# COMMISSION REGULATION (EC) No 1072/95

## of 12 May 1995

## opening a standing invitation to tender for the export of 1 000 000 tonnes of barley held by the German intervention agency

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 the Act of Accession of Austria, Finland and Sweden and Regulation (EC) No 3290/94 (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 procedures and conditions for the disposal of cereals held by intervention agencies;

Whereas, given the current market situation, a standing invitation to tender should be opened for the export at the beginning of the 1995/96 cereals marketing year of 1 000 000 tonnes of barley held by the German intervention agency;

Whereas the proposed invitation to tender for the export of intervention stocks is special in that it will be opened at the end of the marketing year, from May 1995, but for deliveries which will not be possible until 1 July 1995; whereas there should therefore be a derogation from the first paragraph of Article 16 of Regulation (EEC) No 2131/93, which provides for a maximum delay of one month between acceptance of the tender and payment and also a derogation from the third paragraph of Article 16 of the said Regulation, application of which would have led to the price accepted already being increased by monthly increments for the removal of the cereals from the intervention store in July, whereas export was not scheduled previously;

Whereas the operative event for the conversion of tenders submitted for intervention stocks is the date of payment for cereals as fixed by Commission Regulation (EEC) No 1068/93 (5), as last amended by Regulation (EC) No 157/95 (6); whereas this rule should be applied to the sales provided for in this Regulation without prejudice to the possibility of fixing the agricultural conversion rate in advance in accordance with Articles 13 to 17 of Regulation (EEC) No 1068/93;

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*

The German intervention agency may, on the conditions laid down in Regulation (EEC) No 2131/93, open a standing invitation to tender for the export of 1 000 000 tonnes of barley held by it.

*Article 2*

1. The invitation to tender shall cover a maximum of 1 000 000 tonnes of barley to be exported to all third countries. Customs export formalities may not be completed before 1 July 1995.

2. The regions in which the 1 000 000 tonnes of barley are stored are stated in Annex I to this Regulation.

*Article 3*

1. The export licences shall be valid from their date of issue, within the meaning of Article 9 of Regulation (EEC) No 2131/93, until the end of the fourth month following.

2. Tenders submitted in response to this invitation to tender shall be admissible only if they are accompanied by a written undertaking to export only beginning 1 July 1995. They may not be accompanied by applications for export licences pursuant to Article 44 of Commission Regulation (EEC) No 3719/88 (7).

*Article 4*

1. Notwithstanding Article 7 (1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall expire on 18 May 1995 at 9 a.m. (Brussels time).

2. The time limit for submission of tenders under the subsequent partial invitations to tender shall expire each Thursday at 9 a.m. (Brussels time).

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 349, 31. 12. 1994, p. 105.
(3) OJ No L 191, 31. 7. 1993, p. 76.
(4) OJ No L 21, 26. 1. 1994, p. 1.
(5) OJ No L 108, 1. 5. 1993, p. 106.
(6) OJ No L 24, 1. 2. 1995, p. 1.
(7) OJ No L 331, 2. 12. 1988, p. 1.

3. The last partial invitation to tender shall expire on 30 May 1996 at 9 a.m. (Brussels time).

4. The tenders shall be lodged with the German intervention agency.

*Article 5*

The following provisions shall apply to tenders submitted before 1 July 1995:

— notwithstanding the first subparagraph of Article 16 of Regulation (EEC) No 2131/93, the payment must be made not later than 31 July 1995,

— notwithstanding the third subparagraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for products for export shall be that indicated in the tender,

— without prejudice to the possibility of fixing the agricultural conversion rate in advance, tenders shall be converted using the agricultural conversion rate applicable on the date of the payment of cereals of the batch concerned.

*Article 6*

Notwithstanding Article 17 (3) of Regulation (EEC) No 2131/93, the security referred to in the second indent of Article 17 (2) of the said Regulation shall not be released until proof is furnished that the customs export formalities have taken place from 1 July 1995.

