COMMISSION REGULATION (EC) No 493/94

of 4 March 1994

authorizing the German intervention agency to put up for sale by tender 100 000 tonnes of common wheat for export in the form of wheat flour

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 amended by Commission Regulation (EEC) No 2193/93 [2], and in particular Article 5 thereof,

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

Whereas the German intervention agency has large stocks of breadmaking common wheat; whereas there is a heavy demand for wheat flour on the world market; whereas the resale of part of the wheat from German intervention stocks, for export on world market terms in the form of wheat flour after processing, should therefore be permitted; whereas provision should be made for intervention stocks to be used to supply the Community export milling industry during the period 10 March to 27 April 1994 at competitive prices;

Whereas, to avoid interference with the economic effects of the following market year, the flour must be exported by 30 June 1994 at the latest;

Whereas the conclusion of new contracts requires the measure to be implemented as a matter of urgency;

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

Whereas 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 internal market, it should be stipulated that securities may be released only after presentation of proof of the flour's exit from the Community's customs territory;

Whereas, where removal of the common 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, Germany 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 German intervention agency is hereby authorized to issue a standing invitation to tender for the sale on the Community market of 100 000 tonnes of common wheat.

2. A maximum of 73 000 tonnes of wheat flour for human consumption must be exported to third countries, equal to the quantity of common wheat awarded divided by the coefficient referred to in Article 6.

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

4. The German 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 specific weight,
  — the moisture content,
  — the Hagberg falling number,
  — the impurity 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.

[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.
[4] OJ No L 21, 26. 1. 1994, p. 1.

Article 2

Subject to the provisions of this Regulation, the sales of common 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 10 a.m. (Brussels time) on Thursday 10 March 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 27 April 1994.

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

Article 4

1. Interested parties shall submit a tender to the competent German 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 common wheat to be exported in the form of flour,

— the proposed purchasing price per tonne in ecus.

3. Tenders must be accompanied by :

— an application for an export licence for wheat flour falling within product code 1101 00 00 100,

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

4. Tenders may not be for more than the maximum quantity available for each time limit for submitting tenders.

5. 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.

6. 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 wheat flour equivalent to that which would be obtained from the cereals awarded must be completed within 90 days of the date of the award and not later than 30 June 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 493/94 — 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 wheat flour to be exported, the quantity of common wheat awarded shall be divided by a coefficient of 1,37.

Article 7

1. The German 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 the preceding subparagraph.

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

Article 8

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

— either to fix a minimum selling price,

— or not to proceed with the invitation to tender.

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

3. The competent German authority shall inform all tenderers in writing of the result of their tender as soon as the award referred to in paragraph 2 has been made.

Article 9

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

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]. Where the

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

final results of the analysis of the sample indicate a significant difference between the quality of the common 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 discrepancy of more than a kilogram for the specific weight, one percentage point for the moisture content, 10 points for the Hagberg falling index, one percentage point for the protein content, one percentage point for the impurities referred to under B.2 and B.4 one percentage point for the impurities referred to under B.5, the percentage admissible for noxious 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 German intervention agency shall supply him with another lot of intervention common wheat of the requisite quality, at no extra charge, within eight days.

4. If removal of the common wheat is delayed by more than five days with relation to the date of acceptance of the lot to be removed by the succesful tenderer for reasons imputable to the intervention agency, the Member State 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 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 11

1. The security lodged pursuant to Article 13 (4) of Regulation (EEC) No 2131/93 must be released for the corresponding quantities of common wheat once the licences for the export of flour have been issued to the successful tenderers and for the quantities for which the tender has not been accepted.

2. The obligation to export from the Community shall be covered by a security amounting to ECU 50 per tonne of common wheat, of which ECU 25 per tonne shall be lodged upon issue of the licence for the export of flour, for the corresponding quantity of common 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 [1], the amount of ECU 50 per tonne of common wheat corresponding to the processed flour must be released within 15 working days of the date on which the successful tenderer submits proof that the wheat flour has left the Community's customs territory.

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 France amounting to ECU 0,015 per tonnes of flour 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 [2] shall be payment of the purchase price for the common wheat and export of the wheat flour within the time limit laid down under cover of the export licence referred to in Article 4 (3).

Article 12

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

— Harina de trigo blando sin derecho a restitución — Reglamento (CE) nº 493/94,

— Mel af blød hvede uden restitutionsydelse — Forordning (EG) nr. 493/94,

— Weichweizenmehl ohne Ausfuhrerstattung — Verordnung (EG) Nr. 493/94,

— Άλευρα σίτου που δεν παρέχουν δικαίωμα επιστροφής — Κανονισμός (ΕΚ) αριθ. 493/94,

— Common wheat flour not eligible for refund — Regulation (EC) No 493/94,

— Farine de froment ne donnant pas droit à restitution — Règlement (CE) nº 493/94,

— Farina di frumento tenero non dante diritto a restituzione — Regolamento (CE) n. 493/94,

— Meel van zachte tarwe zonder recht op restitutie — Verordening (EG) nr. 493/94,

— Farinha de trigo mole que não dá direito a uma restituição — Regulamento (CE) nº 493/94.

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

Article 13

The German 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.*

[1] OJ No L 301, 17. 10. 1992, p. 17.

[2] OJ No L 205, 3. 8. 1985, p. 5.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4 March 1994.

For the Commission

René STEICHEN

Member of the Commission

ANNEX I

Regions of storage in Germany

(tonnes)

Region of storage	Quantities
— Schleswig-Holstein/Hamburg/Niedersachsen/ Bremen/Nordrhein-Westfalen	64 167
— Hessen/Rheinland-Pfalz/Baden-Württemberg/ Saarland/Bayern	26 993
— Berlin/Brandenburg/Mecklenburg-Vorpommern	6 573
— Sachsen/Sachsen-Anhalt/Thüringen	2 062

ANNEX II

Standing invitation to tender for 100 000 tonnes of common wheat held by the German intervention agency for export in the form of durum wheat flour

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