COMMISSION REGULATION (EEC) No 1226/77

of 8 June 1977

laying down rules for the sale of olive oil held by the intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats (1), as last amended by Regulation (EEC) No 1707/73 (2), and in particular Article 11 (5) thereof,

Whereas Commission Regulation (EEC) No 589/68 of 14 May 1968 on detailed rules for the sale of olive oil held by intervention agencies (3), as last amended by Regulation (EEC) No 782/77 (4), laid down the conditions for the sale by tender on the Community market of oil held by the intervention agencies ; whereas experience has shown that the procedure laid down in that Regulation does not enable the oil in question to be put up for sale under the most favourable conditions ;

Whereas olive oil held by the intervention agencies must be sold without discrimination among Community purchasers and on the best possible terms ; whereas sale by tender seems an appropriate procedure for this purpose ;

Whereas, however, certain special situations may call for the use of other procedures ;

Whereas, in order to ensure that the olive oil is sold when the market situation is most favourable, sales should be subject to a decision taken in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC ;

Whereas, where there is a risk of market disturbance, provision should be made for limiting the quantity which may be awarded to any one tenderer ;

Whereas, since the object of holding an invitation to tender is to obtain the best price, contracts should be awarded to the tenderers quoting the highest prices, subject always to a minimum price established by reference to the market situation ;

Whereas, moreover, provisions should be laid down to deal with cases where two or more tenders relating to the same quantity quote the same price ;

Whereas in some cases olive-residue oil is stored in especially large containers ; whereas the purchase of such quantities can interest only a limited number of traders ;

Whereas the transfer of such oil to other containers might pose technical problems ; whereas provision should therefore be made whereby such oil may be sold in more than one lot ;

Whereas, in order to ensure that the sales take place in a proper manner, provisions must be made for certain information to be given in the invitation to tender and in each tender ;

Whereas prospective tenderers should be encouraged by being permitted to familiarize themselves with the characteristics of the products on sale ; whereas, as a corollary to this facility, such persons must be required to waive all claims regarding the characteristics of any oil eventually awarded to them ;

Whereas, in order to guarantee performance of the obligations resulting from the submission of a tender, provision should be made for the lodging of a security ;

Whereas, since the quantity of oil sold may be different from that actually withdrawn, the final selling price cannot be calculated until withdrawal has been completed ; whereas, in order to ensure that the sale is properly conducted, the provisional price should be paid before withdrawal ;

Whereas, in order to ensure the rapid disposal of the oil sold, the time at which the oil must be placed at the purchaser's disposal and the final date for completion of the withdrawal of the oil should be laid down ; whereas it should also be provided that any consequences of delay in withdrawal should be borne by the purchaser ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

(1) OJ No 172, 30. 9. 1966, p. 3025/66.
(2) OJ No L 175, 29. 6. 1973, p. 5.
(3) OJ No L 112, 15. 5. 1968, p. 6.
(4) OJ No L 95, 19. 4. 1977, p. 13.

HAS ADOPTED THIS REGULATION :

Article 1

Intervention agencies may sell olive oil held by them only after a decision in respect of such sale has been taken in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

This Decision shall relate in particular, to :

— the quantity and quality of the oil to be put up for sale,

— the method of sale,

— the date or dates of publication of the notice of sale,

— the date or dates of the sale,

— where appropriate, the maximum quantity which may be awarded to each tenderer.

Article 2

1. The olive oil held by intervention agencies shall be sold by tender. However, in special circumstances, it may be sold by some other procedure.

2. The terms of the invitation to tender or other selling procedure must ensure equal access and treatment to all prospective purchasers irrespective of their place of establishment in the Community.

Article 3

'Sale by tender' means a procedure whereby all interested parties are invited to submit offers, the contract for each lot being awarded to the person offering the highest price, provided always that such price is at least equal to a set minimum price.

Such minimum price shall be fixed in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC :

— either in the decision providing for the opening of the invitation to tender, or

— on the basis of the tenders received.

Where, however, no minimum price has been fixed pursuant to the first indent, a decision may be taken, in accordance with the aforesaid procedure and in the light of the tenders received, to make no award.

Article 4

Where it is decided that the sale is to be by tender, the intervention agency concerned shall draw up the invitation to tender. This invitation shall be communicated to the Commission without delay.

The invitation shall be published by *inter alia* being placed on public display at the office of the intervention agency.

Article 5

1. The invitation to tender shall specify all the terms and conditions of the invitation to tender, including in particular the following :

(a) the quantity of oil in each lot ;

(b) the name of the storage depot and the place of storage of each lot, together with the number of such lot ;

(c) the quality of the oil constitution each lot ;

(d) the minimum price, if any ;

(e) the time limit and place for the submission of tenders ;

(f) the date or dates of sale ;

(g) the amount of the security referred to in Article 8.

2. For the purposes of this Regulation, 'lot' means the quantity of olive oil contained in a single container.

However, in the case of olive-residue oil, if the oil contained in one container exceeds a quantity to be determined, the intervention agency concerned may be authorized to make up a lot out of part only of that oil.

