authorities. The annual reports of plan implementation should include information allowing both the outcome of the checks and the plan's implementation to be assessed. The checks must be carried out with due regard to the application of Commission Regulation (EEC) No 3002/92 laying down common detailed rules for verifying the use and/or destination of products from intervention [3].

(5) Regulation (EEC) No 3149/1992 should be amended accordingly. These amendments should apply from the start of the 2005 annual plan period.

(6) The relevant Management Committees have not delivered opinions within the time limits set down by their chairmen,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. The following paragraph is added to Article 1:

'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.'

[1] OJ L 352, 15.12.1987, p. 1. Regulation as amended by Regulation (EC) No 2535/95 (OJ L 260, 31.10.1995, p. 3).

[2] OJ L 313, 30.10.1992, p. 50. Regulation as last amended by Regulation (EC) No 2339/2003 (OJ L 346, 31.12.2003, p. 29).

[3] OJ L 301, 17.10.1992, p. 17. Regulation as last amended by Regulation (EC) No 770/96 (OJ L 104, 27.4.1996, p. 13).

2. Article 3 is replaced by the following:

'*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.

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 withdrawals of 500 tonnes or less.

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.'

3. The following Article 5a is inserted:

'*Article 5a*

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

4. Article 9 is replaced by the following:

'*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.'

5. The second paragraph of Article 10 is replaced by the following:

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

6. The following Article 10a is inserted:

'*Article 10a*

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

Article 2

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

It shall apply from the 2005 annual plan.

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

Done at Brussels, 29 October 2004.

For the Commission
Franz FISCHLER
Member of the Commission