COMMISSION REGULATION (EC) No 2458/94

of 10 October 1994

on the issuing of standing invitations to tender for the sale of common wheat of breadmaking quality held by the French and German intervention agencies for export to certain ACP countries in the 1994/95 marketing year

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 Regulation (EC) No 1866/94 [2], and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 [3], as amended by Regulation (EC) No 120/94 [4], lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, with a view to supplying the markets of the ACP countries, favoured partners of the Community, significant quantities of common wheat are required; whereas these markets are usually supplied on the basis of annual contracts to ensure stable prices for the ACP countries over a long period; whereas it is therefore necessary to issue a specific invitation to tender to ensure that users in these countries have access to common wheat of breadmaking quality in the 1994/95 marketing year under conditions appropriate to the highly competitive situation on the world market;

Whereas the French and German intervention agencies hold significant stocks of common wheat of high breadmaking quality; whereas part of the wheat coming from the intervention stocks held by the aforementioned agencies should therefore be resold to the ACP countries so as to meet their quantitative and qualitative needs; whereas to avoid encroaching on the economic effects of the following marketing year, the common wheat successfully tendered for must be sent to the countries of destination by 31 August 1995 at the latest;

Whereas the specific nature of the operation and the accounting position of the common wheat in question require greater flexibility in the mechanisms and obligations governing the resale of intervention stocks and also require the exclusion of any refund or monthly increase; whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas to that end provision should be made for a security lodgment scheme which ensures that the aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, in addition to the conditions laid down in Article 30 of Commission Regulation (EEC) No 3719/88 [5], as last amended by Regulation (EC) No 3519/93 [6], provision should be made for the release for consumption in the ACP State(s) laid down in the Regulation;

Whereas, where removal of the wheat is delayed by more than five days, or the release of one of the securities required is delayed, for reasons imputable to the intervention agency the Member State concerned will have to pay compensation;

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

1. Two standing invitations to tender are hereby issued for the 1994/95 marketing year for the export of:

— 500 000 tonnes of common wheat of breadmaking quality, held by the French intervention agency,

— 150 000 tonnes of common wheat of breadmaking quality, held by the German intervention agency.

2. The common wheat must be exported to an ACP State or to several States within one of the groups of ACP States listed in Annex I.

3. The regions in which the 500 000 tonnes of French and 150 000 tonnes of German common wheat of breadmaking quality are stored are listed in Annex II.

4. The intervention agencies concerned 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 features:

  — specific weight,

  — moisture content,

  — Hagberg falling number,

  — impurity contents and sprouted grains,

  — protein content.

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 197, 30. 7. 1994, p. 1.
[3] OJ No L 191, 31. 7. 1993, p. 76.
[4] OJ No L 21, 26. 1. 1994, p. 1.
[5] OJ No L 331, 2. 12. 1988, p. 1.
[6] OJ No L 320, 22. 12. 1993, p. 16.

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

Article 2

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

Article 3

1. The time limit for submitting tenders for the first partial invitations to tender shall be 9 p.m. (Brussels time) on Thursday 13 October 1994.

2. The time limit for submitting tenders for the second partial invitation to tender shall be 9 p.m. (Brussels time) on the following Thursday.

The time limit for the last partial invitation to tender shall be 27 October 1994.

3. Tenders must be submitted to the intervention agency in question.

Article 4

1. Tenders shall only be admissible if:

— the tenderer provides written proof from an official body in the country of destination or a company having its overseas subsidiary in the said country, that he has concluded for the quantity in question a commercial supply contract for common wheat of breadmaking quality for export to an ACP State or to several States within one of the groups of ACP States listed in Annex I. Such proof shall be lodged with the intervention agency at least two working days before the date of the first invitation to tender,

— they are accompanied by an application for an export licence for the destination in question.

The proof provided for in the first indent shall also indicate the quality provided for in the contract, the time limit for delivery and the price terms.

The Member State shall send the Commission a copy of the said proof forthwith, for information.

2. Tenders may not exceed the quantity laid down in the commercial contract submitted. Where on the basis of the said contract the tenderer simultaneously participates in invitations to tender in the two Member States concerned, he shall be required to mention this in his bid.