3. The minimum price shall be net of tax and relate to 100 kilograms of olive oil delivered ex-storage depot, either in the purchaser's own drums loaded on a vehicle provided by him or in the purchaser's tank vehicle.

Article 6

Prospective purchasers may examine at the storage depot the oil offered for sale and may obtain a sample thereof, in containers supplied by them for that purpose, on payment of a price determined on the basis of either the minimum price fixed in the invitation to tender or the price at which the oil was bought in by the intervention agency.

This sample shall be put into two labelled bottles, which shall be sealed in the presence of both the storer and the prospective purchaser or his duly authorized agent.

One bottle shall be given to the prospective purchaser and the other to the storer, so that, in the event that oil is sold to the former, a check may be made to ensure that, subject as provided in the last sentence of Article 14 (1), the oil applied for by him corresponds to that actually delivered.

Article 7

1. Tenders, which shall be in writing, shall either be delivered personally to the intervention agency against acknowledgment of receipt or sent to the intervention agency by registered letter, telex or telegram.

2. Tenders shall indicate in particular :

(a) the name and full postal address of the tenderer ;

(b) the number or numbers of the lot or lots concerned, the name of the storage depot, and the place of storage ;

(c) the offer price per 100 kilograms.

3. Any tender not stating a price at least equal to the minimum price fixed for the product in question shall be refused.

4. Each tender must relate to all the oil contained in at least one lot.

5. Tenders may not be withdrawn.

6. A tender shall be valid only if it is accompanied by :

(a) a security ;

(b) a statement by the tenderer waiving any claim as to the accuracy of the description under which the oil concerned is offered for sale.

Article 8

1. The security shall be in cash or by way of a guarantee issued by a credit institution satisfying the criteria laid down by the Member State in which it is situated.

2. The security shall be released if no sale is made to the party concerned. It shall likewise be released when the purchaser pays the final amount of the price referred to in Article 14.

Article 9

The oil in each particular lot shall be sold to the tenderer having submitted a valid tender offering the highest price. Where the same highest bid is made by more than one tenderer the purchaser shall be chosen by lot by the intervention agency.

Article 10

The intervention agency shall immediately inform each tenderer by registered letter of the result of his participation in the invitation to tender.

Article 11

1. On receipt by the successful tenderer of the information referred to in Article 10, the container or containers awarded shall be sealed in the presence of both parties. The container or containers concerned shall remain sealed until withdrawal of the oil by the purchaser.

2. In addition, in the case of lampante oils and olive-residue oils, an acidity analysis shall be carried out in the presence of both parties before the placing of the seals referred to in paragraph 1. If the degree of acidity as so determined does not correspond to that in respect of which the minimum price was fixed, the selling price shall be adjusted upwards or downwards by amounts to be determined.

3. Where sealing in the presence of both parties has not been effected within 20 days following the dispatch of the information referred to in Article 10, the intervention agency shall forthwith itself seal the containers awarded. Where the oil awarded is a lampante oil or an olive-residue oil, the intervention agency shall, before sealing, effect an analysis of the acidity of the oil.

Article 12

1. The purchaser shall pay to the intervention agency, before withdrawing the oil and in any event not later than the 30th day following receipt of the information referred to in Article 10, the provisional amount of the selling price. Without prejudice to any domestic taxes applicable, such amount shall be calculated by multiplying the quantity indicated as being contained in the lot by the price offered for that lot.

2. If the provisional amount is not paid to the intervention agency within the period laid down in paragraph 1, the sale shall, without any special formality or invocation of legal process, be cancelled. In that event, the security referred to in Article 8 shall be forfeit.

Article 13

1. Purchasers shall withdraw the entire lot awarded. Withdrawal may begin as soon as the provisional amount referred to in Article 12 (1) has been paid ; it shall be completed not later than the 40th day following the sale of the oil.

2. The quantity of oil delivered to the tenderer may differ from the quantity in respect of which the tender was submitted, depending on the actual quantity in the container at the time of delivery.

Article 14

1. When the withdrawal of the oil is complete the intervention agency shall draw up an invoice for the final amount of the selling price.

Without prejudice to any domestic tax applicable, the final amount shall be calculated by multiplying the quantity actually withdrawn, after the weight of water and impurities above 0·2 % in the case of virgin olive oil and 0·5 % in the case of olive-residue oil has been deducted, by the price offered for the lot in question. The weight of water and impurities shall be determined at the time of delivery by an analysis of a representative sample.

2. The invoice shall show the debit or credit balance, which shall be equal to the difference between :

— the provisional amount,

— the final amount of the selling price plus any storage charge payable pursuant to Article 15 (b).

The balance shall be paid within 30 days following completion of withdrawal of the oil.

Article 15

If withdrawal of the oil is not completed by the date laid down in Article 14 (1) :

(a) the oil remaining in storage shall be held at the purchaser's own risk ;

(b) the purchaser shall pay to the intervention agency a storage charge calculated by reference to the quantity to be withdrawn plus an amount to be determined for each period of 30 days of additional storage or part thereof.

Article 16

Regulation (EEC) No 589/68 is hereby repealed.

Article 17

This Regulation shall enter into force on the day of 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, 8 June 1977.

For the Commission

Finn GUNDELACH

Vice-President