

COMMISSION REGULATION (EC) No 127/2009

of 12 February 2009

laying down the procedure and conditions for the sale of cereals held by paying agencies or intervention agencies

(Codified version)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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(f), in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 of 28 July 1993 laying down the procedure and conditions for the sale of cereals held by intervention agencies ⁽²⁾ has been substantially amended several times ⁽³⁾. In the interests of clarity and rationality the said Regulation should be codified.

(2) Cereals may be bought in by paying agencies or intervention agencies either under compulsory intervention measures as provided for in Article 11 of Regulation (EC) No 1234/2007 or under special intervention measures as referred to in Article 47 of that Regulation.

(3) Cereals held by the paying agencies or intervention agencies must be sold without any discrimination between Community purchasers. In principle invitations to tender permit that objective to be achieved. However, in certain cases it must be possible to use other methods of sale.

(4) To ensure that all interested parties in the Community are treated equally, notices of invitation to tender must be published in the *Official Journal of the European Union* and a reasonable time must elapse between the date of

such publication and the first closing date for the submission of tenders. However, such publicity is not necessary for quantities of less than 5 000 tonnes.

(5) Products held in intervention storage are intended first and foremost for food and feed uses, to take account of specific situations on the cereals market. However, the quantity and quality of the products in intervention storage may, temporarily and occasionally, make it necessary to dispose of them for other purposes, in particular to meet the Community's undertakings, where the situation of stocks so warrants and where supply to traditional food markets is not threatened.

(6) The rise in processing cereals to produce biofuels for use in Community transport forms part of a raft of measures designed to meet the Community's environmental commitments. Promoting the use of biofuels may therefore open a new market for agricultural products held in intervention storage in the Member States, provided that prices applicable to the sale of cereals reflect this specific market in biofuels. Nonetheless, purchasing cereals to produce bioethanol and its use as a biofuel may prove particularly difficult. Provision should therefore be made for selling intervention stocks at special prices in such cases.

(7) Intervention stocks of cereals are sold on the Community market according to availability and market conditions. Sales may be influenced by or dependent upon specific or exceptional circumstances on those markets, and must therefore be able to take account of such circumstances. To this end, provision should be made for prices that avoid market disturbances and ensure that sales reflect those circumstances. This twofold objective can be achieved if the selling price is equal to the price on the market concerned, account being taken of the quality of the cereals put up for sale by tender and of transport costs.

(8) The sale of cereals for export must take place at prices to be determined in each case in the light of market trends and requirements. Such sales must not, however, lead to distortions to the detriment of exports from the open market. A minimum selling price should therefore be fixed by the Commission on the basis of tenders submitted.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 191, 31.7.1993, p. 76.

⁽³⁾ See Annex II.

- (9) The minimum selling price is to be established by the Commission in the light of all the relevant data available on the day on which tenders are submitted. In order to prevent speculation and ensure identical conditions for all concerned in the invitation to tender, tenders must be accompanied by an application for an export licence with, if appropriate, an application for advance fixing of the export refund or levy.
- (10) Tenders for different lots are comparable one with another only where they relate to cereals in identical situations. Cereals put up for tender are stored in different places. Comparability may be better 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. However, for budgetary reasons, such reimbursement can only be made in respect of the place of exit which can be reached at the lowest cost. That place must be determined by reference to its facilities for exporting cereals.
- (11) In Member States which do not have sea ports, tenderers for cereals put up for sale are penalised by higher transport costs. As a result of these additional costs, cereals are more difficult to export from those Member States, which results in particular in longer intervention storage and additional costs to the Community budget. Therefore provision should be made for the possibility, in certain cases, of financing the lowest transport costs between the place of storage and the place of exit, in order to make the tenders comparable.
- (12) The Croatian ports of Rijeka and Split were traditional ports of exit for the countries of central Europe before their accession to the Union. Rijeka and Split should therefore be included among the places of exit that can be considered when calculating the refundable transport costs for exports.
- (13) Invitations to tender can take place properly only if those concerned submit genuine tenders. That objective can be achieved by requiring that a security be paid, to be released on payment of the selling price within the time limit laid down.
- (14) In the case of invitations to tender for export, steps must be taken to ensure that the cereals are not put back on the Community market. That risk exists if the selling price is less than the minimum price to be observed in the case of resale on the internal market. Provision should accordingly be made in such cases for the lodging of a second security, which must be equal to the difference between the selling price and that minimum price. As a consequence, that security can be released only if the successful tenderer intending to export the cereals provides the proof referred to in Article 16 of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽¹⁾.
- (15) In the interests of sound management of the cereals intervention scheme, the information to be communicated by Member States to the Commission should be clarified. This information should be sent by electronic means.
- (16) In order to ensure that intervention stocks are disposed of rapidly and as far as possible in line with commercial practice, a certain time limit should be laid down in respect of the rights and obligations deriving from the award.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SALE BY INVITATION TO TENDER