*Article 7*

1. The intervention agency, the storer and the successful tenderer, if he so wishes, shall by common agreement, either before or at the moment of removal from storage, as the successful tenderer chooses, take reference samples at the rate of at least one sample for every 500 tonnes, and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The Commission must be informed of the findings of the analyses within three days.

Reference samples shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples were taken on removal from storage. If the final result of the sample analyses indicates a quality:

(a) greater than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) greater than the minimum characteristics for intervention but below the quality described in the notice of invitation to tender, with the difference remaining within a limit of up to:

— 2 kg/hl for the specific weight, which must not, however, be less than 60 kg/hl,

— one percentage point for the moisture content,

— half a percentage point for the impurities referred to in B.2 and B.4 of the Annex to Regulation (EEC) No 689/92 [1],

and

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

the successful tenderer must accept the lot as established;

(c) greater than the minimum characteristics required for intervention but below the quality described in the notice of invitation to tender with the difference surpassing the limit referred to in point (b), the successful tenderer may:

— either accept the lot as established,

— or refuse to take over the lot in question. The successful tenderer shall be released from all his obligations relating to the lot in question, including the securities, only once he has informed the Commission and the intervention agency forthwith, in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention barley of the quality laid down, and that without additional charges, the security shall not be released. The lot must be replaced within a maximum of three days from the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II;

(d) below the minimum characteristics required for intervention, the successful tenderer may not remove the lot in question. He shall be released from all his obligations relating to the lot in question, including the securities, only once he has informed the Commission and the intervention agency forthwith, in accordance with Annex II; however, he may request the intervention agency to supply him with another lot of intervention barley of the quality laid down, without additional charges. In this case, the security shall not be released. The lot must be replaced within a maximum of three days from the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

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

2. However, if the barley is removed before the results of the analysis are known, all risks shall be borne by the successful tenderer from the time of removal of the lot, without prejudice to the forms of recourse the successful tenderer may have against the storer.

3. If, the successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for replacement, he shall be released from all his obligations, including the securities, once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. The costs of the taking of samples and the analyses referred to in paragraph 1, except those where the final result of the analyses produces a quality inferior to the minimum characteristics required for intervention, shall be borne by the EAGGF up to a maximum of one analysis per 500 tonnes with the exception of the transsilage costs. The cost of any additional analyses requested by the successful tenderer shall be borne by him.

*Article 8*

The German intervention agency shall notify the Commission of the tenders received not later than two hours after expiry of the time limit for the submission thereof. Notification shall be given as specified in the table in Annex III to this Regulation, to the telex or telefax numbers in Annex IV.

*Article 9*

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, 12 May 1995.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

*ANNEX I*

*(tonnes)*

| Place of storage | Quantity |
|---|---|
| Schleswig-Holstein/ Niedersachsen/Bremen/ Nordrhein-Westfalen | 433 078 |
| Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern | 23 902 |
| Berlin/Brandenburg/ Mecklenburg-Vorpommern | 165 352 |
| Sachsen/Sachsen-Anhalt/Thüringen | 378 556 |

*ANNEX II*

**Communication of refusal of lots under the standing invitation to tender for the export of 1 000 000 tonnes of barley held by the German intervention agency**

(Article 7 (1) of Regulation (EC) No 1072/95)

— 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)<br>— % sprouted grains<br>— % miscellaneous impurities (Schwarzbesatz)<br>— % of matter which is not basic cereal of unimpaired quality<br>— Other |

*ANNEX III*

**Standing invitation to tender for the export of 1 000 000 tonnes of barley held by the German intervention agency**

(Regulation (EC) No 1072/95)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Tender No | Consignment No | Quantity (tonnes) | Offer price (ECU/tonne) (1) | Price increases (+) or reductions (−) (ECU/tonne) p.m. | Commercial costs (ECU/tonne) | Destination |
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| etc. | | | | | | |

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

*ANNEX IV*

The only numbers to use to call Brussels are (DG VI-C-1)

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

— telefax : 296 49 56,
295 25 15.