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COMMISSION REGULATION (EC) No 2768/98
of 21 December 1998
on the aid scheme for the private storage of olive oil

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NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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on the aid scheme for the private storage of olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 1638/98 [2], and in particular Article 12a thereof,

Whereas Article 12a of Regulation No 136/66/EEC provides that in the event of serious disturbance on the market in certain regions of the Community an aid scheme for the private storage of olive oil may be implemented up to 31 October 2001; whereas the scheme must be based on contracts concluded with approved operators offering sufficient guarantees; whereas priority should be given to producer groups within the meaning of Council Regulation (EC) No 952/97 [3];

Whereas detailed rules governing the aid scheme for the private storage of olive oil should be laid down so that it can be implemented speedily if necessary; whereas in order that the scheme may have greater effect on the market at the level of producers and to make monitoring easier, the aid should be granted primarily for the bulk storage of virgin olive oil;

Whereas in order to reflect best the market situation, the amount of aid should be determined by a tendering procedure opened in accordance with certain rules and in respect of market sectors requiring it; whereas participants in the tendering procedure must be operators offering substantial guarantees;

Whereas the information that must appear in tenders and the conditions in which they are to be presented and examined must be specified; whereas, in particular, in order to be able to have an effect on the market situation, tenders must be submitted for a long storage period and in respect of a minimum quantity in relation to the situation in the sector; whereas performance of the tender must be guaranteed by lodging a security under the conditions laid down in Commission Regulation (EEC) No 2220/85 [4], as last amended by Regulation (EC) No 3403/93 [5], the amount and duration of which must be related to the likelihood of fluctuations in prices on the market and the number of days' storage conferring entitlement to the aid which have actually been completed;

Whereas successful tenders shall be those which do not exceed a maximum amount of aid per day of storage, to be determined in relation to the market in olive oil; whereas, however, the representativeness of tenders and compliance with the maximum quantities set under the procedure must be ensured for each category or region specified;

Whereas the main points to be included in the contract should be specified; whereas, in order to prevent shortcomings on the market, the Commission must be able to adjust the term of the contract in the light mainly of the harvest forecasts for the marketing year following that in which the contract was concluded;

Whereas in order to ensure that the scheme is properly administered, it is necessary to indicate the conditions in which an advance on aid may be granted, the checks on compliance with entitlement to the aid which are essential, certain procedures for calculating the aid and the information to be notified to the Commission by the Member States;

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[1] OJ 172, 30. 9. 1966, p. 3025/66.
[2] OJ L 210, 28. 7. 1998, p. 32.
[3] OJ L 142, 2. 6. 1997, p. 30.
[4] OJ L 205, 3. 8. 1985, p. 5.
[5] OJ L 310, 14. 12. 1993, p. 4.

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Whereas Commission Regulation (EEC) No 314/88 [1], as amended by Regulation (EEC) No 3788/89 [2], and Commission Regulation (EC) No 94/98 [3], as last amended by Regulation (EC) No 2367/98 [4], on private storage before 1 March 1998 must be repealed;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

1. The competent bodies in producer Member States shall conclude contracts for the private storage of virgin olive oil in bulk on the conditions laid down in this Regulation.

2. In order to determine the aid to be granted for carrying out contracts for the private storage of virgin olive oil in bulk, the Commission may, up to 31 October 2001 acting in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, open invitations to tender for a limited period. During a tendering procedure for a limited period, partial invitations to tender shall be opened.

Article 2

1. An invitation to tender for a limited period may be opened where:

— there are serious disturbances on the market in certain regions of the Community which may be reduced or resolved by measures for the private storage of virgin olive oil in bulk,

and

— the average price recorded on the market during a period of not less than two weeks is less than:

  — ECU 177,88/100 kg for extra virgin olive oil, and/or

  — ECU 170,99/100 kg for fine virgin olive oil, and/or

  — ECU 166,40/100 kg for ordinary virgin olive oil, and/or

  — ECU 156,08/100 kg for lampante virgin olive oil having 1 degree of free acidity, this amount being reduced by ECU 3,67/100 kg for each additional degree of acidity.

2. Invitations to tender for a limited period shall specify the maximum quantity for the whole tendering procedure and may specify maximum quantities for each:

— category of virgin olive oil as referred to in the Annex to Regulation No 136/66/EEC,

— category of approved operators as referred to in Article 3(1),

— Community region or Member State.