Article 1

Sale

1. Cereals bought in by the paying agencies or intervention agencies hereinafter referred to as 'intervention agencies' in accordance with Article 11 of Regulation (EC) No 1234/2007 shall be put up for sale by invitation to tender or, in the case of resale on the Community market, by public auction.

2. For the purposes of this Regulation, 'invitation to tender' means competition between interested parties in response to a call for tenders, the contract being awarded for each of the lots to the tenderer submitting the most favourable bid from among the bids that comply with this Regulation, for which the price tendered is at least equal to the minimum selling price laid down by the Commission in accordance with Article 14(2).

⁽¹⁾ OJ L 102, 17.4.1999, p. 11.

*Article 2***Decisions issuing invitations to tender**

Decisions issuing invitations to tender shall be taken in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007. Such decisions shall lay down in particular:

- (a) the quantities to be put up for tender;
- (b) the closing date for the submission of tenders in the case of specific invitations to tender and the first and final closing dates for the submission of tenders in the case of standing invitations to tender.

The decisions referred to in the first paragraph shall be brought to the notice of all interested parties by their publication in the *Official Journal of the European Union*.

There must be a gap of at least six days between publication and the first closing date for submission of tenders.

*Article 3***Notice of invitation to tender**

1. At least four days before the first closing date for the submission of tenders, the intervention agencies shall draw up and publish a notice of invitation to tender setting out:

- (a) the additional clauses and conditions of sale compatible with this Regulation;
- (b) the main physical and technological characteristics of the various lots established upon buying in by the intervention agency or during checks carried out subsequently;
- (c) the places of storage and the names and addresses of the storers.

2. Intervention agencies shall ensure that notices of invitation to tender are properly publicised, in particular by displaying them at their head offices and on their website or the website of the competent ministry. In the case of standing

invitations to tender, they shall specify therein the closing dates for the submission of tenders for each partial invitation to tender.

3. Notices of invitation to tender shall specify the minimum quantities which tenders must cover.

4. Notices of invitation to tender, and any changes to them, shall be forwarded to the Commission before the expiry of the first deadline for the submission of tenders.

*Article 4***Quality of cereals**

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

*Article 5***Tenders**

1. Tenders shall be drawn up by reference to the actual quality of the lot to which the tender relates.

2. Tenders submitted may not be amended or withdrawn.

3. Tenders shall be valid only if they are accompanied by proof that the tenderer has lodged a security of EUR 5 per tonne.

CHAPTER II

SPECIFIC RULES FOR THE SALE ON THE COMMUNITY MARKET*Article 6***Limitations of invitations to tender**

1. Article 2 shall not apply to invitations to tender covering quantities of less than 5 000 tonnes.

2. Invitations to tender as provided for in Article 2 may be restricted to specified uses and/or destinations.

*Article 7***Additional conditions for tenders**

1. The following additional conditions shall apply to tenders:
 - (a) in the case of resale of maize and grain sorghum during the first three months of the marketing year and of common wheat, durum wheat and barley during the first two months of the marketing year, successful tenders shall quote a price at least equal to the intervention price applicable for the 11th month of the preceding marketing year, plus one monthly increase fixed for that year;
 - (b) in the case of resale during the rest of the marketing year, tenders may in no circumstances be lower than the intervention price applicable on the closing date for the submission of tenders; however, the intervention prices to be taken into account during the 12th month of the marketing year shall be those applicable for the 11th month, plus one monthly increase.

For successful tenders, the minimum selling price shall be fixed at a level that does not distort the cereals markets and that is at least equal to the price recorded for an equivalent quality and for a representative quantity on the market at the place of storage or, failing that, on the nearest market, account being taken of transport costs.

