

COMMISSION REGULATION (EC) No 2153/2005
of 23 December 2005
on the aid scheme for the private storage of olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 865/2004 of 29 April 2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68 ⁽¹⁾, and in particular Article 6(3) thereof,

Whereas:

- (1) Article 6 of Regulation (EC) No 865/2004 provides that an aid scheme for the private storage of olive oil may be implemented in the event of serious disturbance on the market in certain regions of the Community.
- (2) In order to implement the aid scheme quickly as and when required, detailed rules for the application of that Regulation must be laid down. The aid scheme for private storage must be based on contracts with operators offering sufficient securities and authorised by the Member States on the basis of certain set conditions.
- (3) For the scheme to have greater effect on the market at the level of producers and to make monitoring easier, the aid should be granted primarily for the bulk storage of virgin olive oil.
- (4) Information should be available on changes in prices and in the production of olive oil. This information is needed to monitor the olive oil market on a permanent basis, in order to assess whether the conditions indicating a severe market disturbance pertain or not.
- (5) To reflect the market situation as closely as possible, the aid amount must be established for those market sectors that need it. The oil categories are those listed in Part I of Annex I to Regulation (EC) No 865/2004.

(6) The information that must appear in tenders and the conditions in which they are to be presented and examined must be specified, with a view to having complete and thorough information for each tender.

(7) Invitations to tender should be opened in accordance with certain procedures, particularly as regards the time limits for lodging tenders and the minimum quantity of each tender lodged. In particular, if they are to have an effect on the market situation, tenders must be submitted for a long storage period and in respect of a minimum quantity in relation to the situation in the sector.

(8) Performance of the tender should be guaranteed by lodging a security under the conditions laid down in 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 ⁽²⁾, the amount and duration of which must be related to the likelihood of fluctuations in prices on the market and the number of days' storage conferring entitlement to the aid which have actually been completed.

(9) To be successful, tenders should not exceed a maximum amount of aid per day of storage, to be determined in relation to the market in olive oil. The tenders must be representative and the maximum quantities laid down under the procedure must be complied with for each category or region specified.

(10) The main points to be included in the contract should be specified. In order to prevent disturbances on the market, the Commission must be able to adjust the term of the contract in the light mainly of the harvest forecasts for the marketing year following that in which the contract was concluded.

(11) In order to ensure that the scheme is properly administered, it is necessary to indicate the conditions in which an advance on aid may be granted, the checks on compliance with entitlement to the aid which are essential, certain procedures for calculating the aid and the information to be notified to the Commission by the Member States.

⁽¹⁾ OJ L 161, 30.4.2004, p. 97, corrected by OJ L 206, 9.6.2004, p. 37.

⁽²⁾ OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 673/2004 (OJ L 105, 14.4.2004, p. 17).

- (12) With a view to clarity and transparency, Commission Regulation (EC) No 2768/98 of 21 December 1998 on the aid scheme for the private storage of olive oil ⁽¹⁾ should be repealed and replaced by a new Regulation.
- (13) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Olive Oil and Table Olives,

HAS ADOPTED THIS REGULATION:

Article 1

1. The competent bodies in producer Member States shall conclude contracts for the private storage of virgin olive oil in bulk on the conditions laid down in this Regulation.
2. In order to determine the aid to be granted for carrying out contracts for the private storage of virgin olive oil in bulk, the Commission may, in accordance with the procedure laid down in Article 18(2) of Regulation (EC) No 865/2004, open invitations to tender for a limited period. During a limited-period tendering procedure, partial invitations to tender shall be opened.

Article 2

1. An invitation to tender for a limited period may be opened where the following conditions are met:
- (a) there are serious disturbances on the market in certain regions of the Community which may be reduced or resolved by measures for the private storage of virgin olive oil in bulk;
- (b) the average price for one or more of the following products recorded on the market during a period of not less than two weeks is less than:
- EUR 1 779/tonne for extra virgin olive oil,
 - EUR 1 710/tonne for virgin olive oil,
 - EUR 1 524/tonne for lampante olive oil having two degrees of free acidity, this amount being reduced by EUR 36,70/tonne for each additional degree of acidity.