Invitations to tender for a limited period may be opened for only certain of the categories or regions referred to in the first subparagraph so as to give priority to the operators referred to in Article 3(1)(a).

Invitations to tender for a limited period may be closed before the end of the period in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC.

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[1] OJ L 31, 3. 2. 1988, p. 16.
[2] OJ L 367, 16. 12. 1989, p. 44.
[3] OJ L 9, 15. 1. 1998, p. 25.
[4] OJ L 293, 31. 10. 1998, p. 64.

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Article 3

1. Operators approved to that end by the competent body in the Member State concerned may submit tenders in respect of partial invitations to tender. Approved operators may include the following:

(a) a producers' group or an association of such groups, recognised in accordance with Regulation (EC) No 952/97, or

(b) a producers' group or an association of such groups, recognised in accordance with Article 20c of Regulation No 136/66/EEC, or

(c) a mill approved in accordance with Article 13 of Council Regulation (EEC) No 2261/84 ([1]) for more than two marketing years and which allows not less than 2 tonnes of oil to be extracted per eight-hour working day and which has obtained over the two preceding marketing years a total of at least 500 tonnes of virgin olive oil, or

(d) a packaging firm with a capacity, in the territory of a Member State, equal at least to 6 tonnes of oil put up per eight-hour working day, and which has put up over the two preceding marketing years a total of at least 500 tonnes of olive oil.

2. For the purposes of the approval referred to in paragraph 1, operators shall give an undertaking to:

— accept the sealing, by the competent body in the Member State, of the vats containing the olive oil covered by a storage contract,

— keep stock records of the oil and, where appropriate, the olives they are storing,

— undergo all checks provided for under this aid scheme for private storage contracts.

They shall make a declaration of the capacity of their storage facilities, provide a plan of those facilities and supply evidence of compliance with the conditions in paragraph 1.

3. Operators meeting the conditions in paragraphs 1 and 2 shall be approved and given an approval number within two months of the month in which the complete file containing the application for approval is submitted.

Without prejudice to Article 13(3), approval shall be refused or withdrawn forthwith from operators:

— who fail to meet the conditions for approval, or

— against whom proceedings have been instituted by the competent authorities for breach of the rules governing the scheme provided for in Regulation No 136/66/EEC, or

— who have been penalised for breach of the Regulation during the preceding 24 months.

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Article 3a

Member States shall notify the Commission, each Wednesday at the latest, of the average prices during the previous week for the various categories of olive oil referred to in the Annex to Regulation No 136/66/EEC on the principal representative markets in their territory.

Where appropriate, prices shall be accompanied by details of the volume and representativity of the transactions concerned.

([1]) OJ L 208, 3. 8. 1984, p. 3.

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Article 4

The deadlines for the submission of tenders in respect of partial tendering procedures shall be as follows:

— for November, January, February, March, April, May, June, July, September and October, from the fourth to the eighth day at midday and from the 18th to the 22nd at midday,

— for August, from the 18th to the 23rd at midday,

— for December, from the 9th to the 14th at midday.

The time of the deadline shall be local Belgian time. Where the day on which the deadline expires in a Member State is a holiday for the body responsible for receiving the tenders, the deadline shall expire at midday on the last preceding working day.

Article 5

1. Without prejudice to Article 11, tenders for a minimum quantity of 50 tonnes shall be made in respect of the amount of aid per day, for the private storage for 365 days in sealed vats and in accordance with the conditions laid down in this Regulation of virgin olive oil in bulk in one of the four categories listed in the Annex to Regulation No 136/66/EEC.

2. Approved operators shall take part in the partial tendering procedure either by submitting a written tender to the competent body in a Member State, against receipt of delivery, or by fax to that body.

Where an operator takes part in a partial tendering procedure for more than one category of oil or for vats located at different addresses, he shall submit a separate tender in each case.

A tender shall be valid only for a single partial tendering procedure. Once submitted, tenders may not be withdrawn or altered after the closing date for submission of tenders.

3. Tenders shall contain:

(a) a reference to this Regulation and to the partial tendering procedure to which the tender refers;

(b) the name and address of the tenderer;

(c) the category of approved operator, referred to in Article 3(1), and the approval number;

(d) the quantity and category of olive oil covered by the tender;

(e) the exact address of the place at which the storage vats are located;

(f) the amount of aid per day of private storage per tonne of olive oil, expressed in ecus to two decimal places;

(g) the amount of the security to be established in accordance with Article 6 expressed in the currency of the Member State in which the tender is made.