2. Notwithstanding paragraph 1, sales on the Community market may be organised on the basis of specific invitations to tender for the processing of cereals into bioethanol and the use of this bioethanol to produce biofuels in the Community, provided that supply to traditional food markets is not threatened. In such cases, the minimum selling price shall be at least equal to the price recorded for an equivalent quality and for a representative quantity on the market of products used to produce biofuels, account being taken of transport costs.
3. If during the marketing year there are distortions in the common organisation of the market, in particular due to difficulties in selling cereals at prices which comply with paragraph 1, or in cases of exceptional circumstances, sales on the Community market may be organised on the basis of specific invitations to tender under special conditions and selling prices fixed in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

*Article 8***Informing the Commission on the outcome of tenders**

In the second month following that of the closure of the invitation to tender, the Member States concerned shall inform the

Commission of the outcome of the tendering procedure, indicating in particular the average selling prices of the various lots and the quantities sold.

CHAPTER III

SPECIFIC RULES FOR THE SALE FOR EXPORT*Article 9***Notice of invitation to tender**

1. In the notices of invitation to tender provided for in Article 3, the intervention agencies shall specify for each lot the port or place of exit which may be reached at 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 place of exit referred to in the first subparagraph shall be reimbursed to the successful tenderer by the intervention agency in respect of the quantities exported. In particular cases a decision may be taken, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, for carriage to be undertaken by the intervention agency under the same conditions.

2. Where Member States have no sea port, a decision may be taken, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, to derogate from paragraph 1 of this Article and, in the case of exports from a sea port, to finance the lowest transport costs between the place of storage and the actual place of exit, within the financial limits laid down in the tender notice.

For the purpose of this paragraph the Croatian ports of Rijeka and Split may be regarded as places of exit.

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

*Article 10***Tenders**

1. Provision may be made for tenders submitted pursuant to Article 47 of Commission Regulation (EC) No 376/2008 ⁽¹⁾ not to be admissible.

2. Tenders may be rejected if they relate to lots of less than 500 tonnes.

⁽¹⁾ OJ L 114, 26.4.2008, p. 3.

3. Tenders may stipulate that they are valid only for specified quantities.

4. Tenders shall be considered as relating to a cereal delivered to, but not unloaded at, the ports or places of exit referred to in Article 9(1).

5. Without prejudice to Article 5(1), tenders shall be valid only if they are accompanied by an application for an export licence together with an application for advance fixing of the export refund or levy for the relevant destination. All countries for which the same rate of export refund or levy applies shall be considered as one destination.

Article 11

Determining the term of validity of export licences

Notwithstanding Article 22(1) of Regulation (EC) No 376/2008, export licences issued pursuant to this Regulation shall be considered, for the purposes of determining their term of validity, as having been issued on the closing date for the submission of tenders.

Article 12

Specific condition for the cancellation of the contract

Where the export licence application submitted by the successful tenderer pursuant to Article 10(5) is based on Article 47 of Regulation (EC) No 376/2008, the intervention agency shall cancel the contract in respect of the quantities for which the licence is not issued in accordance with that Article.

Article 13

Specific proof of the completion of customs formalities

Notwithstanding Article 16 of Regulation (EC) No 800/1999, proof of completion of customs formalities for importation shall not be required for payment of the refund provided the operator furnishes proof that at least 1 500 tonnes of cereal products have left the customs territory of the Community on a sea-going vessel where:

- (a) the refund applicable on the day of submission of tenders is different only as between, first Switzerland and Liechtenstein and, second, other third countries;
- (b) the successful tenderer has fixed in advance the lowest standard refund other than that applying to Switzerland and Liechtenstein.

Such proof shall be furnished by the insertion of one of the entries listed in Annex I, certified by the competent authority, on the control copy referred to in Article 8 of Regulation (EC) No 800/1999 and of the single administrative document or national document proving that the goods have left the customs territory of the Community.

CHAPTER IV

COMMON AND FINAL PROVISIONS

Article 14

Minimum price and allocation of tenders

1. Upon expiry of each period for the submission of tenders, the Member State concerned shall forward to the Commission a list of the tenders, without names, in each case showing in particular the lot number, the quantity tendered, the price tendered and the price increases and reductions applying thereto.

2. The Commission, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, shall fix the minimum selling price or decide not to award any quantities.

3. In the case of invitations to tender for export, the minimum selling price shall be fixed at a level which does not prejudice other export operations.

