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REGULATION (EEC) No 376/70 OF THE COMMISSION

of 27 February 1970

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 No 120/67/EEC[1] of 13 June 1967 on the common organisation of the market in cereals, as last amended by Regulation (EEC) No 2463/69[2] and in particular Article 7 (5) thereof;

Whereas, in accordance with Article 3 (1) (a) of Council Regulation No 132/67/EEC[3] of 13 June 1967 laying down general rules for intervention on the market in cereals, the disposal on the internal market of cereals held by the intervention agency must be on the basis of price conditions such as will not cause a deterioration of the market; whereas this object can be achieved if the selling price corresponds to the market price without being lower than a given level in relation to the intervention price;

Whereas cereals must normally be offered under the price conditions ruling in the area of storage; whereas, nevertheless, in order to facilitate disposal and to avoid storage costs, it should be possible, in exceptional cases, to offer the cereals under price conditions ruling at a marketing centre where they are not stored; whereas the reimbursement of certain transport costs is needed to enable such sales operations to take place;

Whereas, under Article 4 (3) of Regulation No 120/70/EEC, the intervention prices valid for August of the following marketing year also apply in June and July, except for maize; whereas this provision, which corresponds to an economic need for the taking over but not for the disposal of cereals by the intervention agency, cannot be applied to this Regulation without harming the economy of the system, since cereals bought in by the intervention agency before 1 June could be resold during the same marketing year at a price lower than their buying-in price;

Whereas, in accordance with Article 3 (1) (b) of Regulation No 132/67/EEC, disposals by tender with a view to export must be effected on the basis of price conditions to be determined case by case according to market trends and requirements; whereas such invitations to tender arise from the need for intervention agencies to dispose of the stocks in their possession; whereas, however, they must not cause distortions detrimental to normal exports; whereas, consequently, a minimum price should be fixed in each case by the Commission; whereas, the better to take account of market trends, this minimum price should not be determined until the time limit for the submission of tenders has expired;

Whereas, so that invitations to tender may proceed smoothly in cases where special situations have been taken into account, the tenderer should be required to apply for an export licence with advance fixing of the refund;

Whereas to take into account the position of an exporter, who has been awarded a contract, on the market of certain third countries referred to in Article 3 (1) (a) of Commission Regulation No 473/67/EEC[4] of 21 August 1967 on import and export licences for cereals, processed cereal products, rice, broken rice and processed rice products, as last amended by Regulation (EEC) No 2247/69[5] provision should be made for cancelling the contract in certain circumstances;

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[1] OJ No 117, 19.6.1967, p. 2269/67.
[2] OJ No L 312, 12.12.1969, p. 3.
[3] OJ No 120, 21.6.1967, p. 2364/67.
[4] OJ No 204, 24.8.1967, p. 16.
[5] OJ No L 285, 13.11.1969, p. 9.

Whereas standing invitations to tender and sales by public auction may facilitate the disposal of cereals and such sales procedures are sometimes better suited to commercial practice;

Whereas when inviting tenders for export the lodging of a special deposit guaranteeing that the cereals will not be put back on the Community market should be required;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Cereals;

HAS ADOPTED THIS REGULATION:

Article 1

Cereals held by intervention agencies shall be remarketed by way of invitation to tender under the conditions laid down in the following Articles.

Article 2

1. Invitation to tender means offering for sale by inviting tenders, the contract being awarded to the person or persons tendering on the most favourable terms and conditions, in conformity with the provisions of this Regulation.

Each invitation to tender shall be made public. Intervention agencies shall provide all relevant information about the different lots (specific weight, moisture, impurities, crop year), indicate where they are stored and allow those concerned to inspect them.

2. The basis of tenders must be a standard quality of cereal as laid down in Council Regulation (EEC) No 768/69[1] of 22 April 1969.

When the quality of the cereal differs from the standard quality, the accepted tender shall be adjusted by the price increase or reduction adopted in pursuance of Article 7 (5) of Regulation No 120/67/EEC.

3. If the cereals are removed later than the month in which the contract was awarded, the price to be paid by the contractor shall be increased monthly by an amount not less than the monthly increase in the intervention price.

Article 3

The following provisions shall apply to invitations to tender for a sale on the Community market:

1. A tender for less than 50 metric tons of any one cereal may be refused. For durum wheat, however, this minimum is reduced to 5 metric tons.

2. (a) If the offered cereals are stored at a marketing centre, their selling price must be not less than the local market price and may not, in any circumstances, be lower than the intervention price valid at that centre plus 1·50 units of account per metric ton;

   (b) If the offered cereals are stored elsewhere, the selling price must be not less than the local market price or, failing this, the price on the nearest market. In no circumstances may it be lower than the price for this locality, calculated in accordance with Article 2 (2) of Regulation No 132/67/EEC, plus 1·50 units of account per metric ton; for these purposes the marketing centre shall be chosen by the intervention agency from the three nearest centres within the meaning of Article 1 of that Regulation;

   (c) Exceptionally it may be decided, in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC, that, by way of derogation from the provisions of (a) and (b) and under conditions to be determined, cereals may be offered for a marketing centre where they are not stored. In such case the criteria laid down in (a) on the selling prices to be observed shall apply for this centre. If the most advantageous transport costs between the place of storage and the place of destination of the cereal exceed the most advantageous transport costs between the marketing centre for which the cereal is offered and the place of destination, the difference between these costs shall be reimbursed by the intervention agency;

   (d) For application of the provisions of (a), (b) and (c) to common wheat denatured by the intervention agency, the operative market price shall be that for barley and the intervention price shall be the price for this cereal plus 0·50 units of account per metric ton.

