COMMISSION REGULATION (EC) No 488/95

of 1 March 1995

amending Regulations (EC) No 953/94, (EC) No 2162/94 and (EC) No 2477/94 relating to the opening of standing invitations to tender for the export of barley held by the German, United Kingdom and French intervention agencies respectively

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 in particular Articles 5 and 13 thereof,

Whereas Commission Regulation (EEC) No 2131/93 (2), as amended by Regulation (EC) No 120/94 (3), lays down the procedure and conditions for the disposal of cereals held by the intervention agencies;

Whereas Commission Regulation (EC) No 953/94 (4), as last amended by Regulation (EC) No 96/95 (5), opened a standing invitation to tender for the export of barley held by the German intervention agency;

Whereas Commission Regulation (EC) No 2162/94 (6), as last amended by Regulation (EC) No 3153/94 (7), opened a standing invitation to tender for the export of barley held by the United Kingdom intervention agency;

Whereas Commission (EC) No 2477/94 (8), as last amended by Regulation (EC) No 2981/94 (9), opened a standing invitation to tender for the export of barley held by the French intervention agency;

Whereas special rules must be laid down to ensure that the operations are properly carried out and monitored;

Whereas, to that end, the Member States must provide for all additional measures compatible with the provisions in force to ensure that the operation takes place smoothly and that the Commission is kept informed;

Whereas the monitoring arrangements should accordingly be supplemented by the possibility of taking reference samples;

Whereas the measures laid down in Article 5 of Regulation (EC) No 953/94 and Article 6 of Regulations (EC) No 2162/94 and (EC) No 2477/94 were needed to ensure deliveries of barley to Saudi Arabia in very short time before 31 December 1994; whereas these deliveries have now been completed; whereas, however, other deliveries to other destinations are still underway; whereas it is therefore necessary to harmonize the methods for the analysis of reference samples under the different tendering procedures;

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

Article 5 of Regulation (EC) No 953/94 is hereby replaced by the following:

'*Article 5*

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 required for intervention but below the quality described in the notice of invitation to tender, with the difference remaining within a limit of up to:

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 191, 31. 7. 1993, p. 76.
(3) OJ No L 21, 26. 1. 1994, p. 1.
(4) OJ No L 108, 29. 4. 1994, p. 4.
(5) OJ No L 16, 24. 1. 1995, p. 1.
(6) OJ No L 230, 3. 9. 1994, p. 3.
(7) OJ No L 332, 22. 12. 1994, p. 36.
(8) OJ No L 264, 14. 10. 1994, p. 11.
(9) OJ No L 315, 8. 12. 1994, p. 4.

— 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,

and

— 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, 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 IV; 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 IV;

(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 IV; 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 IV.

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, after 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 IV.'

Article 2

Article 6 of Regulation (EC) No 2162/94 is hereby replaced by the following:

'Article 6

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 required 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,

and

— 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, 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 IV; 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 IV;

(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 IV; 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 IV.

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, after 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 IV.'

Article 3

Article 6 of Regulation (EC) No 2477/94 is hereby replaced by the following:

'Article 6

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 required 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,

and

— 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, 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 IV; 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 IV;

(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 IV; 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 IV.

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, after 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 IV.'

Article 4

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities.*

It shall apply to the quantities of barley not recorded under the invitations to tender opened by Regulations (EC) No 953/94, (EC) No 2162/94 and (EC) No 2477/94.

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

Done at Brussels, 1 March 1995.

For the Commission

Franz FISCHLER

Member of the Commission