2. Invitations to tender for a limited period shall specify the maximum quantity for the whole tendering procedure and may specify maximum quantities for each:

- category of virgin olive oil as referred to in the Part I of Annex I to Regulation (EC) No 865/2004,
- Community region or Member State.

Invitations to tender for a limited period may be restricted to just some of the virgin olive oil categories or regions referred to in the first subparagraph.

Invitations to tender for a limited period may be closed before the end of the period in accordance with the procedure laid down in Article 18(2) of Regulation (EC) No 865/2004.

Article 3

Only olive oil operators approved to that end by the competent body in the Member State concerned may submit tenders in respect of partial invitations to tender.

Member States shall lay down the criteria and procedures for approving these operators, who shall fall into one of the following categories:

- (a) an olive-oil producers' organisation comprising at least 700 olive growers where it acts as an organisation for the production and marketing of olives and olive oil;
- (b) a producer organisation representing at least 25 % of olive growers or of the olive oil production in the region in which it is situated;
- (c) an association of producer organisations from various economic areas and made up of at least 10 producer organisations as referred to in (a) and (b) above or a number of organisations representing at least 5 % of the olive oil production of the Member State concerned;
- (d) a mill whose facilities can extract at least two tonnes of oil in an eight-hour working day and which has produced in the two preceding marketing years at total of at least 500 tonnes of virgin olive oil;

⁽¹⁾ OJ L 346, 22.12.1998, p. 14. Regulation as last amended by Regulation (EC) No 1432/2004 (OJ L 264, 11.8.2004, p. 6).

(e) a packaging firm with a capacity, in the territory of a single Member State, equal at least to six tonnes of oil put up per eight-hour working day, and which has put up over the two preceding marketing years a total of at least 500 tonnes of olive oil.

Should one or more of the organisations producing or marketing olives and olive oil be a member or members of the organisation referred to in point (a) of the second subparagraph, the olive growers involved in such a grouping shall be individually considered when calculating the minimum number of 700 growers.

Article 4

For the purposes of the approval referred to in Article 3, operators shall give an undertaking to:

- (a) accept the sealing, by the competent body in the Member State, of the vats containing the olive oil covered by a storage contract;
- (b) keep stock records of the oil and, where appropriate, the olives they are storing;
- (c) undergo all checks provided for under this aid scheme for private storage contracts.

The operators concerned shall make a declaration of the capacity of their storage facilities, provide a plan of those facilities and supply evidence of compliance with the conditions in Article 3.

Article 5

1. Operators meeting the conditions in Articles 3 and 4 shall be approved and given an approval number within two months following the month in which the complete file containing the application for approval is submitted.

2. Without prejudice to Article 17(3):

- (a) producer organisations in the olive oil sector, unions thereof and the mills and packaging enterprises that have been authorised by the Member States to undertake private storage in the 1998/99 to 2004/05 marketing years shall be deemed to be approved under this Regulation if they meet the criteria laid down in Articles 3 and 4;

(b) approval shall be refused or withdrawn immediately from an operator where that operator:

- (i) does not meet the conditions for approval;
- (ii) is subject to proceedings by the competent authorities for infringements of Regulation (EC) No 865/2004;
- (iii) has been penalised for infringing the production aid scheme provided for in Council Regulation No 136/66/EEC ⁽¹⁾ in the 2002/03, 2003/04 and 2004/05 marketing years;
- (iv) has been penalised for infringing the scheme to fund the activities of oil operators' organisations provided for in Council Regulation (EC) No 1638/98 ⁽²⁾ in the 2002/03, 2003/04 and 2004/05 marketing years.

Article 6

1. No later than every Wednesday, Member States shall send the Commission the average prices recorded on their main representative markets the preceding week for the various categories of oil listed in Annex I to Regulation (EC) No 865/2004.

These prices shall be notified by e-mail, along with comments on the volume of transactions and how representative they are.

2. Before the 10th day of each month the Member States shall send the Commission an estimate of the total production of olive oil and table olives for the current marketing year.

