

COMMISSION REGULATION (EEC) No 1836/82

of 7 July 1982

laying down the procedure and conditions for the disposal of cereals held by intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1451/82⁽²⁾, and in particular Articles 7 (5) and 8 (4) thereof,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States⁽³⁾, as last amended by Regulation (EEC) No 3605/81⁽⁴⁾, and in particular Article 6 thereof,

Whereas cereals may be bought in by the intervention agency either under obligatory intervention measures as referred to in Article 7 of Regulation (EEC) No 2727/75 or under particular and special intervention measures as referred to in Article 8 of that Regulation ;

Whereas, pursuant to Article 3 of Council Regulation (EEC) No 2738/75 of 29 October 1975 laying down general rules for intervention on the market in cereals⁽⁵⁾ and Article 3 of Council Regulation (EEC) No 1146/76 of 17 May 1976 on particular and special intervention measures for cereals⁽⁶⁾, cereals held by the intervention agencies are to be disposed of by invitation to tender ; whereas public auction sales, which are common practice in some countries, may be regarded as equivalent to an invitation to tender for sales on the internal market ;

Whereas, to ensure equal treatment for all interested parties in the Community, invitations to tender must be issued by publication in the *Official Journal of the*

European Communities, and a reasonable time must elapse between such publication and the earliest date for the submission of tenders ; whereas, however, for quantities of less than 1 000 tonnes such publicity is not necessary ;

Whereas, pursuant to Article 3 of Regulations (EEC) No 2738/75 and (EEC) No 1146/76, disposal on the internal market must be on the basis of price conditions preventing deterioration of the market ; whereas that aim can be achieved if the selling price is equal to the local market price — account being taken of the quality put up for tender — without being below a given level in relation to the intervention or reference price ; whereas in certain cases observing such a price level may not be in the interests of sound management of the market or the intervention system and may lead to disruptions in the operation of the common organization of the market ; whereas provision should therefore be made for disposing of intervention stocks on special price conditions in such cases ;

Whereas, furthermore, the purchase on the market of cereals particularly suitable for certain uses may be especially difficult ; whereas provision should therefore be made for facilitating the supply of that market from intervention stocks ; whereas, however, such possibility must be restricted to exceptional cases ;

Whereas the disposal of cereals for export must be on the basis of price conditions to be determined in each case in the light of current market trends and requirements ; whereas such sales must not, however, lead to distortions to the detriment of exports from the open market ; whereas a minimum selling price should therefore be fixed by the Commission on the basis of the tenders submitted ;

Whereas the minimum selling price is calculated by the Commission in the light of all the relevant data available on the day on which the tenders are submitted ; whereas, in order to prevent speculation and ensure identical conditions for all concerned in the tendering procedure, all tenders must be accompanied by an application for the advance fixing of the export refund and the monetary compensatory amount ;

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 164, 14. 6. 1982, p. 1.

⁽³⁾ OJ No L 106, 12. 5. 1971, p. 1.

⁽⁴⁾ OJ No L 362, 17. 12. 1981, p. 2.

⁽⁵⁾ OJ No L 281, 1. 11. 1975, p. 49.

⁽⁶⁾ OJ No L 130, 19. 5. 1976, p. 9.

Whereas the advance fixing of the monetary compensatory amount is a precondition for the admissibility of a tender in the case of an invitation to tender for export; whereas, therefore, such fixing may be suspended only by express derogation from the provisions of this Regulation;

Whereas tenders for different lots are comparable one with another only where they relate to cereals in identical situations; whereas cereals put up for tender are stored in different places; whereas greater comparability can be ensured by reimbursing to the successful tenderer the lowest costs of transport from the place where the cereals in question are stored and the place of exit; whereas, however, for budgetary reasons, such reimbursement can be made only in respect of the place of exit which can be reached at the lowest cost; whereas that place must be determined by reference to its technical facilities for exporting cereals;

