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COMMISSION REGULATION (EC) No 105/2008

of 5 February 2008

laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter

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COMMISSION REGULATION (EC) No 105/2008

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laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ([1]), and in particular Articles 10 and 40 thereof,

Whereas:

(1) Commission Regulation (EC) No 2771/1999 ([2]) lays down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream. Council Regulation (EC) No 1152/2007 of 26 September 2007 amending Regulation (EC) No 1255/1999 on the common organisation of the market in milk and milk products ([3]) amended the provisions concerning intervention and private storage for butter and cream. In view of those new arrangements and in the light of the experience gained, it is appropriate to amend and, where necessary simplify the detailed rules governing intervention on the market in butter and cream. In the interests of clarity Regulation (EC) No 2771/1999 should be repealed and replaced by a new Regulation.

(2) Article 6(1) of Regulation (EC) No 1255/1999 lays down the criteria under which butter has to be bought at fixed price or through invitation to tender and under which circumstances buying-in is to be suspended. Practical arrangements should be provided concerning the buying-in process. To ensure compliance with the requirements as to the quality and presentation of the butter at the time when the offer is submitted, and after its entry into storage, sellers should be required to submit a written commitment to that effect together with their offer. Offers should also be accompanied by a security, in order to guarantee that the offer will be maintained and that the butter of the required quality will be delivered within time limits to be laid down.

(3) To be eligible for intervention butter should meet the requirements laid down in Article 6 of Regulation (EC) No 1255/1999 as well as the conditions of quality and presentation, which need to be defined. The methods of analysis and detailed rules governing quality control should also be specified and, if the situation so requires, provision should be made for checks of radioactivity in butter, the maximum levels of which need to be established, where appropriate, by Community legislation. However, it should be possible for Member States to authorise a system of self checking, subject to certain conditions.

(4) To ensure that the intervention arrangements function smoothly, it is necessary to specify the conditions for the approval of manufacturing undertakings and verification of compliance therewith. To ensure that the arrangements are effective, provision should be

([1]) OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1152/2007 (OJ L 258, 4.10.2007, p. 3).
([2]) OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 1171/2007 (OJ L 261, 6.10.2007, p. 11).
([3]) OJ L 258, 4.10.2007, p. 3.

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made for action to be taken if these conditions are not complied with. Since butter may be bought in by a competent body belonging to a Member State other than that on whose territory it was produced, the competent body which does the buying-in should in such cases be able to verify that the conditions relating to quality and presentation are complied with.

(5) Article 6(1) of Regulation (EC) No 1255/1999 stipulates that buying-in is to be carried out by tendering procedure. The Commission may decide to suspend intervention buying-in once a certain quantity offered for intervention has been reached. In order to put the Commission in the position to take such a decision, provisions should be adopted for the Commission to monitor the quantity of butter offered for public intervention.

(6) Once these quantities have been reached, the Commission may also decide to carry on buying-in by way of a standing tendering procedure. Relevant detailed rules should be determined. To ensure that all interested parties in the Community are treated equally, invitations to tender should be advertised in the *Official Journal of the European Union*. The details of the tender, particularly the minimum quantity, deadlines for submission and the maximum buying-in price should be defined.

(7) It should be possible to guarantee the quality of the butter, and the terms of buying-in by means of checks at different stages during storage. Failure to comply with the requirements should not impose an additional burden on the Community budget. Provision should therefore be made for sub-standard butter to be taken back by the operator, who should be obliged to bear the storage costs incurred.

(8) The Member States' obligations should be specified with a view to the proper management of stocks in storage, by stipulating a maximum distance for the place of storage and the costs to be borne when that distance is exceeded, and requiring, in particular, that stocks be accessible, that batches be identified and that butter in storage be insured against risks. In order to ensure a uniform frequency and level of checks, it is necessary to specify the nature and number of inspections of storage premises to be performed by the national authorities.

(9) Proper management of intervention stock requires the butter to be resold as soon as outlets become available. In order to better manage quantities and to avoid destabilising the market, the selling price should be set following a tendering procedure. Conditions for sale, entailing the lodging of a security should be laid down, particularly as regards the time limits for payment. Tenderers should have the possibility to distinguish between sweet cream and sour cream butter in their offer and the selling price fixed may vary according to the location of the butter offered for sale.

