COMMISSION REGULATION (EC) No 1816/97

of 19 September 1997

on the issuing of a standing invitation to tender for the sale of common wheat of breadmaking quality held by the German intervention agency for export to certain ACP countries in the 1997/98 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 Commission Regulation (EC) No 923/96 [2], and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 2193/96 [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 regular contracts to ensure stable prices for the ACP countries over a certain 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 under conditions appropriate to the highly competitive situation on the world market;

Whereas the German intervention agency holds stocks of common wheat of breadmaking quality; whereas part of the wheat coming from the intervention stocks held by the aforementioned agency should therefore be resold to the ACP countries to meet their quantitative and qualitative needs; whereas the common wheat successfully tendered for must be exported to the countries of destination by 28 February 1998 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 exclusion of any refund, tax 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 1404/97 [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. A standing invitation to tender is hereby issued for the export of 225 133 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 225 133 tonnes of German common wheat of breadmaking quality are stored are listed in Annex II.

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

[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 191, 31. 7. 1993, p. 76.
[4] OJ L 293, 16. 11. 1996, p. 1.
[5] OJ L 331, 2. 12. 1988, p. 1.
[6] OJ L 194, 23. 7. 1997, p. 5.

— the location,

— and at least the following features:

— specific weight,

— moisture content,

— Hagberg falling number,

— impurity contents and sprouted grains,

— protein content.

5. It 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 invitation to tender shall be 9 a.m. (Brussels time) on Thursday 25 September 1997.

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

The time limit for the last partial invitation to tender shall be 18 December 1997.

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

Article 4

1. Tenders shall only be admissible if:

— the tenderer provides written proof from an official body in the ACP 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 for export to an ACP State or to several States within one of the groups of ACP States listed in Annex I. That contract may cover only those deliveries to be made during the period October 1997 to February 1998 for quantities traditionally supplied; such proof shall be lodged with the competent authorities at least two working days before the date of the partial invitation to tender against which the tender is to be submitted,

— 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.

Article 5

1. No export refund or export tax or monthly increase shall be applied for exports carried out pursuant to this Regulation.

2. The validity of the export licences issued in accordance with this Regulation shall expire on 28 February 1998.

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 30 % 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 Regulation (EEC) No 3719/88 notwithstanding, the rights deriving from the licence referred to in this Article shall not be transferable.

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 in the event of a dispute.

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 72 kg/hl,

— one percentage point for the mositure content,

— 20 percentage points for the Hagberg falling index,

— one percentage point for the protein content,

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

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 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 V; however, if he requests the intervention agency to supply him with another lot of intervention breadmaking wheat 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 V;

(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 V; however, he may request the intervention agency to supply him with another lot of intervention breadmaking wheat 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 V.

2. However, if the breadmaking wheat 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 V.

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 transsilage and of any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

The successful tenderer shall pay for the common wheat before removing it at the price indicated in the tender. The final date for removal is 31 January 1998. 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 45 per tonne of which ECU 15 per tonne shall be lodged upon issue of the export licence, with the balance of ECU 30 being lodged before removal of the cereals.

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

— the amount of ECU 15 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 30 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 [3].

[1] OJ L 74, 20. 3. 1992, p. 18.

[2] OJ L 301, 17. 10. 1992, p. 17.

[3] OJ L 351, 14. 12. 1987, p. 1.

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 limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to ECU 0,015/10 tonnes 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 aplicación de restitución ni gravamen, destinado a (nombre del Estado o de los Estados ACP), Reglamento (CE) nº 1816/97

— Bageegnet blød hvede fra intervention uden restitutionsydelse eller -afgift bestemt for (navnet på det eller de pågældende AVS-lande), forordning (EF) nr. 1816/97

— Interventions-Brotweichweizen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Bestimmung (Name des AKP-Staates oder der AKP-Staaten), Verordnung (EG) Nr. 1816/97

— Μαλακός αρτοποιήσιμος σίτος παρέμβασης, χωρίς εφαρμογή επιστροφής ή φόρου προοριζόμενος για (όνομα της χώρας ΑΚΕ ή των χωρών ΑΚΕ), κανονισμός (ΕΚ) αριθ. 1816/97

— Intervention common wheat of breadmaking quality without application of refund or tax, bound for (name of the ACP State or States), Regulation (EC) No 1816/97

— Blé tendre d'intervention panifiable ne donnant pas lieu à restitution ni à taxe, destiné à (nom de l'État ACP ou des États ACP), règlement (CE) nº 1816/97

— Frumento tenero d'intervento panificabile senza applicazione di restituzione o di tassa, destinato al (nome del paese o dei paesi ACP), regolamento (CE) n. 1816/97

— Zachte tarwe van bakkwaliteit uit interventie, zonder toepassing van restitutie of belasting, bestemd voor (naam van de ACS-Staat of de ACS-Staten), Verordening (EG) nr. 1816/97

— Trigo mole panificável de intervenção sem aplicação de uma restituição, ou imposição destinado a (nome do Estado ou dos Estados ACP), Regulamento (CE) nº 1816/97

— Interventioleipävehnää, jolle ei makseta vientitukea eikä vientimaksua ja jonka määräpaikka on (AKT-maan nimi tai AKT-maiden nimet), asetus (EY) N:o 1816/97

— Interventionsvete av brödkvalitet, ej utan bidrag eller avgift avsett för (AVS-statens eller AVS-staternas namn), förordning (EG) nr 1816/97.

Article 10

1. The German intervention agency 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. It 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, 19 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

Groups of ACP States signatories to the Lomé Convention

Group I	Group II	Group III
Mauritania	Chad	Seychelles
Mali	Central African Republic	Comoros
Niger	Benin	Madagascar
Senegal	Cameroon	Mauritius
Burkina Faso	Equatorial Guinea	Angola
Gambia	São Tomé and Príncipe	Zambia
Guinea-Bissau	Gabon	Malawi
Guinea	Congo	Mozambique
Cape Verde	Democratic Republic of Congo	Namibia
Sierra Leone	Rwanda	Botswana
Liberia	Burundi	Zimbabwe
Côte d'Ivoire		Lesotho
Ghana		Swaziland
Togo		Djibouti
		Ethiopia
		Eritrea

ANNEX II

(tonnes)

Region of storage	Quantities
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	138 156
Hessen/Rheinland-Pfalz/ Baden-Württemberg/ Saarland/Bayern	67 348
Berlin/Brandenburg/ Mecklenburg-Vorpommern	705
Sachsen/Sachsen-Anhalt/ Thüringen	18 924

ANNEX III

Standing invitation to tender for the export of 225 133 tonnes of common wheat of breadmaking quality held by the German intervention agency

(Regulation (EC) No 1816/97)

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: 296 49 56,
295 25 15.

ANNEX V

Communication of refusal of lots under the standing invitation to tender for the export of 225 133 tonnes of breadmaking common wheat held by the German intervention agency

(Article 6 of Regulation (EC) No 1816/97)

— 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