COMMISSION REGULATION (EEC) No 1092/80

of 2 May 1980

laying down detailed rules for granting private storage aid for pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat (1), as last amended by Regulation (EEC) No 1423/78 (2), and in particular Article 5 (4), Article 7 (2) and the second paragraph of Article 22 thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the rates of exchange to be applied in agriculture (3), as last amended by Regulation (EEC) No 779/80 (4),

Whereas detailed rules for granting private storage aid for pigmeat must be adopted in addition to the general rules laid down by Council Regulation (EEC) No 2763/75 (5);

Whereas, if it is to achieve its purpose, such aid should be granted only to natural or legal persons established in the Community whose past activities and experience in the sector are such as to guarantee that storage will be effected in a satisfactory manner and who have adequate cold storage capacity within the Community; whereas, for the same reason, aid should be granted only for the storage of products which have been obtained from recent slaughterings and which are stored in a frozen state or as preserved or other processed products;

Whereas, to make the aid more effective, it should be stipulated that contracts must relate to not less than a certain quantity, varied if necessary according to product;

Whereas, for the same reason, the contract between the intervention agency and the storer should specify the obligations to be fulfilled by the latter, in particular those enabling the intervention agency to undertake an effective control of storage conditions;

Whereas, both to take account of commercial practice and for practical reasons, certain margins of variation from the agreed quantity should be permitted;

Whereas the amount of the security designed to ensure compliance with the contractual obligations should be fixed at a percentage of the aid figure; whereas, however, it is possible to provide for partial release of the security where part of the quantity contracted for has been stored;

Whereas, in certain cases, although the principal obligation to store has been fulfilled, certain ancillary requirements, such as administrative formalities, have not been met; whereas the intervention agencies should be enabled to settle such cases equitably and without delay;

Whereas Article 4 (1) of Regulation (EEC) No 2763/75 provides that the amount of aid for private storage may be determined by means of a tendering procedure; whereas Articles 4 and 5 of the same Regulation contain rules to be observed in connection with this procedure; whereas, however, more detailed rules are necessary for that purpose;

Whereas, to ensure equal treatment for all interested parties in the Community, notices of invitation to tender should be published in the *Official Journal of the European Communities*;

Whereas, to ensure that the tendering procedure is effective, only those tenders which contain the information necessary for their assessment and include a formal undertaking by the tenderer to ensure performance of the storage operations should be accepted;

Whereas certain rules regarding the scrutiny of tenders and their transmission to the Commission by the Member States should be laid down;

(1) OJ No L 282, 1. 11. 1975, p. 1.
(2) OJ No L 171, 28. 6. 1978, p. 19.
(3) OJ No L 106, 29. 4. 1977, p. 27.
(4) OJ No L 85, 29. 3. 1980, p. 45.
(5) OJ No L 282, 1. 11. 1975, p. 19.

Whereas the purpose of adopting the tendering procedure is to determine the amount of the aid ; whereas, in the selection of tenders, preference should be given to those which are most advantageous for the Community ; whereas, to that end, a maximum amount of aid may be set for which tenders would be accepted ; whereas, if no tender is acceptable, none need be accepted ;

Whereas, so that the Commission may have an overall view of the effect of private storage aid, the Member States should supply it with the necessary information ;

Whereas the present Regulation incorporates the provisions of Commission Regulation (EEC) No 1889/76 of 29 July 1976 laying down detailed rules for granting private storage aid for pigmeat [1] ; whereas that Regulation should therefore be repealed ;

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

HAS ADOPTED THIS REGULATION :

Article 1

The granting of private storage aid, as provided for in Article 3 of Regulation (EEC) No 2759/75, shall be subject to the conditions contained in this Regulation.

TITLE I

General provisions

Article 2

1. A contract for the private storage of pigmeat may be concluded only with natural or legal persons :

— carrying on business in the meat and livestock sectors and officially registered in a Member State, and

— having suitable storage facilities at their disposal within the Community.

2. Private storage aid may be granted only for products derived from animals of Community origin slaughtered in the Community not more than 10 days before the date on which the products are placed in storage. These products may be stored :

— frozen, or

— in the form of dried or dried and smoked hams, the preparation of which requires a maturing period of at least five months before consumption, or

— in the form of preserved products containing not less than 80 % pigmeat.

3. Contracts may not relate to less than a minimum quantity to be determined for each product.

Article 3

1. Contracts shall include the following particulars :

(a) a description of the product to be stored and the quantity ;

(b) the time limit for placing in storage the total quantity referred to in (a) ;

(c) the duration of storage ;

(d) the amount of the aid per unit of weight ;

(e) the form and amount of the security ;

(f) a provision enabling the storage period to be curtailed or extended in accordance with Article 3 of Regulation (EEC) No 2763/75.

2. Contracts shall impose the following obligations on the storer :

(a) at his own risk and expense to take the agreed quantity of the product into storage within the time limits laid down and to store it for the stipulated period, and during that period not to alter the stored products in any way or to exchange them for other products or to transfer them from one store to another ;

(b) to advise the intervention agency with which he has concluded the contract, in due time before entry into store, of the date and place of storage and the nature and quantity of the products to be stored, and, in the case of dried or dried and smoked hams, of the place and date of commencement of drying, and where applicable, smoking operations ; the intervention agency may require that it be advised two working days before entry into store ;

(c) to forward the supporting documents relating to the storage operations as soon as possible to the intervention agency ;

(d) to store the products in easily identifiable lots, on which the weight and date of entry into store are clearly marked ;

(e) to permit the intervention agency at all times to check that all the obligations laid down in the contract are being observed.

3. The obligation to store the agreed quantity shall be considered as fulfilled if not less than 90 % of that quantity has been taken into storage and stored in accordance with paragraph 2 (a).