(10) Article 6(3) of Regulation (EC) No 1255/1999 provides for aid to be granted for the private storage of butter. To ensure that the arrangements can be monitored properly, provision should be made for a contract and a set of specifications regarding storage conditions. For the same reason, detailed rules should also be laid down regarding documentation, accounting and the frequency of checks and inspection procedures, particularly in respect of the requirements laid down in Article 6(3). To facilitate checks on the presence of the butter stored under private storage contracts, there should be provision for them to be removed from storage in whole lots unless the Member State authorises removal of a smaller quantity.

(11) To ensure that the private storage scheme is properly managed, it is appropriate to fix annually the amount of the aid. The dates of entry into storage and the dates on which storers may remove

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from storage, storage periods and aid amounts may be changed to take account of the market situation.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for milk and milk products,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

1. This Regulation lays down the detailed rules for applying the following intervention measures in the milk and milk products sector as provided for in Article 6 of Regulation (EC) No 1255/1999:

(a) public storage:

(i) buying-in of butter:

— at fixed price,

— by tendering;

(ii) sales of butter;

(b) private storage aid of butter.

2. For the purposes of this Regulation, the Belgo-Luxembourg Economic Union shall be considered as a single Member State.

3. For the purpose of this Regulation ‘competent body’ means the paying agency or, where appropriate, the body assigned by the paying agency as referred to in Article 6 of Council Regulation (EC) No 1290/2005 ([1]).

CHAPTER II

PUBLIC STORAGE

SECTION 1

Conditions for buying in butter

Article 2

The competent body shall buy in only butter which meets the requirements of the first subparagraph of Article 6(2) of Regulation (EC) No 1255/1999 and of Article 3 of this Regulation and which is offered for intervention in the period from 1 March to 31 August of any year.

Article 3

1. The competent body shall check the quality of butter using the methods described in Annex I and on the basis of samples taken in accordance with the rules set out in Annex II. However, Member States may, subject to written agreement of the Commission, set up a system of self checking under their own supervision in respect of certain quality requirements and in the case of certain approved undertakings.

([1]) OJ L 209, 11.8.2005, p. 1.

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2. Levels of radioactivity in butter may not exceed the maximum levels permitted, where applicable, under Community rules.

The level of radioactive contamination of butter shall be monitored only if the situation so requires, and during the requisite period. Where necessary, the duration and scope of checks shall be determined in accordance with the procedure laid down in Article 42 of Regulation (EC) No 1255/1999.

3. The butter shall have been made during the 23 days preceding the day on which the competent body received the offer to sell.

4. The minimum quantity of butter offered shall be 10 tonnes. Member States may require butter to be offered by the full tonne only.

5. Butter shall be packaged and delivered in blocks of at least 25 kilograms net.

6. Butter shall be packed in new, strong material in such a way as to ensure it is protected throughout transportation, storage and removal from storage. The packaging shall show at least the following particulars, where appropriate in code:

(a) the approval number identifying the factory and the Member State of production;

(b) the date of production;

(c) the date of entry into storage;

(d) the production batch number and the package number; the package number may be replaced by a pallet number marked on the pallet;

(e) the words ‘sweet cream’ if the aqueous phase of the butter has the corresponding pH.

Member States may waive the obligation to show the date of entry into storage on the packaging, provided that the store manager undertakes to keep a register in which the particulars referred to in the first subparagraph are recorded on the date of entry into storage.

Article 4

1. Undertakings as referred to in Article 6(2) of Regulation (EC) No 1255/1999 shall be approved only if they:

(a) are approved in accordance with Article 4 of Regulation (EC) No 853/2004 of the European Parliament and of the Council [1] and have the appropriate technical equipment;

(b) undertake to keep permanent records in the form determined by the competent body of each Member State, listing the supplier and origin of the raw materials, the quantities of butter obtained and the packaging, identification and exit date of each production batch intended for public intervention;

(c) agree to submit their production of butter to a specific official inspection;

(d) undertake to inform the competent body, at least two working days in advance, of their intention to produce butter for public intervention; however, the Member State may set a shorter time limit.

2. To ensure compliance with this Regulation, the competent body shall carry out unannounced on-the-spot inspections, on the basis of the intervention butter production schedule of the undertakings concerned.

They shall carry out at least:

[1] OJ L 139, 30.4.2004, p. 55.

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(a) one inspection per period of 28 days of production for intervention with at least one inspection every year, to examine the records referred to in paragraph 1(b);

(b) one inspection every year, to verify compliance with the other conditions for approval referred to in paragraph 1.

3. Approval shall be withdrawn if the preconditions laid down in paragraph 1(a) are no longer satisfied. Approval may be regranted at the request of the undertaking concerned after a period of at least six months, following a thorough inspection.

Except in cases of *force majeure*, where an undertaking is found not to have complied with one of its commitments as referred to in paragraph 1(b), (c) and (d), approval shall be suspended for a period of between one and 12 months depending on the seriousness of the irregularity.

The Member State may decide not to impose suspension where it is established that the irregularity was not committed deliberately or as a result of serious negligence and it is of minor importance with regard to the effectiveness of the inspections provided for in paragraph 2.

4. A report shall be drawn up on the inspections carried out pursuant to paragraphs 2 and 3, specifying:

(a) the date of the inspection;

(b) the duration of the inspections;

(c) the operations carried out.

The report shall be signed by the inspector responsible.

Article 5

1. Where butter is offered to intervention in a Member State other than that in which it was produced, buying-in shall be subject to the presentation of a certificate supplied by the competent body of the Member State of production.

The certificate shall be presented to the competent body of the purchasing Member State not later than 45 days after the day on which the offer was received and shall contain the information referred to in Article 3(6)(a), (b) and (d) of this Regulation, and a confirmation that the butter has been produced directly and exclusively from pasteurised cream within the meaning of Article 6(6) of Regulation (EC) No 1255/1999, in an approved undertaking in the Community.

2. Where the Member State of production has performed the checks referred to in Article 3(1) of this Regulation, the certificate shall also contain the results of those checks and confirm that the product concerned is butter fulfilling the requirements of the first subparagraph of Article 6(2) of Regulation (EC) No 1255/1999. In that case, the packaging referred to in Article 3(6) of this Regulation must be sealed by means of a numbered label issued by the competent body of the Member State of production. The certificate shall contain the number of the label.

SECTION 2

Procedure for buying-in of butter at fixed price

Article 6

Buying-in of butter at 90 % of the intervention price pursuant to the first subparagraph of Article 6(1) of the Regulation (EC) No 1255/1999 shall be carried out in accordance with the provisions of this Section.

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Article 7

1. Sellers shall submit a written offer against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

2. Offers shall contain:

(a) the name and address of the seller;

(b) the quantity offered;

(c) the name and the approval number of the undertaking approved under Article 4(1);

(d) the dates of manufacture of the butter;

(e) the place where the butter is held.

3. Offers shall be valid only if:

(a) they relate to a quantity of butter meeting the requirements of Article 3(4);

(b) they are accompanied by a written commitment by the seller to comply with Article 11(2);

(c) proof is furnished that the seller has lodged a security of EUR 5 per 100 kg in the Member State in which the offer was submitted no later than the day on which the offer is received.

4. The commitment provided for in paragraph 3(b), if forwarded initially to the competent body, shall be deemed to be tacitly renewed for subsequent offers until explicitly cancelled by the seller or by the competent body, provided that:

(a) the original offer stipulates that the seller intends to avail of the provisions of this paragraph;

(b) subsequent offers refer to the provisions of this paragraph and to the date of the original offer.

5. The competent body shall record the day on which the offer was received, the quantities involved and their respective dates of manufacture and the place where the butter offered is stored.

6. Offers may not be withdrawn after they have been received by the competent body.

Article 8

Maintenance of the offer, delivery of butter to the cold store designated by the competent body within the time limit laid down in Article 9(2) of this Regulation and compliance with the requirements of Article 2 of this Regulation shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 ([1]).

Article 9

1. After checking the offer, and within five working days following the day of receipt of the offer to sell, the competent body shall issue a dated and numbered delivery order showing:

(a) the quantity to be delivered;

(b) the final date for delivery of the butter;

(c) the cold store to which it must be delivered.

([1]) OJ L 205, 3.8.1985, p. 5.

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2. Within 21 days of the day of receipt of the offer to sell, the seller shall deliver the butter to the loading bay of the cold store. Delivery may be in several consignments.

Any costs incurred in unloading the butter at the loading bay of the cold store shall be borne by the seller.

3. The security referred to in Article 7(3)(c) shall be released as soon as the seller has delivered all the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements laid down in Article 2 has been established.

Where the butter does not conform to the requirements laid down in Article 2 the butter shall be rejected and the security shall be forfeit in respect of the quantity rejected.

4. Except in cases of *force majeure*, where the seller fails to deliver the butter within the time limit laid down in the delivery order, the security provided for in Article 7(3)(c) shall be forfeit in proportion to the quantities not delivered and buying-in shall be cancelled in respect of these quantities not yet delivered.

5. For the purpose of this Article, the butter shall be deemed to be delivered to the competent body on the day when the full quantity of butter covered by the offer enters the cold store designated by the competent body, but no earlier than the day following that on which the delivery order was issued.

6. The rights and obligations resulting from the sale shall not be transferable.

Article 10

1. The paying agency shall pay the seller for each quantity of butter taken over, between the 45th and 65th day after the day of the taking over, provided that conformity with the requirements of Articles 2 and 3 has been established.

2. For the purpose of this Article, the day of the taking over shall mean the day on which the butter enters the cold store designated by the competent body, but no earlier than the day following that on which the delivery order referred to in Article 9(1) was issued.

Article 11

1. The butter shall be put through a trial storage period. This period shall be fixed at 30 days starting from the day of taking over.

2. By their offers, sellers shall undertake that, where the inspection on entry into the store designated by the competent body shows that the butter does not meet the requirements of Articles 2 and 3, or where, at the end of the trial storage period, the minimum organoleptic quality of the butter proves to be below that set in Annex I:

(a) they will take back the butter in question and

(b) they will pay the storage costs of the butter concerned from the day on which it was taken over until the date of its removal from storage.

The storage costs to be paid shall be determined on the basis of the standard amounts for entry, removal and storage costs laid down pursuant to Article 6 of Council Regulation (EEC) No 1883/78 ([1]).

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

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Article 12

1. Not later than 12 noon (Brussels time) of each Tuesday, the competent body shall inform the Commission of the quantities of butter which, during the preceding week, have been the subject of an offer to sell in accordance with Article 7.

2. Once it is observed that the offers in a certain year approach 18 000 tonnes, the Commission shall inform Member States as of which date they shall communicate the information referred to in paragraph 1 every day before 12 noon (Brussels time) for the quantities of butter offered the preceding day.

Once it is observed that the offers in a certain year exceed the quantity of 30 000 tonnes referred to in the second subparagraph of Article 6(1) of Regulation (EC) No 1255/1999 buying-in may be suspended in accordance with the procedure referred to in Article 42(2) of that Regulation.

In the case of suspension of buying-in in accordance with the second subparagraph of this paragraph, no new offers shall be accepted as of the day following the day of the entry into force of the decision suspending buying-in.

SECTION 3

Procedure for buying-in of butter by tendering

Article 13

1. Where the Commission decides in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999 to start buying-in butter through an open standing invitation to tender pursuant to the third subparagraph of Article 6(1) of that Regulation, Articles 2 and 3(1)(2)(4) to (6) and Articles 4, 5, 9, 10 and 11 of this Regulation shall apply unless otherwise provided in this Section.

2. A notice of invitation to tender shall be published in the *Official Journal of the European Union*.

3. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month. However, in August it shall be 11.00 (Brussels time) on the fourth Tuesday. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.

Article 14

1. Interested parties shall participate in the tendering procedure announced by the competent body of a Member State either by submitting a written tender against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

2. Tenders shall contain:

(a) the name and address of the tenderer;

(b) the quantity offered;

(c) the proposed price per 100 kilograms of butter, exclusive of national taxes and charges, delivered to the loading bay of the cold store, expressed in EUR to no more than two decimal places;

(d) the name and the approval number of the undertaking approved under Article 4(1);

(e) the dates of manufacture of the butter;

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(f) the place where the butter is held.

3. Tenders shall be valid only if:

(a) they relate to a quantity of butter meeting the requirements of Article 3(4);

(b) the butter has been produced during 31 days preceding the closing date of the tender;

(c) they are accompanied by the written commitment by the tenderer to comply with Article 11(2);

(d) proof is furnished that the tenderer has lodged a security of EUR 5 per 100 kg for the invitation to tender concerned, in the Member State in which the tender was submitted, before the time limit referred to in Article 13(3) for submission of tenders.

4. The commitment provided for in paragraph 3(c), if forwarded initially to the competent body, shall be deemed to be tacitly renewed for subsequent tenders until explicitly cancelled by the tenderer or by the competent body, provided that:

(a) the original tender stipulates that the tenderer intends to avail himself of the provisions of this paragraph;

(b) subsequent tenders refer to the provisions of this paragraph and to the date of the original tender.

5. The competent body shall record the day on which the tender was received, the quantities involved and their respective dates of manufacture and the place where the butter offered is stored.

6. Tenders may not be withdrawn after the time limit referred to in Article 13(3) for the submission of tenders relating to the invitation to tender concerned.

Article 15

Maintenance of the tender after the time limit for submission of tenders, delivery of the butter to the cold store designated by the competent body within the time limit laid down in Article 18(3) of this Regulation and compliance with the requirements of Article 2 of this Regulation, shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 16

1. On the day of the lapse of the time limit referred to in Article 13(3), the competent body shall inform the Commission of the quantities and prices offered by tenderers.

If no offers have been submitted the competent body communicates this to the Commission within the same time limit.

2. In the light of the tenders received for each invitation to tender, the Commission shall fix a maximum buying-in price, by reference to the intervention prices applicable, in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999.

A decision may be taken not to proceed with the invitation to tender.

Article 17

Tenders shall be rejected if the price proposed is higher than the maximum price referred to in Article 16(2), applying to the tendering procedure concerned.

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Article 18

1. Tenderers shall be informed immediately by the competent body of the outcome of their participation in the tendering procedure.

Where tenders have been unsuccessful, the securities provided for in Article 14(3)(d) shall be released immediately.

The rights and obligations resulting from the tendering procedure shall not be transferable.

2. The competent body shall immediately issue to the successful tenderer a dated and numbered delivery order indicating:

(a) the quantity to be delivered;

(b) the final date for delivery of the butter;

(c) the cold store to which it shall be delivered.

3. Within 21 days of the closing date for submission of tenders, the successful tenderer shall deliver the butter to the loading bay of the cold store. Delivery may be in several consignments.

Any costs incurred in unloading the butter at the loading bay of the cold store shall be borne by the successful tenderer.

4. The security provided for in Article 14(3)(d) shall be released as soon as the successful tenderer has delivered all the quantity indicated on the delivery order within the time limit laid down therein and the conformity with the requirements of Article 2 has been established.

Where the butter does not conform to the requirements laid down in Article 2, the butter shall be rejected and the security shall be forfeit in respect of the quantity rejected.

5. Except in cases of *force majeure*, where the successful tenderer fails to deliver the butter within the time limit laid down in the delivery order, the security provided for in Article 14(3)(d) shall be forfeit in proportion to the quantities not delivered, and buying-in shall be cancelled in respect of the quantities not yet delivered.

6. For the purpose of this Article, the butter shall be deemed to be delivered to the competent body on the day when the full quantity of butter covered by the delivery order enters the cold store designated by the competent body, but no earlier than the day following that on which the delivery order was issued.

SECTION 4

Entry into and removal from storage

Article 19

1. The Member States shall lay down technical standards for cold stores, providing in particular for a storage temperature equal or lower than – 15°C, and shall take any other measures necessary to ensure that the butter is properly conserved. The relevant risks shall be covered by insurance in the form of either a contractual obligation on storers or a comprehensive coverage of the liability borne by the competent body; the Member States may also act as their own insurers.

2. The competent body shall require that butter be delivered to the loading bay of the cold store, and be taken into storage and kept there,

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on pallets, in such a way as to create easily identifiable and readily accessible lots.

3. The competent body responsible for checks shall perform unannounced checks on the presence of the butter in store, in accordance with Annex I of Commission Regulation (EC) No 884/2006 ([1]).

Article 20

1. The competent body shall choose the nearest available cold store to the place where the butter is stored.

The maximum distance referred to in the second subparagraph of Article 6(2) of Regulation (EC) No 1255/1999 shall be 350 kilometres.

However, the competent body may choose another store situated within the distance referred to in the second subparagraph, provided that the choice of that cold store does not result in additional storage costs.

The competent body may choose a cold store situated beyond that distance if the resulting expenditure, including storage and transport costs, is lower. In that case the competent body shall notify the Commission of its choice forthwith.

2. Where the competent body buying-in the butter is in a Member State other than the one in whose territory the offered butter is stored, no account shall be taken, in calculating the maximum distance referred to in paragraph 1 of the distance between the store of the vendor and the border of the Member State of the purchasing competent body.

3. Beyond the maximum distance referred to in paragraph 1, the additional transport costs borne by the paying agency shall be EUR 0,065 per tonne and per kilometre. The additional costs shall be borne by the paying agency only if the temperature of the butter does not exceed 6 °C on arrival at the cold store.

Article 21

At the time of removal from store the competent body shall, in the case of delivery outside of the cold store, make the butter available on pallets at the store's loading bay, loaded, where appropriate, onto the means of transport where this is a lorry or a railway wagon. The costs involved shall be borne by the paying agency and any stowage and depalletising costs shall be borne by the purchaser of the butter.