Article 15

Information for tenderers

Intervention agencies shall immediately inform all tenderers of the outcome of their tender. They shall forward statements of award of contract to the successful tenderers within three working days of the said notification, by registered letter or written telecommunication.

Article 16

Payment for cereals

Successful tenderers shall pay for the cereals before they are removed and at the latest within one month of the date on which the statement referred to in Article 15 was forwarded. They shall bear all risks and storage costs in respect of cereals not removed within the period allowed for payment.

Cereals covered by contracts awarded and not removed within the period allowed for payment shall be deemed to all effects to have been removed on expiry of that period. In that case, where sales on the internal market are concerned, the price tendered shall be adjusted by reference to the quality characteristics described in the notice of invitation to tender.

In the case of sales for export, the price to be paid shall be that quoted in the tender, plus a monthly increase where removal takes place in the month following that of award of the contract.

Where the successful tenderer has not paid for the cereals within the period laid down in the first paragraph, the contract shall be cancelled by the intervention agency in respect of the quantities not paid for.

Article 17

Lodge, release and forfeit of securities

1. The securities referred to in this Regulation shall be lodged in accordance with Titles II and III of Commission Regulation (EEC) No 2220/85 ⁽¹⁾.

2. The security provided for in Article 5(3) shall be released where it covers quantities for which:

(a) no contract has been awarded;

(b) the selling price has been paid within the period laid down and, in the case of sales for export and where the price paid is less than the minimum price for resale on the Community market, in accordance with Article 7, a security covering the difference between those two prices has been lodged.

3. The security provided for in point (b) of paragraph 2 shall be released where it covers quantities in respect of which:

(a) proof has been furnished that the goods have become unfit for human or animal consumption;

(b) proof has been furnished that the customs formalities for exports outside the customs territory of the Community and for imports into one of the third countries covered by the tender have been completed. Proof of export outside the customs territory of the Community and of import into a third country shall respectively be those provided in accordance with the detailed rules laid down in Articles 7 and 16(1), (2) and (3) of Regulation (EC) No 800/1999;

(c) the licence has not been issued in accordance with Article 47 of Regulation (EC) No 376/2008;

(d) the contract has been cancelled in accordance with the fourth paragraph of Article 16.

4. The security provided for in Article 5(3) shall be forfeited in respect of quantities for which:

(a) the security lodged in respect of the issue of the export licence has been forfeited;

(b) except in cases of *force majeure*, payment has not been made within the period laid down in Article 16.

5. Except in cases of *force majeure*, the security provided for in point (b) of paragraph 2 shall be forfeited in respect of quantities for which the proof referred to in point (b) of paragraph 3 has not been provided within the period laid down in Article 49(2) of Regulation (EC) No 800/1999.

Article 18

Forwarding the representative market price

Each Member State shall forward to the Commission by electronic means the representative market price expressed in national currency, per tonne, of every cereal listed in Article 10(1)(a) of Regulation (EC) No 1234/2007 by 12.00 (Brussels time) every Wednesday. These prices must be calculated regularly, independently and transparently.

Member States shall indicate in particular the qualitative properties of each cereal, the stage of marketing and the place of quotation.

Article 19

Repeal

Regulation (EEC) No 2131/93 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 III.

⁽¹⁾ OJ L 205, 3.8.1985, p. 5.

*Article 20***Entry into force**

This Regulation shall enter into force on the 20th day following 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, 12 February 2009.