When transmitting the tenders submitted, the Member States shall inform the Commission of the above, mentioning if necessary the names of the tenderers involved.

Article 5

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

2. The validity of the export licences issued in accordance with this Regulation shall expire on 30 June 1995.

3. The licence obliges the operator to export to the ACP State or States for which the licence application was submitted. However, up to a limit of 10 % of the quantity for which the licence was issued, the operator may effect his contract at another destination on condition that it belongs to the same group of countries listed in Annex I.

4. The export licences shall be issued as soon as the successful tenderers have been selected.

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

Article 6

1. The successful tenderer shall notify the storer and the intervention agency in writing of his intention to remove the merchandise at least 10 days in advance.

2. Before the lot awarded is removed, the 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 [2] and shall analyse that sample.

(a) Where the final results of the analysis of the sample indicate a difference between the quality of the bread-making wheat to be removed and the quality as described in the notice of invitation to tender, which nevertheless remains within a limit of up to:

— 2 kg/hl for the specific weight, which must not however be less than 72 kg/hl,

— one percentage point for the moisture content,

— 10 points for the Hagberg falling index,

[1] OJ No L 331, 2. 12. 1988, p. 1.
[2] OJ No L 74, 20. 3. 1992, p. 18.

— one percentage point for the protein content,

— half a percentage point for the impurities referred to in points B.2 and B.4 of the Annex to Regulation (EEC) No 689/92,

— half a percentage point for the impurities referred to in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot however remaining unchanged,

the following provisions shall apply:

(i) the intervention agency shall, that same day, inform the Commission thereof in accordance with Annex III, as well as the storer and the successful tenderer;

(ii) the successful tenderer may:

— either agree to take over the lot with its characteristics as established,

— or refuse to take over the lot in question. In that case the successful tenderer shall, that same day, inform the intervention agency and the Commission thereof in accordance with Annex IV.

Once these formalities have been completed, he shall be immediately released from all his obligations relating to the lot in question.

The lot in question shall then be put up for sale again under a future invitation to tender at the quality established.

(b) Where the final results of the analysis of the sample indicate that the quality is below the limits laid down in (a):

— the intervention agency shall, that same day, inform the Commission thereof in accordance with Annex IV, as well as the storer and the successful tenderer,

— the successful tenderer shall give official notice, that same day, to the intervention agency of the impossibility of taking over the lot in question and shall inform the Commission thereof, that same day, in accordance with Annex IV. Once these formalities have been completed, he shall be immediately released from all his obligations relating to the lot in question.

3. Where the successful tenderer refuses the merchandise, as provided for in paragraph 2 above, the intervention agency shall supply him with another lot of intervention common wheat of the requisite quality, without extra charge, within eight days at the most.

4. If removal of the 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, the Member State shall be responsible for the payment of compensation.

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

Article 7

The successful tenderer shall pay for the common 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 8

1. The security lodged pursuant to Article 13 (4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

2. The obligation to export and import into one of the countries of destination listed in Annex I shall be covered by a security amounting to ECU 60 per tonne of which ECU 20 per tonne shall be lodged upon issue of the export licence, with the balance of ECU 40 being lodged before removal of the cereals.

Article 15 (2) of Commission Regulation (EEC) No 3002/92 [1] notwithstanding:

— the amount of ECU 40 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the wheat removed has left the customs territory of the Community,

— the amount of ECU 20 per tonne must be released within 15 working days of the date on which the successful tenderer supplies proof of entry for consumption into the ACP State or States referred to in Article 5 (3). This proof shall be supplied in accordance with Articles 18 and 47 of Commission Regulation (EEC) No 3665/87 [2].