3. During June and July the intervention prices operative for the application of paragraph 2 shall, except for maize, be those valid for May.

[1] OJ No L 100, 28.4.1969, p. 8.

Article 4

The provisions of Article 2 and of Article 3, save those of paragraph 2 (c), shall also apply to sales by public auction.

Article 5

1. At the request of a Member State it may be decided, in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC, to permit the intervention agency of that Member State to invite tenders for export. In such a decision the Commission shall determine, on the basis of information supplied by that Member State, the following:

(a) the quantities to be put out to tender;

(b) the regions where these quantities are stored;

(c) the places for which the minimum selling price mentioned in paragraph 2 is effective and for which tenders are to be submitted;

(d) the final date by which tenders must be submitted.

2. When the time limit for the submission of tenders has expired, the Member State concerned shall provide the Commission with a list of the tenders, without names, showing in each case the price, expressed in units of account per metric ton, and the quantity. The Commission, acting in accordance with the procedure referred to in paragraph 1, shall fix the minimum selling price on the basis of such tenders or shall decide to cancel the invitation to tender.

This minimum price shall be fixed at such a level that it does not prejudice other exports of the cereal in question. It shall be fixed in terms of a standard quality of cereal.

3. A tender shall be valid only if it is accompanied by a written undertaking by the tenderer, endorsed by a credit institution, to lodge a special deposit of 10 units of account per metric ton not later than two working days after receipt of notification that the contract has been awarded to him.

This deposit shall only be returned for the quantity in respect of which:

— the contractor furnishes proof that it has been exported or that it has become unfit for human or animal consumption;

— the provisions of paragraph 6 have been applied.

4. A tender may indicate that it shall only be considered as submitted if the award of the contract relates to the whole quantity tendered for or a specified part thereof.

5. In special cases, the decision to be taken in accordance with paragraph 1 may lay down that a tender is only valid if it accompanied by an application for an export licence submitted by the tenderer for the quantity tendered for and by an application for advance fixing of a refund resulting from the application of Article 6 of Council Regulation No 139/67/EEC[1] of 21 June 1967. However, that licence shall only be issued for the awarded quantity.

6. If tenders are invited for an export to a country referred to in Article 3 (1) (a) of Regulation No 473/67/EEC and if the provisions of paragraph 5 are applied to this invitation, the intervention agency may, at the request of the contractor, cancel the contract for the quantity in respect of which it is shown that the contractor's offer has not been accepted in that country.

When the provisions of the preceding subparagraph are applied the Member State concerned shall immediately inform the Commission thereof by telex.

7. (a) At the request of a Member State, the decision taken in accordance with paragraph 1 may provide that an invitation to tender should follow a standing tendering procedure.

(b) Under this standing tendering procedure the intervention agency shall lay down the dates on which tenders may be submitted.

(c) After each time limit for the submission of tenders has expired the Member State concerned shall communicate to the Commission a list of the tenders, without names, showing in each case the price expressed in units of account per metric ton, and the quantity. In accordance with the procedure referred to in paragraph 1 the Commission shall fix the minimum selling price on the basis of such tenders or shall decide not to accept any of them.

(d) The provisions of the second subparagraph of paragraph 2 and of paragraphs 3 and 4 shall apply.

8. Except by way of derogation decided on under the procedure referred to in paragraph 1, invitations to tender for export shall not be made for a quantity of less than 500 metric tons.

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[1] OJ No 125, 26.6.1967, p. 2453/67.

Article 6

1. At the request of a Member State it may be decided, in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC, to dispose of cereals for export by way of public auction. In such a decision the Commission shall determine, on the basis of information supplied by that Member State, the following:

(a) the quantities for disposal;

(b) the regions where these quantities are stored;

(c) the places for which the minimum selling price mentioned in paragraph 3 is effective and for which bids are to be made;

(d) the date, time and place fixed for the sale by public auction.

2. Sale by public auction may be used only for the disposal of quantities not exceeding 10 000 metric tons.

3. The Commission, acting in accordance with the procedure referred to in paragraph 1, shall fix the minimum selling price not later than one working day before the date referred to in paragraph 1 (d).

4. The special deposit provided for in Article 5 (3) must be lodged not later than two working days after the award of the contract. It shall only be returned for a quantity in respect of which the contractor furnishes proof that it has been exported or that it has become unfit for human or animal consumption.

5. The provisions of the second subparagraph of Article 5 (2) shall apply.

Article 7

Intervention agencies shall lay down, where necessary, additional provisions and conditions consistent with the provisions of this Regulation.

Article 8

In the week following each sale the Member State concerned shall inform the Commission of the outcome, indicating in particular the selling price, the quantity sold and the place where the cereals were stored when they were put out to tender.

Article 9

Commission Regulation No 160/67/EEC[1] of 23 June 1967 laying down the procedure and conditions for the disposal of cereals held by intervention agencies is hereby repealed.

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

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

Done at Brussels, 27 February 1970.

For the Commission

The President

Jean REY

[1] OJ No 128, 27.6.1967, p. 2545/67.