For the Commission
The President
José Manuel BARROSO

ANNEX I

Entries referred to in Article 13, second subparagraph

— in Bulgarian:	Износ на зърнени култури по море — член 13, втора алинея от Регламент (ЕО) № 127/2009
— in Spanish:	Exportación de cereales por vía marítima; artículo 13, párrafo segundo, del Reglamento (CE) n.º 127/2009
— in Czech:	Vývoz obilovin po moři – čl. 13 druhý pododstavec nařízení (ES) č. 127/2009
— in Danish:	Eksport af korn ad søvejen — Artikel 13, stk. 2, i forordning (EF) nr. 127/2009
— in German:	Getreideausfuhr auf dem Seeweg — Verordnung (EG) Nr. 127/2009, Artikel 13 Absatz 2
— in Estonian:	Teravilja eksport meritsi – määruse (EÜ) nr 127/2009 artikli 13 teine lõik
— in Greek:	Εξαγωγή σιτηρών διά θαλάσσης — Άρθρο 13 δεύτερο εδάφιο του κανονισμού (ΕΚ) αριθ. 127/2009
— in English:	Export of cereals by sea — second paragraph of Article 13 of Regulation (EC) No 127/2009
— in French:	Exportation de céréales par voie maritime — Règlement (CE) n.º 127/2009, article 13, deuxième alinéa
— in Irish:	Onnmhairiú gránach ar muir — an dara mir d' Airteagal 13 de Rialachán (CE) Uimh. 127/2009
— in Italian:	Esportazione di cereali per via marittima — articolo 13, secondo comma, del regolamento (CE) n. 127/2009
— in Latvian:	Labības izvešana pa jūras ceļiem – Regular (EK) Nr. 127/2009 13. panta otrā daļa
— in Lithuanian:	Grūdų eksportas jūra – Reglamento (EB) Nr. 127/2009 13 straipsnio antra pastraipa
— in Hungarian:	Gabonafélék exportja tengeri úton – 127/2009/EK rendelet 13. cikkének második albekezdése
— in Maltese:	L-esportazzjoni ta' ċereali bil-baħar – L-Artikolu 13, it-tieni subparagrafu, tar-Regolament (KE) Nru 127/2009
— in Dutch:	Uitvoer van graan over zee — Artikel 13, tweede alinea, van Verordening (EG) nr. 127/2009
— in Polish:	Wywóz zbóż drogą morską – art. 13 akapit drugi rozporządzenia (WE) nr 127/2009
— in Portuguese:	Exportação de cereais por via marítima — Artigo 13.º, segundo parágrafo do Regulamento (CE) n.º 127/2009
— in Romanian:	Export de cereale pe cale maritimă – Regulamentul (CE) nr. 127/2009, articolul 13, al doilea paragraf
— in Slovak:	Vývoz obilnín po mori – článok 13 druhý odsek nariadenia (ES) č. 127/2009
— in Slovenian:	Izvoz žit s pomorskim prometom – drugi odstavek člena 13 Uredbe (ES) št. 127/2009
— in Finnish:	Viljan vienti meritse – Asetuksen (EY) N:o 127/2009 13 artiklan toinen kohta
— in Swedish:	Export av spannmål genom sjötransport – artikel 13 andra stycket i förordning (EG) nr 127/2009

ANNEX III

Correlation table

Regulation (EEC) No 2131/93	This Regulation
Article 1	Article 1
Article 2(1)	Article 2
Article 2(2)	Article 6(1)
Article 3	Article 3
Article 4	Article 6(2)
Article 5	Article 7
Article 6	Article 8
Article 7(1)	Article 2
Article 7(2)	Article 9(1)
Article 7(2a)	Article 9(2)
Article 7(3)	Article 9(3)
Article 8	Article 10(2) to (5)
Article 9	Article 11
Article 10	Article 14
Article 11	Article 12
Article 12	Article 3
Article 12a	Article 18
Article 13(2)	Article 5(1)
Article 13(3)	Article 10(1)
Article 13(4) first subparagraph	Article 5(2)
Article 13(4) second subparagraph	Article 5(3)
Article 14	Article 4
Article 15	Article 15
Article 16	Article 16
Article 17(1)	Article 17(1)
Article 17(2) introductory sentence	Article 17(2) introductory sentence
Article 17(2) first indent	Article 17(2)(a)
Article 17(2) second indent	Article 17(2)(b)
Article 17(3) introductory sentence	Article 17(3) introductory sentence
Article 17(3) first indent	Article 17(3)(a)
Article 17(3) second indent	Article 17(3)(b)
Article 17(3) third indent	Article 17(3)(c)
Article 17(3) fourth indent	Article 17(3)(d)
Article 17(4) introductory sentence	Article 17(4) introductory sentence
Article 17(4) first indent	Article 17(4)(a)
Article 17(4) second indent	Article 17(4)(b)
Article 17(5)	Article 17(5)
Article 17a first paragraph introductory sentence	Article 13 first paragraph introductory sentence
Article 17a first paragraph first indent	Article 13 first paragraph, point (a)
Article 17a first paragraph second indent	Article 13 first paragraph, point (b)
Article 17a first paragraph final part	Article 13 first paragraph introductory sentence
Article 17a second paragraph	Article 13 second paragraph
Article 18	—
—	Article 19
Article 19	Article 20
Annex	Annex I
—	Annex II
—	Annex III