COMMISSION REGULATION (EC) No 1122/98

of 29 May 1998

opening a standing invitation to tender for the export of barley from harvests prior to 1997 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 organisation 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, given the current market situation, a standing invitation to tender should be opened for the export of 500 000 tonnes of barley from harvests prior to 1997 held by the German intervention agency;

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 lodgement scheme which ensures that 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, where removal of the barley 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 must 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

Subject to the provisions of this Regulation the German intervention agency issues a standing invitation to tender for the export of barley from harvests prior to 1997 held by it in accordance with Regulation (EEC) No 2131/93.

Article 2

1. The invitation to tender shall cover a maximum of 500 000 tonnes of barley from harvests prior to 1997 for export to third countries.

2. The regions in which the 500 000 tonnes of barley from harvests prior to 1997 are stored are set out in Annex I.

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

Article 4

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 thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 44 of Commission Regulation (EEC) No 3719/88 [5].

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 4 June 1998.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 27 May 1999.

4. Tenders shall be lodged with the German intervention agency.

Article 6

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of

[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.

removal from storage as the successful tenderer chooses, take reference samples for counter-analysis 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 analysis results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis 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 are taken on removal from storage. Where the final result of sample analyses indicates a quality:

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

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

— two kilograms per hectolitre as regards specific weight, which must not, however, be less than 60 kg/hl,

— one percentage point as regards moisture content,

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

— half a percentage point as regards impurities as specified 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) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released 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 at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released 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 at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the barley is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of 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 a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 [2], the documents relating to the sale of barley 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 necessary, the T5 copy shall carry the entry:

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

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

— Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 1122/98

— Byg fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 1122/98

— Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 1122/98

— Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 1122/98

— Intervention barley without application of refund or tax, Regulation (EC) No 1122/98

— Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 1122/98

— Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 1122/98

— Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 1122/98

— Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) nº 1122/98

— Interventio-ohraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 1122/98

— Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 1122/98.

Article 8

1. The security lodgement 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 to the third countries shall be covered by a security amounting to ECU 50 per tonne of which ECU 30 per tonne shall be lodged when the export licence is issued, with the balance of ECU 20 per tonne being lodged before removal of the cereals.

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

— the amount of ECU 30 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the barley 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 the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

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 ECU 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the German intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

Article 10

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, 29 May 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

(tonnes)

Place of storage	Quantity
Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen	152 959
Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern	21 499
Berlin/Brandenburg/ Mecklenburg-Vorpommern	86 021
Sachsen/Sachsen-Anhalt/Thüringen	239 517

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of barley from harvests prior to 1997 held by the German intervention agency

(Article 6(1) of Regulation (EC) No 1122/98)

— 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 basic cereal of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of barley from harvests prior to 1997 held by the German intervention agency

(Regulation (EC) No 1122/98)

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);

— fax 296 49 56,
295 25 15.