COMMISSION REGULATION (EC) No 239/94

of 2 February 1994

authorizing the Italian intervention agency to put up for sale by tender 100 000 tonnes of durum wheat for export from the other Member States in the form of durum wheat meal to Algeria

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals (1), as last amended by Commission Regulation (EEC) No 2193/93 (2), and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 (3) lays down the procedures and conditions for the disposal of cereals held by intervention agencies;

Prices for durum wheat on the Community's internal market are very high due to a fall in total production caused by the drought in Spain and a reduction in land down to durum wheat in France; whereas the Community's durum wheat meal industry must continue to be able to export in order to keep up normal trade flows to Algeria; whereas, therefore, provision should be made for Italian intervention stocks to be used to supply the Community export meal industry during the period 1 January to 30 April 1994 at competitive prices;

Whereas the above situation requires the measure to be implemented as a matter of urgency;

Whereas a conversion rate should be set to determine the quantity of durum wheat meal to be exported on the basis of the durum wheat used;

Whereas the specific nature of the operation requires greater flexibility in the mechanisms and obligations governing the resale of intervention stocks and the exclusion of any refund or monthly increase; whereas special procedures must be laid down to ensure that the operations are properly carried out and monitored; whereas to that end provision should be made for a system of securities to ensure that the aims of the measure are achieved without placing excessive burdens on operators; whereas derogations should accordingly be made from certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, to ensure that the operation is carried out smoothly and to avoid any disturbance of the market, it should be stipulated that securities may be released only after presentation of proof of arrival;

Whereas, where removal of the durum wheat is delayed by more than five days or the release of one of the required securities is delayed for reasons imputable to the intervention agency, Italy should pay compensation;

Whereas the Member States are to take all additional measures compatible with the provisions in force to ensure that the scheme operates smoothly and that the Commission is kept informed;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The Italian intervention agency is hereby authorized to issue an invitation to tender for the sale on the Community market of 100 000 tonnes of durum wheat in accordance with Article 4 of Regulation (EEC) No 2131/93.

2. A maximum of 68 000 tonnes of durum wheat meal for human consumption must be exported to Algeria, equal to the quantity of durum wheat awarded divided by the coefficient referred to in Article 6. This maximum quantity may not come from Italy or Greece. The competent authorities of the Member States shall ensure that the abovementioned quantity of meal is not exceeded. To that end they shall supply each other with the necessary information.

3. The regions in which the 100 000 tonnes of Italian durum wheat are stored are listed in Annex I.

4. The Italian intervention agency shall prepare a notice of invitation to tender indicating for each lot or, where appropriate, each part lot:

— the location,

— and, at least the following:

  — the maximum percentage of wholly or partially mitadine grains,

  — the specific weight,

  — the moisture content,

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 196, 5. 8. 1993, p. 22.
(3) OJ No L 191, 31. 7. 1993, p. 76.

— the Hagberg falling number,

— the impurity, mottled grain and sprouted grain contents,

— the protein content.

5. It shall publish the notice of invitation to tender at least three days before the date set for the first partial invitation to tender.

Article 2

Subject to the provisions of this Regulation, the sales of durum wheat referred to in Article 1 shall take place in accordance with the procedure and conditions laid down in Regulation (EEC) No 2131/93.

Article 3

1. The time limit for submitting tenders for the first partial invitation to tender shall be 1 p.m. (Brussels time) on Wednesday, 9 February 1994.

2. The time limit for submitting tenders for the subsequent partial invitations to tender shall be 1 p.m. (Brussels time) each Wednesday.

The time limit for the last partial invitation to tender shall be 23 March 1994.

3. Tenders must be submitted to the Italian intervention agency.

Article 4

1. Interested parties shall submit a tender to the competent Italian authorities either in writing against an acknowledgment of receipt or by telex, telegram or fax.

2. The tender shall indicate:

— the reference of the invitation to tender,

— the name, full address and telex or fax number of the tenderer,

— the quantity of durum wheat to be exported in the form of meal,

— the proposed purchasing price per tonne in eucs.