In the case of dried or dried and smoked hams, the quantity of the product must be shown in the contract both as a number of items and by weight. The weight of the finished product may not be less than 70 % of the weight of the fresh product as ascertained before drying or drying and smoking.

[1] OJ No L 206, 31. 7. 1976, p. 82.

Article 4

1. Applications for contracts or tenders as well as contracts shall relate to a single product only.

2. Applications for contracts or tenders shall not be accepted unless they include the particulars and obligations referred to in Article 3 (1) and (2) and proof has been furnished that a security has been provided.

The security shall be paid to the intervention agency concerned or shall be furnished in the form of a guarantee meeting the requirements laid down by the Member State concerned.

Article 5

1. The amount of the security shall not exceed 30 % of the amount of aid applied for.

2. Except in cases of *force majeure*:

(a) the security shall be forfeit proportionately to the shortfall on the quantity agreed in the contract if less than 90 % of that quantity is entered into storage within the time limits laid down and remains stored for the stipulated period in accordance with Article 3 (2) (a);

(b) if any of the obligations laid down in Article 3 (2) (b), (c), (d) and (e) are not complied with, the competent authority of the Member State concerned shall declare the security wholly or partially forfeit, depending on the gravity of the breach of contract; the competent authorities of the Member States shall notify monthly the Commission of such cases, the circumstances and the action taken;

(c) where the other obligations are not complied with, the security shall be totally forfeit.

3. The security shall be released as soon as it is established that the conditions of the contract have been fulfilled, or in the event of an application for a contract or a tender being refused.

Article 6

1. The amount of aid shall be fixed per unit of weight and shall relate:

(a) in the case of frozen products, to their weight, exclusive of packaging, as ascertained on entry into store and before freezing;

(b) in the case of dried or dried and smoked hams, to the weight of the fresh products as ascertained before drying or drying and smoking; and

(c) in the case of preserved products, to the net weight.

2. Subject to the second sentence of paragraph 3, the storer shall be entitled to aid if the obligations referred to in Article 3 (2) (a) are fulfilled.

3. The aid shall be paid, on application by the person entitled thereto, as soon as possible after the intervention agency has established that the conditions of the contract have been fulfilled. Aid shall be paid for quantities actually stored within the limit of the quantities specified by the contract.

Article 7

The conversion rate to be applied to the amounts of private storage aid shall be the representative rate in force on the day a contract is concluded, where the amount of the aid is fixed at a flat rate in advance or on the day on which the time limit for the submission of tenders expires where the aid is granted by tender.

Article 8

The storage period shall begin on the day on which entry into store is completed.

In the case of dried or dried and smoked hams, the effective storage period shall begin on the 151st day after the commencement of the drying or drying and smoking operations.

Article 9

In the event of *force majeure*, the competent authority of the Member State concerned shall decide on the measures which it deems necessary having regard to the circumstances invoked.

That authority shall inform the Commission of each case of *force majeure* and of the action taken in respect thereof.

TITLE II

Special provisions

Article 10

Where the amount of aid is fixed at a flat rate in advance:

(a) the application for a contract shall be lodged with the competent intervention agency in accordance with Article 4;

(b) the intervention agency concerned shall, within five working days following the day on which an application for a contract is lodged with the agency, communicate to the person concerned the decision concerning that application by registered letter, by telex or against written acknowledgement.

If the application is accepted, the contract shall be regarded as being concluded on the date of the said communication.

Article 11

1. Where private storage aid is granted by tender:

(a) the Commission shall draw up and publish in the *Official Journal of the European Communities* a notice of invitation to tender setting out the general conditions and specifying the products to be stored, the time limit (date and hour) for the submission of tenders and the minimum quantities in respect of which a tender may be submitted;

(b) tenders must be submitted to the intervention agency concerned in accordance with Article 4;

(c) tenders shall be examined in private session by the appropriate agencies of the Member States; persons present at the examination shall be sworn to secrecy;

(d) tenders submitted must be forwarded anonymously to the Commission by way of the Member States to arrive not later than the second working day following the time limit for the submission of tenders specified in the invitation to tender;

(e) where no tenders are submitted, Member States shall so inform the Commission within the same time limit as that specified in (d);

(f) on the basis of the tenders received, the Commission shall decide in accordance with the procedure laid down in Article 24 of Regulation (EEC) No 2759/75, either to fix a maximum amount for private storage aid, taking account of the criteria laid down in Article 4 (2) of Regulation (EEC) No 2763/75, or to make no award;

(g) where a maximum amount for private storage aid is fixed, tenders which are lower than or equal to this amount shall be accepted.

2. Within five working days following the day on which the Member States are notified of the decision of the Commission, the intervention agency concerned shall communicate to each tenderer the decision taken on his tender by registered letter, by telex, or against written acknowledgement.

Where a tender is accepted, the contract shall be regarded as being concluded on the date of issue of the said communication.

TITLE III

Final provisions

Article 12

1. Member States shall inform the Commission of all provisions adopted in application of this Regulation.

2. Member States shall notify the Commission by telex:

(a) before Thursday in each week and by storage periods, of the products and quantities which have been the subject of applications for conclusion of contracts and of the products and quantities for which contracts have been concluded during the preceding week, giving a summary of the products and quantities for which contracts have been concluded;

(b) every month, of the products and total quantities actually in storage and of the products and total quantities in respect of which the storage period has been terminated.

3. The application of the measures provided for in this Regulation shall be subject to regular examination in accordance with the procedure laid down in Article 25 of Regulation (EEC) No 2759/75.

Article 13

Regulation (EEC) No 1889/76 is hereby repealed.

Article 14

This Regulation shall enter into force on the 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, 2 May 1980.

For the Commission

Finn GUNDELACH

Vice-President