3. From September to May of each marketing year, Member States shall send the Commission, no later than the 15th day of each month, an estimate of the olive oil and table olives produced since the start of the marketing year in question.

To obtain these data, the Member States may use various sources of information, including the data supplied by the mills and enterprises engaging in the processing of table olives, surveys of operators in the olive sector or the estimates of statistical bodies.

⁽¹⁾ OJ L 172, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 210, 28.7.1998, p. 32.

Member States shall notify the Commission, before the end of the marketing year concerned, of the total estimated volume of olive oil and quantity of table olives produced.

4. Member States shall establish the data-collection system they deem to be most appropriate for obtaining and preparing the notifications referred to in paragraphs 2 and 3 and they shall specify, as appropriate, the data-communication obligations of the olive-sector operators concerned.

5. The estimates of olive-oil and table-olive production referred to in paragraphs 2 and 3 shall be sent by e-mail on the form provided by the Commission.

6. The Commission may use other sources of information.

Article 7

The deadlines for the submission of tenders in respect of partial tendering procedures shall be as follows:

- (a) for November, January, February, March, April, May, June, July, September and October, from the 4th to the 8th day at midday and from the 18th to the 22nd at midday;
- (b) for August, from the 18th to the 23rd at midday;
- (c) for December, from the 9th to the 14th at midday.

The time of the deadline shall be local Belgian time. Where the day on which the deadline expires in a Member State is a holiday for the body responsible for receiving the tenders, the deadline shall expire at midday on the preceding working day.

Article 8

1. Without prejudice to Article 15, tenders for a minimum quantity of 50 tonnes shall be made in respect of the amount of aid per day, for the private storage for 365 days in sealed vats and in accordance with the conditions laid down in this Regulation of virgin olive oil in bulk in one of the three categories listed in Part I of Annex I to Regulation (EC) No 865/2004.

2. Approved operators shall take part in the partial tendering procedure either by submitting a written tender to the

competent body in a Member State, against receipt of delivery, or by e-mailing that body.

Where an operator takes part in a partial tendering procedure for more than one category of oil or for vats located at different addresses, he shall submit a separate tender in each case.

A tender shall be valid only for a single partial tendering procedure. Once submitted, tenders may not be withdrawn or altered after the closing date for submission of tenders.

Article 9

1. The tenders referred to in Article 8 shall specify:

- (a) a reference to this Regulation and to the partial tendering procedure to which the tender refers;
 - (b) the name and address of the tenderer;
 - (c) the category of approved operator, referred to in Article 3(1), and the approval number;
 - (d) the quantity and category of olive oil(s) covered by the tender;
 - (e) the exact address of the place where the storage vats are located and the information needed to identify the vats to which the tenders refer;
 - (f) the amount of aid per day of private storage per tonne of olive oil, expressed in euro to two decimal places;
 - (g) the amount of the security to be established in accordance with Article 10 expressed in the currency of the Member State in which the tender is made.
2. To ensure that their validity is recognised, tenders must:
- (a) be drawn up, together with the relevant documents, in the official language or one of the official languages of the Member State of the competent body which receives them;

- (b) be submitted in accordance with this Regulation and contain all the particulars listed in paragraph 1;
- (c) not contain conditions other than those provided for in this Regulation;
- (d) be made by an operator approved by the Member State in which they are received, and concern storage vats located in that Member State;
- (e) be accompanied, prior to the deadline for the submission of tenders, by proof that the tenderer has established the security specified in them.

Article 10

1. Tenderers shall establish a security of EUR 50 per tonne of olive oil covered by a tender.

2. Where tenders are unsuccessful, the security referred to in paragraph 1 shall be released forthwith following publication in the *Official Journal of the European Union* of the maximum amount of the aid for the partial tendering procedure concerned.

3. Where tenders are successful, in addition to the security referred to in paragraph 1, a security of EUR 200 per tonne of olive oil covered by the tender shall be established no later than the first day of performance of the contract as referred to in the second subparagraph of Article 13(3).

4. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 for the release of the securities referred to in paragraphs 1 and 3 shall be the storage for six months provided for in the tender under the contract conditions laid down in this Regulation.