3. Tenders shall be valid only if they are accompanied by:

— an application for an export licence for Algeria for durum wheat meal falling within Product code 1103 11 10 200,

— proof that the tenderer has lodged a security of ECU 5 per tonne,

— an undertaking from the operator that he will transfer the durum wheat awarded to the country from which the meal will be exported.

4. Tenders not submitted in accordance with paragraphs 1, 2 and 3 or which contain conditions other than those laid down in the invitation to tender shall be invalid.

5. Tenders may not be withdrawn.

Article 5

1. No export refund shall be granted for exports carried out pursuant to this Regulation.

2. Customs export formalities for durum wheat meal equivalent to that which would be obtained from the cereals awarded must be completed within 60 days of the date of the award and not later than 30 April 1994.

3. Export licences issued under this invitation to tender must bear the following entry in Section 22:

'Invitation to tender opened by Regulation (EC) No 239/94 — Tender dated ...'.

4. Notwithstanding Article 9 of Commission Regulation (EEC) No 3719/88 [1], the rights deriving from the licence referred to in this Article shall not be transferable.

Article 6

For the determination of the quantity of durum wheat meal to be exported, the quantity of durum wheat awarded shall be delivered by a coefficient of 1,48.

Article 7

1. The Italian intervention agency shall inform the Commission of the tenders received within two hours of the expiry of the time limit for the submission of tenders. The information must be sent in the form laid down in Annex II to one of the telex or fax numbers listed in Annex III.

Where no tenders are received, the agency shall inform the Commission within the time limit laid down in subparagraph 1.

2. It shall inform the Commission on a monthly basis of the quantities of durum wheat removed pursuant to this Regulation.

Article 8

On the basis of the tenders submitted and notified, the Commission shall decide, in accordance with the procedure laid down for in Article 23 of Council Regulation (EEC) No 1766/92:

— either to fix a minimum selling price,

— or not to proceed with the invitation to tender.

Where a minimum selling price is fixed, the contract shall be awarded to the tenderer submitting offers at or above that minimum price.

[1] OJ No L 331, 2. 12. 1988, p. 1.

To take account of the cost of transport between the warehouse in which the durum wheat awarded is stored and the port of export declared by the tenderer, when fixing the minimum selling price a differential may be allowed between tenderers submitted for export from Italy and Greece and tenders submitted for the export of durum wheat meal from the other Member States.

The Italian intervention agency shall inform all tenderers in writing of the result of their tender as soon as the Commission has adopted the decision referred to in paragraph 1.

Article 9

1. The successful tenderer shall notify the storer and the Italian intervention agency in writing at least ten days in advance of his intention to remove the merchandise.

2. Before the lot awarded is removed, the Italian intervention agency and the successful tenderer shall take a reference sample in accordance with the method laid down in Commission Regulation (EEC) No 689/92 [1].

Where the final results of the analysis of the sample indicate a significant difference between the quality of the durum wheat to be removed and the quality as described in the notice of invitation to tender referred to in Article 1 of this Regulation, the successful tenderer may refuse the merchandise.

A significant difference shall be a specific weight of less than 76 kg/hl, a level of broken grains of more than 9 % and a discrepancy of one percentage point for the moisture content, ten points for the Hagberg falling index, one percentage point for the protein content, ten percentage points for the impurities referred to under B.2, B.3 and B.4 and a half a percentage point for the impurities referred to under B.5, the percentage admissible for noxious grains, damaged grains and ergot, however, remaining as laid down in the Annex to Regulation (EEC) No 689/92.

3. Where the successful tenderer refuses the merchandise, as provided for in the second subparagraph of paragraph 2 above, the Italian intervention agency shall supply him with another lot of intervention durum wheat of the requisite quality, at no extra charge, within eight days.

4. If removal of the durum wheat is delayed by more than five days with relation to the date of acceptance of the lot to be removed by the successful tenderer for reasons imputable to the intervention agency, Italy shall be responsible for the payment of compensation.

5. All risks and storage costs shall be borne by the successful tenderer from the time of removal.

Article 10

The successful tenderer shall pay for the durum wheat before removing it at the price indicated in the tender. The payment due for each of the lots to be removed shall be indivisible.