Whereas, to allow for the position of successful tenderers exporting to certain non-member countries, provision should be made for cancellation of the contract with the intervention agency; whereas such possibility is, however, justified only where the successful tenderer has applied for an export licence in accordance with Article 43 of Commission Regulation (EEC) No 3183/80 of 3 December 1980 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products⁽¹⁾, as last amended by Regulation (EEC) No 49/82⁽²⁾;

Whereas a tendering procedure can operate properly only if those concerned submit serious tenders; whereas that can be ensured by requiring that a security be provided which is released upon payment of the selling price within the time limit specified;

Whereas, in the case of an invitation to tender for export, it must be ensured that the cereals are not put back on the Community market; whereas there is a risk that this will happen if the selling price is less than the minimum price to be observed for resale on the internal market; whereas provision should therefore be made in such cases for the lodging of a second security which must be equal to the difference between the selling price and the said minimum price; whereas, consequently, this security may be released only if the successful tenderer for export furnishes the proof referred to in Article 20 of Commission Regulation (EEC) No 2730/79 of 29 November 1979 laying down common detailed rules for the application of the system of export refunds on agricultural products⁽³⁾, as last amended by Regulation (EEC) No 202/82⁽⁴⁾;

Whereas, to ensure that intervention stocks are disposed of rapidly and in a manner which accords as

far as possible with commercial practice, a certain time limit should be imposed in respect of the rights and obligations deriving from the award;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. Cereals bought in by the intervention agencies pursuant to Articles 7 and 8 of Regulation (EEC) No 2727/75 shall be resold by tender under the conditions laid down in the following Articles; this shall include sale by public auction in the case of resale on the Community market.

2. For the purposes of this Regulation, selling by tender means offering for sale by inviting tenders, the contract being awarded to the person tendering the best price and conditions in conformity with the provisions of this Regulation.

TITLE I

Sale on the Community market

Article 2

1. Each invitation to tender shall be made public, the procedure being as follows:

- (a) Member States shall communicate to the Commission the quantity and description of the cereal to be offered for tender;
- (b) an announcement of the call for tenders shall be published in the *Official Journal of the European Communities* not later than five working days after receipt of the communication referred to in (a);
- (c) a period of at least 10 days must elapse between the date of the publication referred to in (b) and the first closing date for the submission of tenders fixed by the Member State;
- (d) intervention agencies shall draw up a notice of invitation to tender in accordance with the provisions of Article 12 and shall publicize it, in particular by displaying it on their premises. In the case of a standing invitation to tender they shall specify therein the dates within which offers may be made for each partial invitation to tender.

2. The provisions of paragraph 1 (a), (b) and (c) shall not apply to invitations to tender relating to quantities of less than 1 000 tonnes.

Article 3

The notice of invitation to tender shall specify the minimum quantities to which tenders may relate.

⁽¹⁾ OJ No L 338, 13. 12. 1980, p. 1.

⁽²⁾ OJ No L 7, 12. 1. 1982, p. 7.

⁽³⁾ OJ No L 317, 12. 12. 1979, p. 1.

⁽⁴⁾ OJ No L 21, 29. 1. 1982, p. 23.

Article 4

In exceptional cases, the intervention agency may be authorized under the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 to restrict the use of cereals sold to specified purposes.

In such cases, the notice referred to in Article 2 (1) (d) shall specify the permitted uses.

Article 5

1. Successful tenders must offer a price at least equivalent to the market price for a similar quality recorded on the market for the place of storage or, failing such a price, the price on the nearest market taking account of transport costs. The tender price may not, in any circumstances, be lower than the intervention or reference prices applicable on the closing date for the submission of tenders:

- (a) increased by 1 %, except during the 12th month of the marketing year;
- (b) as appropriate, adjusted prior to each increase :
 - in accordance with Article 4 (6) of Regulation (EEC) No 1570/77 ⁽¹⁾, in the case of certain varieties of durum wheat,
 - by the special increase provided for in Article 6 (1) of Regulation (EEC) No 1570/77 in the case of rye of bread-making quality,
 - in accordance with Article 4 (3) of Regulation (EEC) No 1629/77 ⁽²⁾, in the case of common wheat of less than average bread-making quality.

2. For the purposes of paragraph 1, the intervention and reference prices to be taken into consideration during the 11th and 12th months of the marketing year shall be those in force for the 10th month to which have been added one and two monthly price increases respectively.

3. If, during a marketing year, there are disruptions in the operation of the common organization of the market on account in particular of difficulty in selling cereals at prices which comply with paragraph 1, special price conditions may be fixed in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75.

Article 6

The Member State concerned shall inform the Commission, in the second month following that of the closure of the invitation to tender, of the outcome of the tendering procedure, indicating in particular the

average selling prices of the individual lots and the quantities sold.

TITLE II

Sale for export*Article 7*

1. The decision to issue an invitation to tender shall be taken in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75. The following shall be determined in such a decision:

- (a) the quantities to be put up for tender;
- (b) the regions where the quantities are stored;
- (c) in the case of an individual invitation to tender, the closing date for the submission of tenders and, in the case of a standing invitation to tender, the opening and closing dates for the submission of tenders.

All interested parties shall be informed of the decision referred to in the preceding subparagraph by publication of the decision in the *Official Journal of the European Communities*.

A period of at least 15 days must elapse between the date of such publication and the first closing date for the submission of tenders.

2. In the notice of invitation to tender referred to in Article 12, the intervention agency shall specify for each lot the port or point of exit which involves the lowest transport costs and which has adequate technical facilities for exporting the cereals put up for tender.

The lowest transport costs between the place of storage and the place of loading at the port or point of exit referred to above shall be reimbursed to the successful tenderer by the intervention agency for the quantities exported. In particular cases it may be decided, in accordance with the procedure laid down in paragraph 1, that transport may be undertaken by the intervention agency under the same conditions.

3. In the case of standing invitations to tender, the intervention agency shall fix the closing dates for the submission of tenders for each partial invitation.

Article 8

1. Tenders:

- (a) may be refused if they relate to lots of less than 500 tonnes;
- (b) may stipulate that they are only valid for specified quantities;
- (c) shall be considered as being submitted for a cereal delivered to, but not unloaded at, a port or other exit point as referred to in Article 7 (2).

⁽¹⁾ OJ No L 174, 1. 7. 1977, p. 18.

⁽²⁾ OJ No L 181, 21. 7. 1977, p. 26.

2. Without prejudice to Article 13 (2), tenders shall be valid only if:

- (a) they are accompanied by an application for an export licence together with an application for the advance fixing of the export refund or levy for the relevant destination. All countries for which the same level of refund or levy applies shall be considered as one destination;
- (b) they are accompanied by an application for the advance fixing of the monetary compensatory amount;
- (c) where the price tendered is less than the intervention or reference price, increased by 1 %, they are accompanied by a written undertaking by the tenderer, endorsed by a credit institution, to provide a security covering the difference between the two prices not later than two working days after receipt of the statement of award of contract referred to in Article 15.

Article 9

1. By way of derogation from Article 21 (1) of Regulation (EEC) No 3183/80, export licences issued under this Regulation shall be regarded, for the purposes of determining the period of their validity, as having been issued on the closing date for submission of tenders.

2. The monetary compensatory amount referred to in Article 8 (2) (b) shall be that applicable on each closing date for the submission of tenders.

3. Suspension of the advance fixing of the monetary compensatory amount shall not apply unless the Regulation on the suspension specifies that this paragraph does not apply.

Article 10

When each period for the submission of tenders has expired, the Member State concerned shall provide the Commission with a list of the tenders, without names, in each case showing in particular the quantity, the price, the refund and monetary compensatory amount fixed in advance and the price increases and reductions applying thereto. The Commission, acting in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75, shall fix the minimum selling price or shall decide to take no action on the tenders received.

The minimum selling price shall be fixed:

- at a level which does not prejudice other export operations,
- in terms of the standard quality defined in Regulation (EEC) No 2731/75⁽¹⁾.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 22.

Article 11

Where the export licence application submitted by the successful tenderer pursuant to Article 8 (2) (a) is based on Article 43 of Regulation (EEC) No 3183/80, the intervention agency shall cancel the contract in respect of the quantities for which the licence is not issued in accordance with the said Article.

TITLE III

General and final provisions

Article 12

At least 12 days before the first closing date for the submission of tenders, intervention agencies shall publish a notice of invitation to tender setting out:

- supplementary terms and conditions of sale compatible with the provisions of this Regulation,
- the main physical and technical characteristics of the various lots ascertained at the time of buying in by the intervention agency or during a later appraisal of stocks,
- the places of storage and the name and address of the storer.

Such notice shall be forwarded immediately to the Commission.

Article 13

1. Tenders shall be drawn up in terms of the standard quality defined in Regulation (EEC) No 2731/75 and may not be amended or withdrawn once they have been submitted.

Where the quality of the cereal differs from the standard, the successful tender price shall be adjusted by the price increases or reductions determined in accordance with Articles 7 (5) and 8 (4) of Regulation (EEC) No 2727/75 but excluding the specific adjustments referred to in Article 5 (1) (b).

2. Tenders shall be valid only if they are accompanied by proof that the tenderer has provided a security of 5 ECU per tonne.

Article 14

Intervention agencies shall take all necessary steps to enable interested parties to assess the quality of cereals put up for sale before submitting their tenders.

Article 15

Intervention agencies shall immediately inform all tenderers of the outcome of their tender. They shall send a statement of award of contract to successful tenderers, by registered letter, telex or telegram.

Article 16

The successful tenderer shall pay for the cereals before they are removed and at the latest one month after the date on which the statement referred to in Article 15 is sent. He shall bear all risks and storage costs in respect of cereals not removed within the period for payment.

During the 1982/83 marketing year, the period envisaged in the first subparagraph may be extended by one month. During this supplementary period, the successful tenderer shall be liable for the storage costs.

If cereals are not paid for within the period referred to in the preceding subparagraphs, the intervention agency shall terminate the contract in respect of quantities for which payment has not been received.

Article 17

1. The securities referred to in this Regulation shall be provided at the tenderer's choice either in cash or in the form of a guarantee given by a credit institution meeting the criteria laid down by each Member State.

2. The security referred to in Article 13 (2) shall be released in respect of quantities for which :

- no contract has been awarded,
- the selling price has been paid within the period specified.

3. The security referred to in Article 8 (2) (c) shall be released in respect of quantities for which :

- proof has been furnished that the goods have become unfit for human or animal consumption,
- the proof referred to in Article 20 of Regulation (EEC) No 2730/79 has been furnished,
- the licence is not issued in accordance with Article 43 of Regulation (EEC) No 3183/80,
- the contract has been terminated in accordance with the third subparagraph of Article 16.

4. The security referred to in Article 13 (2) shall be forfeited in respect of quantities for which :

- the security referred to in the second subparagraph of Article 43 (2) of Regulation (EEC) No 3183/80 has been forfeited,
- except in cases of *force majeure*, payment is not made within the period specified in Article 16 of this Regulation.

5. Except in cases of *force majeure*, the security referred to in Article 8 (2) (c) shall be forfeited in respect of quantities for which the proof referred to in Article 20 of Regulation (EEC) No 2730/79 is not furnished within the period referred to in Article 31 of that Regulation.

Article 18

Regulation (EEC) No 376/70 is hereby repealed. However, it shall remain applicable to invitations to tender issued before 1 August 1982.

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

It shall apply from 1 August 1982.

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

Done at Brussels, 7 July 1982.

For the Commission

Poul DALSGER

Member of the Commission