SECTION 5

Procedure for sales of butter by tendering

Article 22

1. Butter shall be sold by means of a standing invitation to tender.

2. Sales shall concern butter taken into storage before 1 June 2007.

3. A standing invitation to tender shall be published in the *Official Journal of the European Union* at least eight days before the first closing date laid down for the submission of tenders.

4. The competent body shall draw up a notice of standing invitation to tender indicating in particular the time limit and the address for submission of tenders.

They shall also indicate, for the butter they hold:

([1]) OJ L 171, 23.6.2006, p. 35.

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(a) the locations of the cold store where the butter to be sold is stored,

(b) the quantity for sale in each cold store and, if appropriate, the quantity of the butter referred to in Article 3(6)(e).

5. The competent body shall keep an up-to-date list of the information referred to in paragraph 4, which they shall make available to interested parties on request. They shall publish updated lists at regular intervals in a form which shall be specified in the notice of standing invitation to tender.

6. The competent body shall make the necessary arrangements to enable interested parties:

(a) to examine samples of the butter put up for sale at their own expense before submitting a tender;

(b) to verify the results of the analyses referred to in Annex I concerning fat, water and non-fat solids.

Article 23

1. The competent body shall organise individual tendering rounds during the term of validity of the standing invitation to tender.

2. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month. However, in August it shall be 11.00 (Brussels time) on the fourth Tuesday and in December it shall be 11.00 (Brussels time) on the second Tuesday. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.

Article 24

1. Tenders under each individual round shall be submitted by written offer against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

Tenders shall be submitted to the competent body holding the butter for which an offer is made.

2. Offers shall contain:

(a) the name and address of the tenderer;

(b) the quantity desired;

(c) the price in EUR tendered per 100 kilograms, not including national taxes and charges, delivered to the loading-bay of the cold store;

(d) if appropriate, the cold store where the butter is held and as the case may be a substitute cold store;

(e) if appropriate, an indication of the kind of butter referred to in Article 3(6)(e) for which the offer is being submitted.

3. Offers shall not be valid unless:

(a) they relate to at least five tonnes or, if the quantity available in a cold store is less than five tonnes, to the actual quantity available;

(b) proof is provided that the tenderer has lodged a tendering security of EUR 70 per tonne, in the Member State where the tender is submitted, for the tendering round in question before the time limit specified for submission of tenders referred to in Article 23(2).

4. Tenders may not be withdrawn after the time limit referred to in Article 23(2).

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Article 25

For the purposes of the tendering security provided for in Article 24(3)(b) of this Regulation, maintenance of the tenders after the time limit referred to in Article 23(2) of this Regulation and the payment of the price within the deadline laid down in Article 31(2) of this Regulation, shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 26

1. On the day of the lapse of the time limit referred to in Article 23(2), the competent body shall inform the Commission of the quantities and prices offered by tenderers and the quantity of butter offered for sale.

If no offers have been submitted the competent body communicates this to the Commission within the same time limit if butter is available for sale in the Member State concerned.

2. A minimum selling price for the butter on the basis of the offers received under each round shall be fixed in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999. This price may vary according to the location of the quantities of butter offered for sale.

A decision may be taken to make no award under the round.

Article 27

Offers shall be rejected if the price offered is lower than the established minimum price.

Article 28

1. The competent body shall allocate the butter on the basis of its date of entry into storage, starting with the oldest product of the total quantity or, as the case may be, the oldest of the quantity of sweet or sour cream butter available in the cold store designated by the tenderer.

2. Without prejudice to Article 27, the successful tenderer shall be the tenderer offering the highest price. If the full quantity available is not allocated, the remainder shall be awarded to the other tenderers on the basis of the prices tendered, starting with the highest price.

3. Where acceptance of a tender would result in contracts being awarded in excess of the quantity of butter available in a particular cold store, only the quantity available shall be awarded to the tenderer in question.

However, the competent body may designate other cold stores to make up the quantity set out in the tender, provided the tenderer agrees.

4. Where acceptance of two or more tenders offering the same price for butter in a particular cold store would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocating the quantity available in proportion to the quantities tendered for.

However, should such allocation lead to the award of quantities of less than five tonnes, the award shall be made by drawing lots.

5. Where after the acceptance of all successful tenders the quantity left in the store is less than 5 000 kg, this remaining quantity shall be offered by the competent body to the successful tenderers starting with the one who offered the highest price. The successful tenderer shall be

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offered the option to buy the remaining quantity for the same price as the one awarded to him.

