COMMISSION DELEGATED REGULATION (EU) No 950/2014

of 4 September 2014

opening a temporary exceptional private storage aid scheme for certain cheeses and fixing in advance the amount of aid

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ([1]), and in particular Article 219 (1) in conjunction with Article 228 therof,

Whereas:

(1) On 7 August 2014 the Russian government introduced a ban on imports of certain products from the Union to Russia, including dairy products. The most affected dairy product by the ban is cheese, given that exports to Russia represent 33 % of total Union cheese exports. Moreover, Russia is an exclusive trading partner for cheese for Finland and the Baltic countries and a significant destination for other Member States such as Germany, the Netherlands or Poland.

(2) Exports of cheeses to Russia amounted in 2013 to more than 250 000 tonnes, a quantity that risks having to be absorbed by the internal market in an important share, thus resulting in market imbalance and downwards price pressure.

(3) The market intervention measures available under Regulation (EU) No 1308/2013 do not appear to be sufficient for the situation recently created, since they are limited to cheeses with a geographical indication.

(4) The threat of a serious imbalance in the cheese market might be mitigated or eliminated by storage. It is therefore appropriate to grant aid for private storage of cheese and to fix the amount of aid in advance.

(5) Article 17 of Regulation (EU) No 1308/2013 provides for the granting of private storage aid for cheeses benefiting from a protected designation of origin or from a protected geographical indication under Regulation (EU) No 1151/2012 of the European Parliament and of the Council ([2]). While cheeses with a geographical indication are affected by the import ban, they only represent a minimum share of the whole range of cheeses exported to Russia. For reasons of operational and administrative efficiency it is appropriate to set up a single private storage aid scheme covering all types of cheeses.

(6) It is appropriate to exclude fresh cheeses which are not suitable for storage.

(7) As a general rule, to facilitate management and control, private storage aid should be granted only to operators established and registered for VAT purposes in the Union.

(8) To ensure that the arrangements can be monitored properly, the information needed to conclude the storage contract should be specified in this Regulation as well as the obligations of the contracting parties.

(9) In order to make the scheme more effective, contracts should relate to a certain minimum quantity and to the obligations to be fulfilled by the contracting party, in particular those enabling the competent authority responsible for checking storage operations to make an effective inspection of the storage conditions.

(10) Storage of the contractual quantity for the agreed period is one of the primary requirements for the granting of private storage aid. To take account of commercial practice and practical reasons, a margin of tolerance in respect of the quantity subject to aid should be allowed.

(11) To ensure that the storage is properly managed, it is appropriate to adopt provisions for reducing the amount of aid to be paid when the quantity stored during the contractual storage period is less than the contractual quantity and where the storage period is not fully observed.

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ L 343, 14.12.2012, p. 1).

(12) The amount of aid should be fixed on the basis of storage costs and/or other relevant market elements. It is appropriate to set an aid for fixed storage costs for entry and exit of the products concerned and an aid per day of storage for costs for cold storage and financing.

(13) It is necessary to indicate the conditions under which an advance payment may be granted, the adjustment of the aid in cases where the contractual quantity is not entirely respected, the checks on compliance with entitlement to aid, the possible penalties and the information to be notified to the Commission by the Member States.

(14) It is appropriate to provide for the possibility to set a reduction coefficient for pending applications where that is necessary in order measures not to exceed the volumes for which the private storage aid scheme is set up.

(15) Rules should also be laid down regarding documentation, accounting and frequency and nature of checks.

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation provides for a temporary exceptional private storage aid scheme for cheeses falling under CN codes 0406 20, 0406 30, 0406 40 and 0406 90, and frozen curd falling under CN code 0406 10.

The maximum volume of product subject to this temporary scheme is set to 155 000 tonnes.

Article 2

Definition

For the purposes of this Regulation 'the competent authorities of the Member States' shall mean the departments or bodies accredited by the Member States as paying agencies which fulfil the conditions laid down in Article 7 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council [1].

Article 3

Eligibility of products

1. In order to qualify for the private storage aid referred to in Article 1, hereinafter the 'aid', the cheese shall be of sound and fair marketable quality, of Union origin and have, on the day when the storage contract starts, a minimum age corresponding to the period of maturation that contributes to increasing the value of the cheese.

2. The cheese shall comply with the following requirements:

(a) each lot weighs at least 0,5 tonnes;

(b) it is indelibly marked with an indication, which may be encoded, of the undertaking in which it was manufactured and with the date of manufacture;

(c) it bears the date of entry into storage;

(d) it has not been the subject of a previous storage contract.

3. Member States may waive the obligation to indicate the date of entry into store referred to in point (c) of paragraph 2 on the cheese provided that the store manager undertakes to keep a register in which the particulars referred to in point (b) of paragraph 2 are entered on the date of entry into store.

Article 4

Applications for aid

1. An operator seeking aid shall lodge an application with the competent authorities of the Member States where the products are stored.

2. Operators applying for aid shall be established and registered for VAT purposes in the Union.

[1] Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

3. Applications for aid may be lodged as from the date of entry into force of this Regulation. The last date for the submission of applications shall be 31 December 2014.

4. Applications for aid shall relate to products which have been fully placed in storage.

5. Applications shall be lodged using the method made available to the operators by the Member State concerned.

The competent authorities of the Member States may require that electronic applications be accompanied by an advance electronic signature within the meaning of point 2 of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council ([1]) or by an electronic signature offering equivalent assurances with regard to the functionalities attributed to a signature by applying the same rules and conditions as those defined in the Commission's provisions on electronic and digitised documents, set out in Commission Decision 2004/563/EC, Euratom ([2]), and in its implementing rules.

6. Application shall only be admissible if the following conditions are met:

(a) it indicates a reference to this Regulation;

(b) it indicates the identification data of the applicants name, address and the VAT registration number;

(c) it indicates the product with its relevant 6-digit CN code;

(d) it indicates the quantity of products;

(e) it indicates the period of storage;

(f) it indicates the name and address of the storage place, the storage lot number and where appropriate the approval number identifying the factory;

(g) it does not include any additional conditions introduced by the applicant other than those laid down in this Regulation;

(h) it is presented in the official language, or one of the official languages of the Member State in which the application is lodged.

7. The content of the applications shall not be amended after their submission

Article 5

Conclusion of contracts

1. Contracts shall be concluded between the competent authority of the Member State on whose territory the products are stored and the applicant, hereafter referred to as the 'contracting party'.

2. Contracts shall be concluded within 30 days of the date of receipt of the information referred to in Article 4(6)(f) subject, where appropriate, to subsequent confirmation of the eligibility of the products as referred to in the second sub-paragraph of Article 14(2). If eligibility is not confirmed, the contract concerned shall be considered as null and void.

Article 6

Obligations of the contracting party

1. Contracts shall stipulate at least the following obligations for the contracting party:

(a) to place and to keep the contractual quantity in storage, during the contractual storage period, at his own risk and expense in conditions ensuring the maintenance of the characteristics of the products, without substituting the stored products or transferring them to another storage place. Where the contracting party submits a reasoned request, the competent authority may authorise a relocation of the stored products;

(b) to retain the weighting-in documents established at the time of entry into the storage place;

(c) to allow the competent authority to check at any time that all the obligations laid down in the contract are being observed;

(d) to make the products stored easily accessible and individually identifiable: each unit individually stored shall be marked so that date of placing in storage, the contract number, the product and the weight are shown. However, Member States may waive the requirement to mark the contract number provided that the store manager undertakes to enter the contract number in the register referred to in Article 3(2).

([1]) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).
([2]) Commission Decision 2004/563/EC, Euratom of 7 July 2004 amending its Rules of Procedure (OJ L 251, 27.7.2004, p. 9).

2. The contracting party shall make available to the authority responsible for checking all documentation, for each contract, allowing in particular the following information on the products placed in private storage to be verified:

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

(b) the origin and the date of manufacture of the products;

(c) the date of placing into storage;

(d) the weight and the number of pieces packaged;

(e) the presence in the store and the address of the store;

(f) the expected date of the end of the contractual storage period and completed by the actual date of removal.

3. The contracting party or, where applicable the operator of the storage place, shall keep stock accounts available at the warehouse covering, by contract number:

(a) the identification of the products placed in private storage by lot;

(b) the dates of placing in and removal from storage;

(c) the quantity indicated per storage in lot;

(d) the location of the products in the store.

Article 7

Contractual storage period

1. The contractual storage period shall start on the day following that of receipt by the competent authorities of the information referred to in Article 4(6)(f).

2. Contractual storage shall end on the day preceding that of the removal from storage.

3. Aid may be granted only where the contractual storage period is between 60 and 210 days.

Article 8

Removal from storage

1. Removal from storage may start on the day following the last day of the contractual storage period.

2. Removal from store shall be in whole storage lots or, if the competent authority so authorises, in smaller quantities. However, in the case referred to in Article 14(4)(a), only a sealed quantity may be removed from store.

3. The contracting party shall notify the competent authority before it intends to begin removing products from storage, in accordance with the provisions laid down in Article 14(5).

4. Where the requirement in paragraph 3 is not complied with but the competent authority is satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, the aid shall be reduced by 15 % and shall only be paid in respect of the period for which the contracting party supplies to the competent authority satisfactory proof that the product has been maintained in contractual storage.

5. Where the requirement in paragraph 3 is not complied with and the competent authority is not satisfied that sufficient evidence has been furnished, within 30 days following removal from the storage place, of the date of removal from storage and the quantities concerned, no aid shall be paid in respect of the contract concerned.

Article 9

Aid amounts

The aid shall be:

— 15,57 EUR per tonne of storage for fixed storage costs,

— 0,40 EUR per tonne per day of contractual storage.

Article 10

Advance payment of aid

1. After 60 days of storage, a single advance payment of the aid may be made, at the contracting party's request, provided that he lodges a security equal to the advance payment plus 10 %.

2. The advance payment shall not exceed the amount of aid corresponding to a storage period of 90 days or three months, where appropriate. The security referred to in paragraph 1 shall be released as soon as the balance of aid has been paid.

Article 11

Payment of aid

1. The aid, or, where an advance payment has been granted pursuant to Article 10, the balance of aid, shall be paid on the basis of an application for payment lodged by the contracting party within three months after the end of the contractual storage period.

2. Where the contracting party was unable to produce supporting documents within the time limit of three months despite acting promptly to obtain them on time, he may be given extensions, which may not exceed a total of three months.

3. Payment of the aid or of the balance of aid shall be carried out within 120 days following the day when an application for the payment of aid has been lodged provided that the obligations of the contract have been met and the final check has been carried out. However, if an administrative inquiry is under way, payment shall not be made until entitlement has been recognised.

4. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the contractual quantity and not less than 95 % of that quantity, the aid shall be paid for the quantity actually stored. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.

5. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than the percentages indicated in paragraph 4, but not less than 80 % of the contractual quantity, the aid for the quantity actually stored shall be reduced by half. However, if the competent authority finds that the contracting party acted deliberately or negligently, it may decide to further reduce or not to pay the aid.

6. Except in cases of *force majeure*, if the quantity actually stored during the contractual storage period is less than 80 % of the contracted quantity, no aid shall be paid.

7. If checks during storage or on removal reveal defective products, no aid shall be paid for those quantities. The remainder of the storage lot which is still eligible for aid shall be not less than the minimum quantity as laid down in Article 3(2). The same rule shall apply where part of a storage lot is removed for that reason before the minimum storage period.

Defective products shall not be included in the calculation of the quantity actually stored referred to in paragraphs 4, 5 and 6.

8. Except in cases of *force majeure*, where the contracting party fails to respect the end of the contractual storage period, as laid down in Article 7(3), for the totality of the quantity stored, each calendar day of non-compliance shall entail a reduction of 10 % in the amount of aid for the contract in question. However, this reduction shall not exceed 100 % of the amount of the aid.

Article 12

Notifications and monitoring

1. Member States shall notify the Commission, by each Tuesday for the previous week, of the quantities for which contracts have been concluded, broken down by storage period, as well as of the quantities of products for which applications for aid have been submitted.

The Commission shall inform the Member States as soon as it determines that the quantities for which applications for aid have been submitted approach the maximum quantity referred to in Article 1.

When the Commission has informed the Member States that the quantities for which applications for aid have been submitted approach the maximum quantity referred to in Article 1, Member States shall notify the Commission each working day before 14.00 (Brussels time) of the quantities of products for which applications for aid have been submitted the preceding working day.

2. On the basis of the notifications received in accordance with paragraph 1, the Commission shall satisfy itself that the maximum quantity referred to in Article 1 is not exceeded.

Where the Commission determines, on the basis of those notifications, that the maximum quantity referred to in Article 1 has been exceeded, it shall immediately inform all Member States.

3. When the Commission has informed the Member States that the maximum quantity referred to in Article 1 has been exceeded, the Member States shall inform the operators accordingly.

4. Member States shall notify the Commission not later than the end of each month for the previous month:

(a) the quantities of products placed into and leaving storage during the month concerned;

(b) the quantities of products in storage at the end of the month concerned;

(c) the quantities of products in respect of which the contractual storage period has ended.

5. The notifications by the Member States referred to in paragraphs 1 and 4 shall be made in accordance with Commission Regulation (EC) No 792/2009 ([1]).

Article 13

Measures for respecting the maximum quantity

Where acceptance of the full quantity of products for which applications for aid have been submitted on a certain day would lead to the maximum quantity referred to in Article 1 being exceeded, the Commission shall, by means of an implementing act adopted without applying the procedure referred to in Article 229(2) and (3) of Regulation (EU) No 1308/2013, set an allocation coefficient applicable to the quantities corresponding to the applications notified to the Commission on that day. That allocation coefficient shall limit the total quantity of products eligible for the temporary exceptional private storage aid to the maximum quantity referred to in Article 1.

Article 14

Checks

1. Member States shall take all necessary measures to ensure compliance with this Regulation. Those measures shall include full administrative checking of aid applications, which shall be supplemented by on-the-spot checks as specified in paragraphs 2 to 8.

