

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 282/2012

of 28 March 2012

laying down common detailed rules for the application of the system of securities for agricultural products

(codification)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43(a), (d), (f) and (j), Article 47(2), Article 134, Article 143(b), Article 148, Article 161(3), Article 171 and Article 172(2),Having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products ⁽²⁾, and in particular Articles 37 and 38 thereof,Having regard to Council Regulation (EC) No 1216/2009 of 30 November 2009 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽³⁾, and in particular Article 4(4), Article 6(4), Article 7(3), and Article 11(4) thereof,Having regard to Council Regulation (EC) No 247/2006 of 30 January 2006 laying down specific measures for agriculture in the outermost regions of the Union ⁽⁴⁾, and in particular Article 25 thereof,

Having regard to Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, amending

Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 ⁽⁵⁾, and in particular Article 142(c) thereof,Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽⁶⁾, and in particular Article 9 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽⁷⁾ has been substantially amended several times ⁽⁸⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) Numerous provisions in agricultural regulations of the Union require that a security be given to ensure payment of a sum due if an obligation is not met. However, experience has shown that this requirement is in practice interpreted in widely differing fashions. Therefore, in order to avoid unequal competitive conditions, the requirement should be defined.
- (3) In particular, the form of the security should be defined.
- (4) Many provisions in agricultural regulations of the Union provide that the security given is forfeited if any obligation secured is breached, without making any distinction between breaches of fundamental and of secondary or subordinate obligations. In the interests of equity a distinction should be drawn between the consequences of breaching a fundamental obligation and the consequences of breaching a secondary or

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.⁽²⁾ OJ L 17, 21.1.2000, p. 22.⁽³⁾ OJ L 328, 15.12.2009, p. 10.⁽⁴⁾ OJ L 42, 14.2.2006, p. 1.⁽⁵⁾ OJ L 30, 31.1.2009, p. 16.⁽⁶⁾ OJ L 349, 24.12.1998, p. 1.⁽⁷⁾ OJ L 205, 3.8.1985, p. 5.⁽⁸⁾ See Annex I.

subordinate one. In particular, provision should be made, where permissible, for forfeiture of only a part of the security where the fundamental obligation is in fact met but the deadline set for meeting it has been slightly exceeded, or when a secondary or subordinate obligation is not met.

- (5) No distinction between the consequences of failure to meet an obligation should be made based on whether or not an advance payment has been received. Accordingly, securities given against advances should be covered by separate rules.
- (6) The costs of lodging a security, incurred by both the party giving the security and the competent authority, may be out of proportion to the sum whose payment the security guarantees if that sum is below a certain limit. Competent authorities should therefore have the right to waive the requirement of a security for payment of a sum below that limit. Further, a competent authority should be empowered to waive the requirement of a security where the nature of the person required to meet the obligations makes that requirement unnecessary.
- (7) A competent authority should have the right to refuse a security offered where it considers it to be unsatisfactory.
- (8) A time limit for furnishing the evidence needed for the release of a sum secured should be laid down where no such time limit is laid down elsewhere.
- (9) In connection with the exchange rate to be used for converting a sum secured expressed in euro into national currency, the operative event referred to in Article 3 of Regulation (EC) No 2799/98, should be defined in accordance with Commission Regulation (EC) No 1913/2006 ⁽¹⁾.
- (10) The procedure to be followed once a security is forfeited should be laid down.
- (11) The Commission should be enabled to monitor the implementation of the provisions on securities.
- (12) This Regulation lays down the rules to apply generally, unless specific Union legislation lays down different rules.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets and were submitted for information to the other competent committees,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

This Regulation lays down the rules governing securities to be provided, either under the following regulations or under any regulations adopted pursuant to those regulations, unless other rules are laid down by those regulations:

- (a) regulations laying down the common organisation of markets in certain agricultural products:
 - Regulation (EC) No 104/2000 (fishery and aquaculture products),
 - Regulation (EC) No 1234/2007 (Single CMO Regulation);
- (b) Regulation (EC) No 73/2009 (direct support schemes);
- (c) Regulation (EC) No 1216/2009 (trade arrangements applicable to certain goods resulting from the processing of agricultural products).