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 in this same Article shall confer an entitlement to compensation from the Member State amounting to 0,015 ECU/10 tonne for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

Article 12 of Regulation (EEC) No 3002/92 notwithstanding, the documents relating to the sale of common wheat in accordance with this Regulation and in particular the export licence, the removal order referred to in Article 3 (1) (b) of Regulation (EEC) No 3002/92, the export declaration and, where appropriate, the T5 control copy must bear the words:

— Trigo blando panificable de intervención sin derecho a restitución, destinado a (nombre del Estado o de los Estados ACP), Reglamento (CE) nº 2458/94,

— Bageegnet blød hvede fra intervention uden restitutionsydelse bestemt for (navnet på det eller de pågældende AVS-lande), forordning (EF) nr. 2458/94,

[1] OJ No L 301, 17. 10. 1992, p. 17.
[2] OJ No L 351, 14. 12. 1987, p. 1.

— Interventions-Brotweichweizen ohne Ausfuhrerstattung, Bestimmung (Name des AKP-Staates oder der AKP-Staaten) — Verordnung (EG) Nr. 2458/94,

— μαλακός αρτοποιήσιμος σίτος παρέμβασης, που δεν παρέχει δικαίωμα επιστροφής, προοριζόμενος για (όνομα της χώρας ΑΚΕ ή των χωρών ΑΚΕ), κανονισμός (ΕΚ) αριθ. 2458/94,

— Intervention common wheat of breadmaking quality not eligible for refund, bound for (name of the ACP State or States), Regulation (EC) No 2458/94,

— Blé tendre d'intervention panifiable ne donnant pas droit à restitution, destiné à (nom de l'État ACP ou des États ACP), règlement (CE) n° 2458/94,

— Frumento tenero d'intervento panificabile non dante diritto a restituzione, destinato al (nome del paese o dei paesi ACP), regolamento (CE) n. 2458/94,

— Zachte broodtarwe uit interventie, zonder recht op restitutie, bestemd voor (naam van de ACS-Staat of de ACS-Staten), Verordening (EG) nr. 2458/94,

— Trigo brando panificável de intervenção que não dá direito a uma restituição, destinado a (nome do Estado ou dos Estados ACP), Regulamento (CE) nº 2458/94.

Article 10

1. The French and German intervention agencies shall inform the Commission of the tenders received within three hours of the expiry of the time limit for submitting tenders. The information must be sent in the form laid down in Annex III to one of the telex or fax numbers listed in Annex IV.

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

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, 10 October 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Groups of ACP States signatories to the Lomé Convention

Group I	Group II	Group III	Group IV
Mauritania	Chad	Seychelles	Angola
Mali	Central African Republic	Comoros	Zambia
Niger	Benin	Madagascar	Malawi
Senegal	Cameroon	Mauritius	Mozambique
Burkina Faso	Equatorial Guinea		Namibia
Gambia	São Tomé and Príncipe		Botswana
Guinea-Bissau	Gabon		Zimbabwe
Guinea	Congo		Lesotho
Cape Verde	Zaire		Swaziland
Sierra Leone	Rwanda		
Liberia	Burundi		
Ivory Coast			
Ghana			
Togo			

ANNEX II

(tonnes)

Region of storage	Quantities
FRANCE :	
Orléans	400 000
Paris	40 000
Poitiers	60 000
GERMANY :	
Schleswig-Holstein/Niedersachsen/ Mecklenburg-Vorpommern/Sachsen/ Sachsen-Anhalt/Thüringen	149 934

ANNEX III

Standing invitation to tender for the export of 500 000 tonnes of common wheat of breadmaking quality held by the French intervention agency and 150 000 tonnes of common wheat of breadmaking quality held by the German intervention agency

(Regulation (EC) No 2458/94)

1	2	3	4	5	6	7
Registration number of the tenderer	Lot number	Quantity in tonnes	Offer price (ECU/tonne) (1)	Increases (+) Reductions (−) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1 2 3 etc.						

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

ANNEX IV

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

DG VI/C/1 :

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

— fax : 295 25 15
296 10 97
296 20 05.

ANNEX V

Communication of refusal of lots under the standing invitation to tender for the export of 650 000 tonnes of bread-making wheat held by the French and German intervention agency

(Article 6 (2) of Regulation (EC) No 2458/94)

— Name of successful tenderer :

— Date of award of contract :

— Date of refusal of lot by successful tenderer :

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— Specific weight (kg/hl) — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not wheat of unimpaired quality — Other