2. The authority responsible for checking shall conduct checks on the products entering storage within 30 days from the date of receipt of the information referred to in Article 4(6)(f).

Without prejudice to point (a) of the first subparagraph of paragraph 5 of this Article in order to ensure that the products stored are eligible for aid, a representative sample of at least 5 % of the quantities placed in storage shall be physically checked to ensure that, as regards, inter alia, the weight, identification and nature of products, storage lots conform to the particulars in the application for concluding a contract.

3. Where the Member State can offer duly justified reasons, the 30-day limit laid down in paragraph 2 may be extended by 15 days.

4. The authority responsible for checking shall:

(a) seal the products by contract, storage lot or a smaller quantity at the time of the check provided for in paragraph 2; or

(b) make an unannounced check to ensure that the contractual quantity is present in the storage place.

([1]) Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands (OJ L 228, 1.9.2009, p. 3).

The check referred to in point (b) of the first subparagraph shall correspond to at least 10 % of the total quantity under the contract and shall be representative. Such checks shall include an examination of the stock records as referred to in Article 6(3) and supporting documents, such as weigh tickets and delivery dockets, and a verification of weight, type of products and their identification relating to at least 5 % of the quantity subject to the unannounced check.

5. At the end of the contractual storage period, the authority responsible for checking shall, in respect of at least one half of the number of contracts, by sampling, verify weight and identification of the products in storage. For the purposes of this check, the contracting party shall inform the competent body, indicating the storage lots involved, at least five working days before:

(a) the end of the maximum contractual storage period; or

(b) the start of removal operations where the products is removed before the expiry of the maximum contractual storage period.

The Member States may accept a shorter time limit than five working days.

6. Where the option in paragraph 4(a) applies, the presence and integrity of the seals applied shall be verified at the end of the contractual storage period. Sealing and handling costs shall be borne by the contracting party.

7. Any samples taken for verification of the quality and composition of the products shall be taken by the officials of the authority responsible for checking or in their presence.

A physical check or verification of weight shall be conducted in the presence of those officials at the weighing procedure.

For the purposes of audit trail, all stock and financial records and documents checked by those officials shall be stamped or initialled during the control visit. Where computer records are verified, a copy shall be printed and retained on the inspection file.

Article 15

Audit reporting

1. The authority responsible for checking shall draw up a control report on each on-the-spot check. The report shall describe precisely the different items checked.

The report shall set out:

(a) the date and time of commencement of the check;

(b) details of advance notice given;

(c) the duration of the check;

(d) the responsible persons present;

(e) the nature and extent of the checks carried out, providing, in particular, details of the documents and products examined;

(f) the findings and conclusions;

(g) whether any follow-up is required.

The report shall be signed by the official responsible and countersigned by the contracting party or, where applicable, by the operator of the warehouse and shall be included in the payment file.

2. In case of significant irregularities affecting at least 5 % of the quantities of products covered by a single contract subject to the check, the verification shall be extended to a larger sample to be determined by the authority responsible for the checking.

3. The authority responsible for checking shall record any case of non-compliance on the basis of the criteria of gravity, extent, duration and repetition that may result in exclusion in accordance with Article 16(1), and/or in the repayment of an unduly paid aid, including interests where applicable, in accordance with paragraph 4 of that Article.

Article 16

Penalties

1. Where the competent authority of a Member State finds that a document presented by an applicant for the attribution of the rights deriving from this Regulation provides incorrect information and where the incorrect information concerned is decisive for the attribution of that right, the competent authority shall exclude the applicant from the procedure of granting aid for the same product for which the incorrect information has been given for a period of one year from the moment when a final administrative decision establishing the irregularity has been taken.

2. The exclusion provided for in paragraph 1 shall not apply if the applicant proves, to the satisfaction of the competent authority, that the situation referred to in that paragraph is due to *force majeure* or obvious error.

3. Unduly paid aid shall be recovered, with interest from the operators concerned. The rules laid down in Article 73 of Commission Regulation (EC) No 796/2004 ([1]) shall apply *mutatis mutandis*.

4. Implementation of administrative penalties and recovery of unduly paid amounts, as provided for in this Article, are without prejudice to communication of irregularities to the Commission pursuant to Commission Regulation (EC) No 1848/2006 ([2]).

Article 17

Entry into force

This Regulation shall enter into force on the third 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.

Done at Brussels, 4 September 2014.

For the Commission
The President
José Manuel BARROSO

([1]) Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulations (EC) No 1782/2003 and (EC) No 73/2009, as well as for the implementation of cross compliance provided for in Council Regulation (EC) No 479/2008 (OJ L 141, 30.4.2004, p. 18).

([2]) Commission Regulation (EC) No 1848/2006 of 14 December 2006 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organisation of an information system in this field and repealing Council Regulation (EEC) No 595/91 (OJ L 355, 15.12.2006, p. 56).