Article 29

The rights and obligations resulting from the tendering procedure shall not be transferable.

Article 30

1. The competent body shall immediately inform tenderers of the outcome of their participation in the invitation to tender.

Securities provided for in Article 24(3)(b) lodged for unsuccessful tenders shall be released immediately.

2. Before removing the butter and within the period specified in Article 31(2), successful tenderers shall pay the paying agency the amount corresponding to their tender for each quantity that they wish to withdraw.

3. Except in cases of *force majeure*, if the successful tenderer has not complied with the requirement provided for in paragraph 2 the tendering security referred to in Article 24(3)(b) shall be forfeited and the sale of the quantities involved shall be cancelled.

Article 31

1. Once the amount referred to in Article 30(2) has been paid the competent body shall issue a removal order indicating:

(a) the quantity in respect of which the corresponding amount has been paid;

(b) the cold store in which the butter is stored;

(c) the final date for removal of the butter.

2. Successful tenderers shall remove the butter awarded to them within 30 days following the end of the time period for the submission of tenders. Removal may be effected by instalments of not less than five tonnes each. However, where the quantity remaining in a cold store is less than five tonnes, that smaller quantity may be delivered.

Except in cases of *force majeure*, if the butter has not been removed within the period laid down in the first subparagraph, the cost of storing shall be borne by the successful tenderer from the day following that on which the period expired. Moreover, storage shall be at tenderer's risk.

3. The security lodged in accordance with Article 24(3)(b) shall be released immediately in respect of quantities removed within the period provided for in the first subparagraph of paragraph 2.

In the event of *force majeure* referred to in the second subparagraph of paragraph 2, the competent body shall take such action as it considers necessary having regard to the circumstances invoked.

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CHAPTER IV

REPEAL, TRANSITIONAL AND FINAL PROVISIONS

Article 44

Regulation (EC) No 2771/1999 is hereby repealed. However, it shall continue to apply to private storage contracts concluded before 1 January 2008.

References to Regulation (EC) No 2771/1999 shall be construed as references to this Regulation and be read in accordance with the correlation table set out in Annex III.

Article 45

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

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

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ANNEX I

Compositional requirements, quality characteristics and analytical methods

Butter is a solid emulsion, mainly of the water-in-oil type, with the following compositional and quality characteristics:

Parameters	Content and quality characteristics
Fat	Minimum 82 %
Water	Maximum 16 %
Non-fat solids	Maximum 2 %
Free fatty acids	Maximum 1,2 mmole/100 g fat
Peroxide value	Maximum 0,3 meq oxygen/1 000 g fat
Coliformes	Not detectable in 1 g
Non-milk fat	Not detectable by triglyceride analysis
Tracers ([1])	
— sterols	Not detectable, β-sitosterol ≤ 40 mg/kg
— vanillin	Not detectable
— ethyl ester of carotenic acid	≤ 6 mg/kg
— triglycerides of enanthic acid	Not detectable
Other tracers ([1]) ([2])	Not detectable
Sensory characteristics	At least four out of five points for appearance, flavour and consistency
Water dispersion	At least four points

The reference methods to be applied shall be those laid down in Regulation (EC) No 213/2001 (OJ L 37, 7.2.2001, p. 1).

([1]) Tracers approved under Regulation (EC) No 1898/2005 (OJ L 308, 25.11.2005, p. 1). Checks on tracers shall not be applied during the suspension of invitations to tender provided for in Regulation (EC) No 1039/2007 (OJ L 238, 11.9.2007, p. 28).

([2]) Methods approved by competent body.

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ANNEX II

Sampling for chemical and microbiological analysis and sensory evaluation

1. **Chemical and microbiological analysis**

Quantity of butter (kg)	Minimum number of samples (> 100 g)
≤ 1 000	2
> 1 000 ≤ 5 000	3
> 5 000 ≤ 10 000	4
> 10 000 ≤ 15 000	5
> 15 000 ≤ 20 000	6
> 20 000 ≤ 25 000	7
> 25 000	7 + 1 per 25 000 kg or part thereof

Sampling for microbiological analysis must be carried out aseptically.

Up to five samples of 100 g may be combined into one sample for analysis after thorough mixing.

The samples must be taken randomly from different parts of the offered quantity before or at the time of entry into the cold store designated by the competent body.

Preparation of composite butter sample (chemical analysis):

(a) using a clean, dry butter trier or similar suitable instrument, extract a core of butter of at least 30 g and place in a sample container. The composite sample must then be sealed and forwarded to the laboratory for analysis;

(b) at the laboratory the composite sample is to be warmed in the original unopened container to 30 °C and shaken frequently until a homogeneous fluid emulsion free of unsoftened pieces is obtained. The container should be one half to two thirds full.

Two samples per year per producer offering butter for intervention must be analysed for non-milk fat and one sample for tracers.

2. **Sensory evaluation**

Quantity of butter (kg)	Minimum number of samples
1 000 ≤ 5 000	2
> 5 000 ≤ 25 000	3
> 25 000	3 + 1 per 25 000 kg or part thereof

The samples are to be taken randomly from different parts of the offered quantity between the 30th and the 45th day following take-over of the butter and graded.

Each sample must be assessed individually in accordance with Annex VII to Regulation (EC) No 213/2001. No resampling or re-evaluation is allowed.

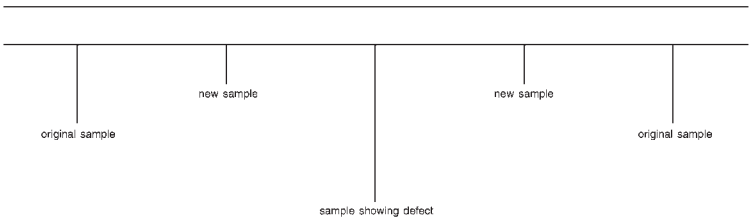
3. **Guidelines to be followed where samples show defects**

(a) chemical and microbiological analysis:

— where individual samples are analysed, one sample showing a single defect out of five to 10 samples or two samples each showing a single defect out of 11 to 15 samples may be allowed. Where a sample shows a defect, two new samples must be taken from either side of the sample showing the defect and checked for the parameter in question. Where neither sample meets the specification, the quantity of butter between the original two samples on either side of the sample showing the defect must be rejected from the quantity offered.

Quantity to be rejected where the new sample shows a defect:

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— where composite samples are analysed and found to show defects in respect of one parameter, the quantity represented by the composite sample concerned is to be rejected from the quantity offered. The quantity represented by one composite sample may be determined by subdividing the quantity offered before samples are taken randomly from each part thereof;

(b) sensory evaluation:

where a sample fails the sensory evaluation, the quantity of butter between two neighbouring samples on either side of the sample failing is to be rejected from the quantity offered;

(c) where samples show a sensory defect and either a chemical or a micro-biological defect, the whole quantity is to be rejected.

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ANNEX III

Correlation table

Regulation (EC) No 2771/1999	This Regulation
Article 1(1) and (2)	Article 1(1) and (2)
Article 2	—
Article 3	Article 2
Article 4	Article 3
Article 5(1) to (4)	Article 4(1) to (4)
Article 5(5)	—
Article 6	Article 5
Article 7	—
Article 8	—
Article 9	Article 6
Article 10	Article 7
Article 11	Article 8
Article 12	Article 9
Article 13	Article 10
Article 14	Article 11
Article 15(1)	Article 12(1)
Article 15(2)	First and second subparagraph of Article 12(2)
Article 15(a)	Third subparagraph of Article 12(2)
Article 16	Article 13
Article 17	Article 14
Article 17(a)	Article 15
Article 17(b)	Article 16
Article 17(c)	Article 17
Article 17(d)	Article 18
Article 18	Article 19
Article 19	Article 20
Article 20	Article 21
Article 21	Article 22
Article 22	Article 23
Article 23	Article 24
Article 24	Article 25
Article 24(a)	Article 26
Article 24(b)	Article 27
Article 24(c)(1)	—
Article 24(c)(2)	Article 28(1)
Article 24(c)(3)	Article 28(2)
Article 24(c)(4)	Article 28(3)
Article 24(c)(5)	Article 28(4)
Article 24(d)	Article 29
Article 24(e)(1) and (2)	Article 30(1) and (2)

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Regulation (EC) No 2771/1999	This Regulation
Article 24(f)	Article 31
Article 24(g)	—
Article 25	Article 32
Article 26	Article 34
Article 27(1)	Article 33
Article 27(2)	—
Article 28	Article 35
Article 29	Article 36
Article 30	Article 37
Article 31	Article 38
Article 32	Article 39
Article 33	Article 40
Article 34	Article 41
First subparagraph of Article 35(1)	—
Second subparagraph of Article 35(1)	Article 42
Article 35(2)	—
Article 36	—
Article 37	—
Article 38	Article 43
Annex I	Annex I
Annex IV	Annex II
Annex V	—