4. To ensure that their validity is recognised, tenders must:

— be drawn up, together with the relevant documents, in the official language or one of the official languages of the Member State of the competent body which receives them,

— be submitted in accordance with this Regulation and contain all the particulars listed in paragraph 3,

— not contain conditions other than those provided for in this Regulation,

— be made by an operator approved by the Member State in which they are received, and concern storage vats located in that Member State,

— be accompanied, prior to the deadline for the submission of tenders, by proof that the tenderer has established the security specified in them.

Article 6

1. Tenderers shall establish a security of ECU 50 per tonne of olive oil covered by a tender.

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2. Where tenders are unsuccessful, the security referred to in paragraph 1 shall be released forthwith following publication in the *Official Journal of the European Communities* of the maximum amount of the aid for the partial tendering procedure concerned.

3. Where tenders are successful, a security of ECU 200 per tonne of olive oil covered by the tender shall be established no later than the first day of performance of the contract as referred to in Article 9(3) second paragraph in addition to the security referred to in paragraph 1.

4. The primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 for the release of the securities referred to in paragraphs 1 and 3 shall be the storage for six months provided for in the tender under the contract conditions laid down in this Regulation.

However, where the duration of the contract is reduced to less than six months pursuant to Article 11, the storage period referred to in the first subparagraph shall be the same as the period of performance of the contract.

Article 7

1. Tenders shall be examined by the competent body in the Member State concerned in the absence of members of the public. Subject to paragraph 2, persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Valid tenders shall be notified to the Commission, classified in increasing order of amount, unnamed, by fax, not later than 48 hours following the expiry of the deadline for the submission of tenders. If the deadline expires on a Friday tenders shall be notified no later than midday the following Monday.

3. Particulars shall be given for each tender notified of the quantity, category of oil and amount referred to in Article 5(3)(d) and (f). In addition, where the procedure sets maximum quantities for each category of operators or region, the categories or regions concerned shall be indicated for each tender.

Article 8

1. In accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and on the basis of the tenders received, a maximum amount of aid shall be set per day of private storage not later than the ninth working day following the expiry of each deadline set for the submission of tenders under partial tendering procedures.

2. The maximum amount of aid shall be set in the light of the situation and foreseeable developments on the market in olive oil, and the opportunities for contributing significantly to ensuring that the market is regulated by the measure concerned.

In addition, account shall be taken of quantities which are covered already by private storage contracts and of the quantities covered by the tenders received.

3. When the maximum amount is being set, and in accordance with the same procedure, all tenders in respect of a category of oil, a category of operator or a region for which a maximum quantity has been set under Article 2(2) may be rejected where, in the case of the category or region in question:

— the tenders are not representative, or

— the maximum amount set could result in an overrun of the maximum quantity concerned.

Article 9

1. The contract shall be awarded, without prejudice to Article 8(3), to the tenderer or tenderers whose tender has been notified in accordance with Article 7(2), and which corresponds to the maximum amount of aid per day of private storage, or less for the quantity shown in the tender.

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The rights and obligations of the successful tenderer shall not be transferable.

2. The competent body in the Member State concerned shall notify all tenderers in writing of the outcome of their participation in the tendering procedure not later than the second working day following the date of publication of the maximum amount of the aid in the *Official Journal of the European Communities*.

3. The date of conclusion of the contract shall be that on which the notice of acceptance of the tender is dispatched to the tenderer.

The date of commencement of performance of the contract, subject to the lodging of the security referred to in Article 6(3), shall be that of the day following the conclusion of the contract, and the oil in question must be stored in the conditions provided for in the contract.

4. Within 30 days of the conclusion of the contract, the competent body in the Member State shall

— identify the vats containing the olive oil concerned,

— record the net weight of the oil,

— take a sample representative of the tender,

— seal each vat.

5. The sample taken shall be analysed as quickly as possible to ensure that the oil corresponds to the category for which the contract was awarded.