However, where the duration of the contract is reduced to less than six months pursuant to Article 15, the storage period referred to in the first subparagraph shall be the same as the period of performance of the contract.

Article 11

1. Tendere shall be examined by the competent body in the Member State concerned in the absence of members of the

public. Subject to paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Valid tenders shall be notified to the Commission, classified in increasing order of amount, unnamed, by e-mail, not later than 48 hours following the expiry of the deadline for the submission of tenders.

If the deadline expires on a Friday tenders shall be notified no later than midday (Brussels time) the following Monday.

3. Particulars shall be given for each tender notified of the quantity, category of oil and amount referred to in Article 9(1)(d) and (f). In addition, where the procedure sets maximum quantities for each region, the regions concerned shall be indicated for each tender.

Article 12

1. In accordance with the procedure laid down in Article 18(2) of Regulation (EC) No 865/2004 and on the basis of the tenders received, a maximum amount of aid shall be set per day of private storage not later than the ninth working day following the expiry of each deadline set for the submission of tenders under partial tendering procedures.

2. The maximum amount of aid shall be set in the light of the situation and foreseeable developments on the market in olive oil, and the opportunities for contributing significantly to ensuring that the market is regulated by the measure concerned.

In addition, account shall be taken of quantities which are covered already by private storage contracts and of the quantities covered by the tenders received.

3. When the maximum amount is being set, and in accordance with the same procedure, all tenders in respect of a category of oil or a region for which a maximum quantity has been set under Article 2(2) may be rejected where, in the case of the category or region in question:

— the tenders are not representative, or

— the maximum amount set could result in an overrun of the maximum quantity concerned.

Article 13

1. The contract shall be awarded, without prejudice to Article 12(3), to the tenderer or tenderers whose tender has been notified in accordance with Article 11(2), and which corresponds to the maximum amount of aid per day of private storage, or less for the quantity shown in the tender.

The rights and obligations of the successful tenderer shall not be transferable.

2. The competent body in the Member State concerned shall notify all tenderers in writing of the outcome of their participation in the tendering procedure not later than the second working day following the date of publication of the maximum amount of the aid in the *Official Journal of the European Union*.

3. The date of conclusion of the contract shall be that on which the notice of acceptance of the tender is dispatched to the tenderer.

The starting date of performance of the contract, subject to the lodging of the security referred to in Article 10(3), shall be the day following the conclusion of the contract, and the oil in question must be stored in the conditions provided for in the contract.

However, performance of the contract may not begin until the vats are sealed after the taking of samples, in accordance with paragraph 4(c) and (d) below.

4. Within 30 days of the conclusion of the contract, the competent body in the Member State shall:

- (a) identify the vats containing the olive oil concerned;
- (b) record the net weight of the oil;
- (c) take a sample representative of the tender;
- (d) seal each vat.

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

5. The sample referred to in paragraph 4(c) shall be analysed as quickly as possible to ensure that the oil corresponds to the category of virgin olive oils for which the contract was awarded.

If the analysis confirms that the oil in the vat does not correspond to the category for which the contract was awarded, the entire quantity covered by the tender shall be rejected and the security referred to in Article 10(1) shall be forfeit.

Article 14

1. The contract drawn up in two copies shall contain at least the following:

- (a) the name and address of the competent body in the Member State;
- (b) the full postal address, and the approval number and category of the contractor, as referred to in Article 3;
- (c) the exact storage address and the location of the vats concerned;
- (d) the date of conclusion of the contract;
- (e) the starting and completion dates of performance of the contract, subject to Article 15;
- (f) a reference to this Regulation and to the partial tendering procedure concerned.

2. The contract shall contain a reference in respect of each batch covered by it to:

- (a) the category and net weight of the virgin olive oil;
- (b) the particulars and location of the vats containing the oil.

3. The contract shall require the contractor:

- (a) to keep in storage, for an agreed period, the agreed quantity of the product concerned, at his expense and risk;

(b) to store oil of different categories in separate vats, specified in the contract and sealed by the competent body in the Member State;

(c) to allow the competent body in the Member State to verify at all times compliance with the requirements of the contract.