Article 11

1. The security referred to in Article 4 (3) must be released for the corresponding quantities of durum wheat as soon as the operator concerned has supplied proof that the durum wheat has been transferred to the country in which the customs formalities for the export of the meal have been completed and for which the tender has not been accepted.

2. The obligation to export from the Community and import into Algeria shall be covered by a security amounting to ECU 50 per tonne of durum wheat of which ECU 25 per tonne shall be lodged upon issue of the licence for the export of meal for the corresponding quantity of durum wheat and the balance of ECU 25 per tonne before removal of the cereals.

Notwithstanding Article 15 (2) of Commission Regulation (EEC) No 3002/92 [2], the amount of ECU 50 per tonne of durum wheat corresponding to the processed meal must be released within 15 working days of the date on which the successful tenderer submits proof that the meal has arrived in Algeria.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified herein shall confer an entitlement to compensation from Italy amounting to ECU 0,015 per 10 tonnes of meal for each day's delay. Such compensation shall not be charged to the European Agricultural Guidance and Guarantee Fund (EAGGF).

4. The primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 [3] shall be payment of the purchase price for the durum wheat and export of the durum wheat meal within the time limit laid down under cover of the export licence referred to in Article 4 (3).

[1] OJ No L 74, 20. 3. 1992, p. 18.

[2] OJ No L 301, 17. 10. 1992, p. 17.
[3] OJ No L 205, 3. 8. 1985, p. 5.

Article 12

1. Notwithstanding Article 12 of Regulation (EEC) No 3002/92, the export licence for the durum wheat meal must bear the words :

— Sémola de trigo duro de intervención sin derecho a restitución, destinada a Argelia — Reglamento (CE) nº 239/94,

— Groft mel fra intervention uden restitutionsydelse bestemt for Algeriet — Forordning (EF) nr. 239/94,

— Feinhartweizengrieß ohne Ausfuhrerstattung, Bestimmung Algerien — Verordnung (EG) Nr. 239/94,

— Σιμιγδάλι σκληρού σίτου που δεν παρέχει δικαίωμα επιστροφής προοριζόμενο για την Αλγερία — Κανονισμός (ΕΚ) αριθ. 239/94,

— Semolina of durum wheat not eligible for refund, bound for Algeria — Regulation (EC) No 239/94,

— Semoule de blé dur d'intervention ne donnant pas droit à restitution, destinée à l'Algérie — Règlement (CE) nº 239/94,

— Semolini di frumento duro non dante diritto a restituzione, destinato all'Algeria — Regolamento (CE) n. 239/94,

— Griesmeel zonder recht op restitutie, bestemd voor Algerije — Verordening (EG) nr. 239/94,

— Sêmolas de trigo duro que não dá direito a uma restituição, destinado à Argélia — Regulamento (CE) nº 239/94.

2. The use of one of the customs warehousing or free zone schemes is prohibited.

Article 13

The Italian intervention agency shall take all necessary steps to ensure compliance with the provisions of this Regulation. It shall inform the Commission weekly, within the Management Committee for Cereals, of the progress of the invitation to tender.

Article 14

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, 2 February 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Regions in which durum wheat is stored in Italy

(tonnes)

Region of storage	Quantities
Piemonte	15 734
Emilia Romagna	24 000
Liguria	5 413
Lombardia	4 769
Toscana	17 844
Lazio	29 130
Sicilia	3 110

ANNEX II

Standing invitation to tender for 100 000 tonnes of durum wheat held by the Italian intervention agency for export in the form of durum wheat meal

1	2	3	4	5	6	7
Registration number of the tender	Lot No	Quantity in tonnes	Offer price (ECU/tonne) (1)	Increases (+) and reductions (−) (ECU/tonne) p.m.	Place of processing	Port of export
1						
2						
3						
etc.						

(1) This price includes the increases and reductions applicable to the lot for which the tender is submitted.

ANNEX III

The only telex and fax numbers in Brussels to be used are:

DG IV/C/1 (for the attention of Mr Thibault/Mr Brus):

— telex: 22037 AGREC B
22070 AGREC B (Greek characters)

— fax: 295 25 15
296 10 97
296 20 05