Article 2

This Regulation shall apply in all cases where the regulations referred to in Article 1 provide for a security as defined in Article 3, whether or not the particular term 'security' is used.

This Regulation shall not apply to securities given to ensure payment of import and export duties referred to in Council Regulation (EEC) No 2913/92 ⁽²⁾.

Article 3

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'security' means the assurance that a sum of money will be paid or forfeited to a competent authority if a particular obligation is not met;
- (b) 'block security' means a security made available to the competent authority with the purpose of ensuring that more than one obligation is met;
- (c) 'obligation' means a requirement or set of requirements, imposed by a regulation, to perform or to refrain from performing an act;
- (d) 'competent authority' means either a party authorised to accept a security or a party authorised to decide in accordance with the relevant regulation if a security is to be released or forfeited.

⁽¹⁾ OJ L 365, 21.12.2006, p. 52.

⁽²⁾ OJ L 302, 19.10.1992, p. 1.

CHAPTER II

REQUIREMENT OF A SECURITY*Article 4*

A security shall be given by or on behalf of the party responsible for paying the sum of money due if an obligation is not met.

Article 5

1. The competent authority may waive the requirement of a security where the value of the sum secured is less than EUR 500.

2. Where use is made of the facility in paragraph 1, the party concerned shall undertake in writing to pay a sum equal to that which he would have been required to pay had he given a security and that security has subsequently been forfeited in part or entirely.

Article 6

The competent authority may waive the requirement of a security where the party responsible for meeting the obligation is either:

- (a) a public body responsible for executing the duties of a public authority; or
- (b) a private body executing duties referred to in point (a) under State supervision.

CHAPTER III

FORM OF SECURITIES*Article 7*

1. A security may be given by:
 - (a) making a cash deposit as referred to in Articles 12 and 13; and/or
 - (b) providing a guarantor as defined in Article 15(1).
2. At the discretion of the competent authority, a security may be given by:
 - (a) providing a mortgage; and/or
 - (b) pledging cash deposits in a bank; and/or
 - (c) pledging recognised claims against a public body or public funds, which are due and payable and against which no other claim has precedence; and/or
 - (d) pledging securities negotiable in the Member State concerned provided they are issued or guaranteed by that Member State; and/or

(e) pledging bonds, issued by mortgage credit associations, listed on a public stock exchange and for sale on the open market, provided that their credit rating ranks equal with that of government bonds.

3. The competent authority may impose additional terms for accepting securities of the type listed in paragraph 2.

Article 8

The competent authority shall refuse to accept or shall require the replacement of any security which it considers inadequate or unsatisfactory or which does not provide cover for a sufficient period.

Article 9

1. Assets mortgaged in accordance with Article 7(2)(a) or securities or bonds pledged in accordance with Article 7(2)(d) and (e) shall, at the time the security is given, have a disposable value of at least 115 % of the value of the security required.

A competent authority may accept a security of the type listed in Article 7(2)(a), (d) or (e) only if the party offering it undertakes, in writing, either to give an additional security or to replace the original security should the disposable value of the assets, securities or bonds in question have been for a period of three months below 105 % of the value of the security required. This written undertaking shall not be necessary where national law already so provides. The competent authority shall regularly review the value of such assets, securities or bonds.

2. The disposable value of a security as referred to in Article 7(2)(a), (d) and (e) shall be assessed by the competent authority, taking into account any costs of disposal.

The disposable value of securities or bonds shall be assessed using the last available quotation.

The party giving the security shall, at the request of the competent authority, provide proof of its disposable value.

Article 10

1. Any security may be replaced by another.

However, the agreement of the competent authority shall be required in the following cases:

- (a) where the original security has been forfeited but not yet realised; or
- (b) where the replacement security is of a type listed in Article 7(2).

2. A block security may be replaced by another block security on condition that the new block security covers at least that part of the original block security assigned at the time of replacement to ensure fulfilment of one or more obligations still outstanding.

Article 11

1. Securities as referred to in Article 1 shall be constituted in euro.
2. Notwithstanding paragraph 1, where the security is accepted in a Member State outside the euro area, in national currency, the amount of the security in euro shall be converted into that currency in accordance with Article 10 of Regulation (EC) No 1913/2006. The undertaking corresponding to the security and any amount withheld in the event of irregularities or breaches shall remain fixed in euro.

Article 12

Where cash is deposited by transfer it shall not be regarded as establishing a security until the competent authority is satisfied that it has the amount at its disposal.

Article 13

1. A cheque for a sum whose payment is guaranteed by a financial institution recognised for the purpose by the Member State of the competent authority concerned shall be treated as a cash deposit. The competent authority need not present such a cheque for payment until the period for which it is guaranteed is about to expire.
2. A cheque, other than as referred to in paragraph 1, shall constitute a security only when the competent authority is satisfied that it has the amount at its disposal.
3. Any charges by a financial institution shall be borne by the party giving the security.

Article 14

No interest shall be paid to the party giving a security in the form of a cash deposit.

Article 15

1. The guarantor shall have his normal residence or an establishment in the Union and, subject to the provisions of the Treaty concerning freedom to supply services, be approved by the competent authority of the Member State in which the security is given. The guarantor shall be bound by a written guarantee.
2. The written guarantee shall state at least:
 - (a) the obligation or, in the case of a block security, the type(s) of obligation against whose fulfilment it guarantees the payment of a sum of money;
 - (b) the maximum liability to pay that the guarantor accepts;
 - (c) that the guarantor undertakes jointly and severally with the party responsible for meeting the obligation to pay, within 30 days of demand by the competent authority, any sum, within the limit of the guarantee, due once a security is declared forfeit.

3. The competent authority may accept a written telecommunication sent by the guarantor as constituting a written guarantee. If the competent authority does so accept, it shall take whatever steps are required to satisfy itself that the telecommunication is genuine.

4. Where a written block guarantee has already been given, the competent authority shall determine the procedure to be followed by which all or part of the block guarantee shall be allocated to a particular obligation.

Article 16

As soon as part of a block security is assigned to a particular obligation, the balance of the block security remaining shall be noted.

CHAPTER IV

ADVANCE PAYMENTS

Article 17

The provisions of this Chapter shall apply in all cases where specific Union rules provide that a sum may be advanced before the obligation has been met.

Article 18

1. The security shall be released when:
 - (a) final entitlement to the sum granted as advance has been established; or
 - (b) the sum granted, plus any addition provided for in the specific Union rules, has been repaid.

2. Once the deadline for showing final entitlement to the sum granted has passed without production of evidence of entitlement, the competent authority shall immediately follow the procedure in Article 28.

The deadline may be postponed in a case of *force majeure*.

However, where Union legislation so provides, evidence may still be produced after that date against partial repayment of the security.

3. If the *force majeure* provisions in Union legislation permit repayment of the advance alone, the following further conditions shall apply:

- (a) the circumstances claimed as *force majeure* shall be notified to the competent authority not later than 30 days after the day on which information was received by the party concerned that circumstances indicating a possible case of *force majeure* had arisen; and

(b) the party concerned shall repay the sum advanced or the relevant part of it within 30 days from the date on which the competent authority issues a request for repayment.

If the conditions laid down in points (a) and (b) are not respected, the terms of repayment shall be the same as if circumstances of *force majeure* had not occurred.

CHAPTER V

RELEASE AND FORFEITURE OF SECURITIES OTHER THAN THOSE REFERRED TO IN CHAPTER IV

Article 19

1. An obligation may include primary, secondary or subordinate requirements.

2. A primary requirement is a requirement, basic to the purposes of the regulation imposing it, to perform, or to refrain from performing, an act.

3. A secondary requirement is a requirement to respect the time limit for fulfilling a primary requirement.

4. A subordinate requirement is any other requirement imposed by a regulation.

5. This Chapter shall not apply where the specific Union rules have not defined the primary requirements.

6. For the purposes of this Chapter 'the relevant part of the sum secured' means the part of the sum secured corresponding to the quantity for which a requirement has been breached.

Article 20

Once the evidence laid down by the specific Union rules has been furnished that all primary, secondary and subordinate requirements have been fulfilled, the security shall be released.

Article 21

1. A security shall be forfeit in full for the quantity for which a primary requirement is not fulfilled, unless *force majeure* prevented fulfilment.

2. A primary requirement shall be considered to have been breached if the relevant evidence is not produced within the time limit set for the production of that evidence unless *force majeure* prevented production of such evidence within that time limit. The procedure in Article 28 for recovering the sum forfeited shall immediately be followed.

3. Where evidence that all primary requirements have been met is produced within 18 months of the deadline in paragraph 2, 85 % of the sum forfeited shall be repaid.

Where evidence that all primary requirements have been met is produced within 18 months of that deadline in circumstances where the relevant secondary requirement has not been met, the sum to be repaid shall be the sum that would have been repayable under Article 22(2), less 15 % of the relevant part of the sum secured.

4. No repayment shall be made where evidence that all primary requirements have been respected is produced after the 18 months period referred to in paragraph 3 has expired unless *force majeure* prevented production of this evidence within that period.

Article 22

1. If the evidence laid down by the specific Union rules is produced within the specified period that all primary requirements have been met, in circumstances where a secondary requirement has been breached, a partial release of the security shall be made and the rest of the sum secured forfeited. The procedure in Article 28 for recovering the sum forfeited shall be followed.

2. The proportion of the security released shall be: the security covering the relevant part of the sum secured less 15 %, and

(a) 10 % of the sum remaining after deduction of the 15 % for each day by which:

(i) a maximum period of 40 days or less has been exceeded;

(ii) a minimum period of 40 days or less has not been respected;

(b) 5 % of the sum remaining after deduction of the 15 % for each day by which:

(i) a maximum period of between 41 and 80 days has been exceeded;

(ii) a minimum period of between 41 and 80 days has not been respected;

(c) 2 % of the sum remaining after deduction of the 15 % for each day by which:

(i) a maximum period of 81 days or more has been exceeded;

(ii) a minimum period of 81 days or more has not been respected.

3. This Article shall not apply to periods for either applying for, or using, import and export licences and advance fixing certificates, or to periods relating to the fixing of import and export levies and export refunds by tender.

Article 23

1. Failure to fulfil one or more subordinate requirements shall lead to forfeiture of 15 % of the relevant part of the sum secured unless *force majeure* prevented fulfilment.

2. The procedure laid down in Article 28 for recovery of the sum forfeited shall immediately be put into effect.

3. This Article shall not apply in circumstances where Article 21(3) applies.

Article 24

If evidence is produced that all primary requirements have been observed but both a secondary and a subordinate requirement have been breached, Articles 22 and 23 shall apply and the total sum to be forfeit shall be the sum forfeit in accordance with Article 22 plus 15 % of the relevant part of the sum secured.

Article 25

The total sum forfeited shall not exceed 100 % of the relevant part of the sum secured.

CHAPTER VI

GENERAL PROVISIONS

Article 26

1. A security shall on request be released in part where the relevant evidence has been furnished in relation to part of a quantity of product, provided that that part is not less than any minimum quantity specified in the regulation requiring the security.

Where the specific Union rules do not specify a minimum quantity, the competent authority may itself restrict the number of partial releases of any one security, and may specify a minimum sum for any such release.

2. Before releasing all or part of a security the competent authority may require that a written request for release be furnished.

3. In the case of securities covering, in accordance with Article 9(1), more than 100 % of the sum required to be secured, that part of the security exceeding 100 % shall be released when the remainder of the sum secured is finally released or forfeited.

Article 27

1. Where no period is laid down for producing the evidence needed to release a sum secured, such period shall be:

(a) 12 months from the time limit specified for respecting all primary requirements; or

(b) where no such time limit as referred to in point (a) is specified, 12 months from the date by which all primary requirements have been met.

2. The period laid down in paragraph 1 shall not exceed three years from the time the security was assigned to a particular obligation, except in cases of *force majeure*.

Article 28

1. Once the competent authority is aware of circumstances giving rise to forfeiture of the security, in whole or in part, it shall without delay demand the party required to meet the obligation to pay the sum forfeited, allowing up to 30 days from the day of receipt of demand for payment.

Where payment has not been made at the end of this period, the competent authority shall:

(a) without delay clear any security of the type described in Article 7(1)(a) to the appropriate account;

(b) without delay require the guarantor described in Article 7(1)(b) to pay, allowing up to 30 days from the day of receipt of demand for payment;

(c) without delay take steps to:

(i) convert the securities described in Article 7(2)(a), (c), (d) and (e) into money sufficient to recover the sum due;

(ii) clear pledged cash deposits referred to in Article 7(2)(b) to its own account.

The competent authority may without delay clear any security of the type described in Article 7(1)(a) to the appropriate account without first requiring the person concerned to effect payment.

2. The competent authority may waive the forfeiture of an amount less than EUR 60, provided that similar national provisions for comparable cases are laid down by law, regulation or administrative action.

3. Without prejudice to paragraph 1, where the decision to forfeit a security is taken but on appeal is subsequently postponed in accordance with national law, the party concerned shall pay interest on the sum actually forfeited over the period starting 30 days from the day of receipt of

the demand for payment as referred to in the first subparagraph of paragraph 1 and ending on the day prior to the payment of the sum actually forfeited.

Where following the outcome of the appeal procedure the party concerned is asked to pay within 30 days the sum forfeited, for the purposes of calculating interest the Member State may consider payment to be made on the 20th day following the date of such request.

The rate of interest applicable is calculated according to the provisions of national law, but shall in no case be lower than the interest rate applicable in case of recovery of national amounts.

The paying agencies shall deduct the interest paid from the expenditure of the European Agricultural Guarantee Fund (EAGF) or the European Agricultural Fund for Rural Development (EAFRD) in accordance with the provisions of Council Regulation (EEC) No 352/78 ⁽¹⁾.

Member States may claim periodically a supplementation of the security in respect of the interest involved.

Where a security has been forfeited and the amount already credited to the EAGF or to the EAFRD and, following the outcome of an appeal procedure, the sum forfeited in whole or in part, including interest at a rate in accordance with national law, is to be repaid, the sum to be repaid shall be borne by the EAGF or by the EAFRD unless the repayment of the security is attributable to the negligence or serious mistake of administrative authorities or other bodies of the Member State.

Article 29

The Commission may, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007 and in the corresponding Articles of the other relevant regulations, provide for a derogation from the foregoing provisions.

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

Done at Brussels, 28 March 2012.

For the Commission
The President
José Manuel BARROSO

CHAPTER VII INFORMATION

Article 30

1. Member States shall keep available for the Commission, for each year, the total number and sum of securities forfeited, whatever stage of the procedure in Article 28 has been reached, distinguishing in either case between those credited to the national budgets and those credited to the budget of the Union.

2. The information referred to in paragraph 1 shall be kept in relation to all securities forfeited for an amount greater than EUR 1 000 and each Union provision requiring that a security be given.

3. Information shall cover both sums paid directly by the interested party and sums recovered by realising a security.

Article 31

Member States shall keep the following information available for the Commission:

- (a) the types of institutions authorised to act as guarantors and the requirements laid down;
- (b) the types of security accepted pursuant to Article 7(2) and the requirements laid down.

Article 32

Regulation (EEC) No 2220/85 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 33

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

⁽¹⁾ OJ L 50, 22.2.1978, p. 1.

ANNEX I

Repealed Regulation with list of its successive amendments

Commission Regulation (EEC) No 2220/85
(OJ L 205, 3.8.1985, p. 5)

Commission Regulation (EEC) No 1181/87
(OJ L 113, 30.4.1987, p. 31)

Commission Regulation (EEC) No 3745/89
(OJ L 364, 14.12.1989, p. 54)

Commission Regulation (EC) No 3403/93
(OJ L 310, 14.12.1993, p. 4)

Commission Regulation (EC) No 1932/1999
(OJ L 240, 10.9.1999, p. 11)

Commission Regulation (EC) No 673/2004
(OJ L 105, 14.4.2004, p. 17)

Commission Regulation (EC) No 1713/2006
(OJ L 321, 21.11.2006, p. 11)

Article 3 only

Commission Regulation (EC) No 1913/2006
(OJ L 365, 21.12.2006, p. 52)

Article 12 only

ANNEX II

Correlation Table

Regulation (EEC) No 2220/85	This Regulation
Title I	Chapter I
Article 1, introductory part	Article 1, introductory part
Article 1(a)	Article 1(a)
Article 1(b)	Article 1(b)
Article 1(c)	—
Article 1(d)	—
Article 1(e)	—
Article 1(f)	Article 1(c)
Article 2	Article 2, second paragraph
Article 3, introductory words	Article 3, introductory words
Article 3(a), first subparagraph	Article 3(a)
Article 3(a), second subparagraph	Article 2, first paragraph
Article 3(b), (c) and (d)	Article 3(b), (c) and (d)
Title II	Chapter II
Articles 4, 5 and 6	Articles 4, 5 and 6
Title III	Chapter III
Article 8	Article 7
Article 9	Article 8
Article 10(1)(a)	Article 9(1), first subparagraph
Article 10(1)(b)	Article 9(2), second subparagraph
Article 10(1)(c)	Article 9(1), second subparagraph
Article 10(2)(a)	Article 9(2), first subparagraph
Article 10(2)(b)	Article 9(2), third subparagraph
Article 11	Article 10
Article 12	Article 11
Article 13	Article 12
Article 14	Article 13
Article 15	Article 14

Regulation (EEC) No 2220/85	This Regulation
Article 16	Article 15
Article 17	Article 16
Title IV	Chapter IV
Article 18, introductory words and indent	Article 17
Article 19	Article 18
Title V	Chapter V
Article 20	Article 19
Article 21	Article 20
Article 22	Article 21
Article 23(1)	Article 22(1)
Article 23(2), introductory words	Article 22(2), introductory words
Article 23(2)(a)	Article 22(2), introductory words
Article 23(2)(b), first indent, introductory words	Article 22(2)(a), introductory words
Article 23(2)(b), first indent, first sub-indent	Article 22(2)(a)(i)
Article 23(2)(b), first indent, second sub-indent	Article 22(2)(a)(ii)
Article 23(2)(b), second indent, introductory words	Article 22(2)(b), introductory words
Article 23(2)(b), second indent, first sub-indent	Article 22(2)(b)(i)
Article 23(2)(b), second indent, second sub-indent	Article 22(2)(b)(ii)
Article 23(2)(b), third indent, introductory words	Article 22(2)(c), introductory words
Article 23(2)(b), third indent, first sub-indent	Article 22(2)(c)(i)
Article 23(2)(b), third indent, second sub-indent	Article 22(2)(c)(ii)
Article 23(3)	Article 22(3)
Article 24	Article 23
Article 25	Article 24
Article 26	Article 25
Title VI	Chapter VI
Article 27	Article 26
Article 28	Article 27
Article 29	Article 28
Article 30	Article 29
Title VII	Chapter VII

Regulation (EEC) No 2220/85	This Regulation
Article 31	Article 30
Article 32	Article 31
—	Article 32
Article 33	Article 33
—	Annex I
—	Annex II