Changes of vats referred to in (b) above must be authorised by that body, undertaken in its presence, representative samples of the vat concerned must be taken and new seals affixed in accordance with Article 13(4)(c) and (d).

4. Without prejudice to Article 15, where the contractor terminates the contract while it is being performed, the contractor shall lose the benefit of the aid for the whole of the period and for all the quantities provided for in the contract.

Article 15

1. The Commission, on the basis of developments on the market in olive oil and the outlook for the future, may decide in accordance with the procedure laid down in Article 18(2) of Regulation (EC) No 865/2004 to shorten the term of contracts which are being performed.

Changes to contracts may be adopted only during the period 1 September to 31 December, and may not take effect before the end of the month following that in which they are adopted.

2. Where a contract is changed under paragraph 1, the Commission shall set a percentage reduction to be applied to the numbers of days of performance provided for after a date specified for all contracts which are being performed on that date.

Article 16

1. From the starting date of performance of the contract as referred to in the second subparagraph of Article 13(3), an advance corresponding to the aid provided for in respect of the period starting on the starting date of performance of the contract and ending on 31 August following may be paid on condition that a security is lodged for an amount equal to 120 % of the advance.

In the case of contracts that are being performed, from 1 January a further advance may be paid for the period

beginning on 1 September and ending on expiry of those contracts, under the terms specified in the first subparagraph.

2. The security referred to in paragraph 1 shall be released forthwith upon payment of the balance of the aid in accordance with Article 18(3).

Article 17

1. Before final payment of the aid is made, the competent body in the Member State shall:

(a) collect and verify proof of compliance with the conditions laid down in this Regulation;

(b) carry out the necessary checks to ensure that the olive oil in question has remained in storage during the whole of the storage period referred to in the contract;

(c) take all the measures necessary to ensure that checks are made on compliance with the requirements of the contract.

2. Checks on compliance shall include a physical inspection of the goods stored, together with scrutiny of the accounts.

The physical inspection shall cover in particular the compliance of the stocks covered by the contract with the categories of oil provided for in the contract, the presence of the seals and of the quantities provided for.

3. Where there is failure to comply with the requirements of the contract, the aid shall not be granted, and without prejudice to other penalties that may be applied, approval of the operator shall be withdrawn. In addition, the securities as referred to in Articles 10 and 16 shall be forfeit under the terms of Regulation (EEC) No 2220/85.

Article 18

1. The aid amount shall be calculated in relation to the net weight recorded in accordance with Article 13(4)(b).

The rate to be applied when converting the amount of private storage aid into national currency shall be the agricultural conversion rate applicable on the date of commencement of performance of the contract as referred to in the second subparagraph of Article 13(3).

2. The requirements relating to the quantities provided for in the tenders and contracts shall be regarded as met if they are in fact met in respect of 98 % of those quantities.

Where the analysis referred to in Article 13(5) does not suffice to confirm that the oil corresponds to the category for which the contract was awarded, the entire quantity covered by the tender shall be deemed not to be in conformity.

3. The aid, or, where an advance has been granted under Article 16, the balance of the aid, shall be paid only when all the requirements of the contract have been met. Payment of the aid, or the balance of the aid, shall be made following a check on compliance with the requirements, within 60 days following expiry of the contract.

Article 19

1. The Member States concerned shall notify the Commission of the national measures taken to apply this Regulation and of the specimen contract.

2. The Member States shall electronically notify the Commission of the quantities of olive oil for which an aid

has been awarded and which, as appropriate, are not the subject of:

- a contract,
- compliance with or the performance in full of the contract.

The notices referred to in the first subparagraph shall specify the partial tendering procedure concerned and, as appropriate, the categories of oil, operators, or regions concerned. Notification shall take place at the earliest opportunity and not later than the 10th day of the month following the month concerned.

Article 20

Regulation (EC) No 2768/98 is hereby repealed.

Article 21

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

It shall apply from 1 November 2005.

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

Done at Brussels, 23 December 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission
