COMMISSION REGULATION (EEC) No 428/90

of 20 February 1990

on the sale, under the procedure laid down in Regulation (EEC) No 3143/85, of butter held by certain intervention agencies and intended for direct consumption in the form of concentrated butter

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products (1), as last amended by Regulation (EEC) No 3879/89 (2), and in particular Article 6 (7) thereof,

Whereas Article 2a of Commission Regulation (EEC) No 3143/85 of 11 November 1985 on the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter (3), as last amended by Regulation (EEC) No 2690/89 (4), introduces the option of selling intervention butter in two stages, firstly by tendering and secondly at prices fixed at a standard rate in advance;

Whereas Commission Regulation (EEC) No 242/90 (5) concerning the sale of 2 800 tonnes of intervention butter did not reach its desired goal; whereas it is therefore necessary to repeal the said Regulation and to put back on sale the quantities still held by the relevant agencies;

Whereas in view of the current butter stock situation it is possible to offer butter for sale in accordance with the conditions laid down in the Annexes to this Regulation;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The following quantities of intervention butter intended for direct consumption in the form of concentrated butter shall be put up for sale in two stages pursuant to Article 2a of Regulation (EEC) No 3143/85:

— 800 tonnes held by the Irish intervention agency and taken into storage before 1 June 1987,

— 1 400 tonnes held by the United Kingdom intervention agency and taken into storage before 1 July 1987.

2. The intervention agencies referred to in paragraph 1 shall sell first the butter which has been stored the longest.

3. The sales shall be conducted in accordance with the provisions of Regulation (EEC) No 3143/85 and this Regulation.

4. The minimum prices referred to in Article 2a (3) of Regulation (EEC) No 3143/85 are given in Annex I hereto.

5. Only those tenders which reach the intervention agencies concerned not later than 12 noon on 27 February 1990 and those applications for purchase submitted from the fifth working day following the above deadline shall be taken into consideration.

6. Particulars relating to the quantities and the places where the products are stored may be obtained from the addresses given in Annex II.

Article 2

1. Tenders, which shall be in writing, shall be submitted either by registered post or delivered by hand to the intervention agency against acknowledgement of receipt, or by any written means of telecommunication.

2. Tenders shall state:

(a) the name and address of the tenderer;

(b) the price offered per 100 kilograms of butter having the fat content required, exclusive of internal taxes, ex coldstore, expressed in the currency of the Member State on whose territory the butter is stored;

(c) the quantity of butter applied for, stating its fat content;

(d) the establishment where the total quantity of butter is to be concentrated and packed in accordance with Articles 4 and 5 of Regulation (EEC) No 3143/85 and, where appropriate, the establishment where the total quantity of concentrated butter is to be packed for marketing. However, with the agreement of the competent agency, the total quantity of concentrated butter may be packed for marketing in an establishment other than that indicated in the tender;

(e) where appropriate, the Member State on whose territory the butter is to be processed into concentrated butter and tracers are to be added.

3. A tender shall not be valid unless:

(a) it is accompanied by a written undertaking to use in accordance with Regulation (EEC) No 3143/85 the quantity of butter stipulated in the tender for processing into concentrated butter;

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 378, 27. 12. 1989, p. 1.
(3) OJ No L 299, 12. 11. 1985, p. 9.
(4) OJ No L 261, 7. 9. 1989, p. 6.
(5) OJ No L 27, 31. 1. 1990, p. 5.

(b) it relates only to butter having the same fat content;

(c) it relates to a quantity of at least one tonne. However, if the butter has to be allocated proportionally and the quantity obtained by the tenderer is less than one tonne, the quantity obtained shall constitute the minimum quantity for tender;

(d) proof is furnished that, before expiry of the period set for the submission of tenders, the tenderer has lodged the tendering security referred to in Article 3 (1).

4. No tender may be withdrawn after the closing date specified in Article 1 (5).

Article 3

1. For the purposes of this Regulation, maintenance of the tender after the closing date for the submission of tenders, payment of the price and lodging of the destination security referred to in Article 2a (5) of Regulation (EEC) No 3143/85 shall constitute primary requirements compliance with which shall be ensured by the lodging of a tendering security of ECU 150 per tonne.

2. Tendering securities shall be lodged in the Member State in which the tender is submitted.

However, if the tender states, in accordance with Article 2 (2), that the manufacture of the concentrated butter and the addition of tracers provided for in Article 5 (2) of Regulation (EEC) No 3143/85 are effected in a Member State other than the Member State in which the offer has been lodged, the tendering security may be lodged with the competent authority designated by the Member State where the processing will take place and which shall issue to the tenderer the proof referred to in Article 2 (3) (d).

Article 4

1. Tenders shall be rejected if the price offered is lower than the minimum price fixed for the tendering procedure.

2. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 5

1. Each tenderer shall be notified by the intervention agency of the result of his participation in the tendering procedure within the time limit referred to in the fourth subparagraph of Article 2a (3) of Regulation (EEC) No 3143/85.

2. Where the tenderer has been declared successful such notification shall indicate:

(a) the quantity of butter sold;

(b) the sum of the destination security;

(c) the final date for processing into concentrated butter of the quantity of butter contained in the tender and for its packing.

Article 6

1. The successful tenderer shall, before the removal of the butter and within the time limit of 15 days specified in Article 2a (6) of Regulation (EEC) No 3143/85, pay the intervention agency an amount corresponding to his tender for each quantity which he intends to remove from store.

2. Except in cases of *force majeure*, if the successful tenderer has not made the payment within the specified period the tendering security referred to in Article 3 shall be forfeited and the sale shall be cancelled in respect of the remaining quantities.

Article 7

1. When the amount referred to in Article 6 (1) has been paid and the destination security has been lodged, the intervention agency shall issue a removal warrant indicating:

(a) the quantity in respect of which the conditions referred to above have been satisfied and the tender, identified by a serial number, to which it relates;

(b) the coldstore where it is stored;

(c) the final date for removing the butter;

(d) the final date for processing and packing.

2. If the payment referred to in Article 6 (1) has been made without removal of the butter having been effected within the period referred to above, the successful tenderer shall bear the cost and risk of storing the butter with effect from the day following that referred to in paragraph 1 (c). Removal may be effected by instalments.

3. The butter shall be handed over by the intervention agency in packages bearing, in clear and legible print, the statement referred to in Article 3 (2) of Regulation (EEC) No 3143/85.

The butter shall remain in its original packaging until the start of the processing operations in accordance with Article 4 of that Regulation.

Article 8

1. The applications to purchase referred to in Article 1 (5) shall be, *mutatis mutandis*, submitted and admissible under the conditions laid down in Article 2 (1), (2) (a), (c), (d) and (3) (a), (b) and (c).

2. The contract shall be concluded under the conditions referred to in Article 2 (4) of Regulation (EEC) No 3143/85.

Article 9

The destination security referred to in Article 3 (1) shall be ECU 200 per 100 kilograms.

Article 10

Regulation (EEC) No 242/90 is hereby repealed.

Article 11

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, 20 February 1990.

For the Commission
Ray MAC SHARRY
Member of the Commission

ANNEX I

Member State	Product (%)	Quantity (tonnes)	Minimum price expressed in ECU per 100 kg
Ireland	Butter ≥ 80	800	130
United Kingdom	Butter ≥ 80	1 400	130

ANNEX II

Addresses of the intervention agencies

— Department of Agriculture and Food, Dairying (Trade) Division,
Agriculture House,
Kildare Street,
IRL-Dublin 2;
tel. (35 31) 78 90 11,
telex 93607 agri-ei,
telefax 616263;

— Internal Market Division,
Intervention Board for Agricultural Produce,
Fountain House,
2 Queens Walk,
UK-Reading, Berks RG1 7QW;
tel. (44) 734-58 36 26,
telex 848302.