Article 10

1. The contract drawn up in two copies shall contain at least the following:

(a) the name and address of the competent body in the Member State;

(b) the full postal address, and the approval number and category of the contractor, as referred to in Article 3(1);

(c) the exact address of the place of storage;

(d) the date of conclusion of the contract;

(e) the date of commencement and of completion of performance of the contract, subject to Article 11;

(f) a reference to this Regulation and to the partial tendering procedure concerned.

2. The contract shall contain a reference in respect of each batch covered by it to:

— the category and net weight of the virgin olive oil,

— the particulars of the vats containing the oil.

3. The contract shall require the contractor:

(a) to keep in storage, for an agreed period, the agreed quantity of the product concerned, at his expense and risk;

(b) to store oil of different categories in separate vats, specified in the contract and sealed by the competent body in the Member State; changes of vats must be authorised by that body, undertaken in its presence and have new seals affixed;

(c) to allow the competent body in the Member State to verify at all times compliance with the requirements of the contract.

4. Without prejudice to Article 11, where the contractor terminates the contract while it is being performed, the securities referred to in Article 6 and, where appropriate, Article 12, shall be forfeit in their totality; in addition, the contractor shall lose the benefit of the aid for the whole of the period and for all the quantities provided for in the contract.

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Article 11

1. The Commission, on the basis of developments on the market in olive oil and the outlook for the future, may decide in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC to shorten the duration of contracts which are being performed.

Changes to contracts may be adopted only during the period 1 September to 31 December, and may not take effect before the end of the month following that in which they are adopted.

2. Where a contract is changed pursuant to paragraph 1, the Commission shall set a percentage reduction to be applied to the numbers of days of performance provided for after a date specified for all contracts which are being performed on that date.

Article 12

1. Following the conclusion of the contract an advance corresponding to the aid provided for in respect of the period starting on the date of commencement of performance of the contract and ending on 31 August following may be paid on condition that a security is lodged for an amount equal to 120 % of the advance.

In the case of contracts that are being performed, from 1 January, a further advance may be paid for the period beginning on 1 September and ending on expiry of those contracts, under the terms specified in the first subparagraph.

2. The security referred to in paragraph l shall be released forthwith on payment of the balance of the aid in accordance with Article 14(3).

Article 13

1. Before final payment of the aid is made, the competent body in the Member State shall:

— collect and verify the proof of compliance with the conditions laid down in this Regulation,

— carry out the necessary checks to ensure that the olive oil in question has remained in storage during the whole of the storage period referred to in the contract,

— take all the measures necessary to ensure that checks are made on compliance with the requirements of the contract.

2. Checks on compliance shall include the physical inspection of the goods stored, together with scrutiny of the accounts.

The physical inspection shall cover in particular the compliance of the stocks covered by the contract with the categories of oil provided for in the contract, the presence of the seals and of the quantities provided for.

3. Where there is failure to comply with the requirements of the contract, the aid shall not be granted, and without prejudice to other penalties that may be applied, the approval of the operator shall be withdrawn. In addition, securities as referred to in Articles 6 and 12 shall be forfeit under the terms of Regulation (EEC) No 2220/85.

Article 14

1. The aid amount shall be calculated in relation to the net weight recorded in accordance with Article 9(4).

The rate to be applied when converting the amount of private storage aid into national currency shall be the agricultural conversion rate applicable on the date of commencement of performance of the contract.

2. The requirements relating to the quantities provided for in the tenders and contracts shall be regarded as met if they are in fact met in respect of 98 % of those quantities.

Where the analysis referred to in Article 9(5) does not suffice to confirm that the oil in the vat corresponds to the category for which the contract

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was awarded, the entire quantity covered by the tender shall be deemed not to be in conformity.

3. The aid, or where an advance has been granted under Article 12 the balance of the aid, shall be paid only when all the requirements of the contract have been met. Payment of the aid, or the balance of the aid, shall be made following a check on compliance with the requirements, within 60 days following expiry of the contract.

Article 15

1. The Member States concerned shall notify the Commission of the national measures taken to apply this Regulation and of the specimen contract.

2. The Member States shall notify the Commission of the quantities of olive oil for which an aid has been awarded and which, as appropriate, are not the subject of:

— a contract,

— compliance with or the performance in full of the contract.

The notices referred to in the first subparagraph shall specify the partial tendering procedure concerned and, as appropriate, the categories of oil, operators, or regions concerned. Notification shall take place at the earliest opportunity and not later than the 10th day of the month following the month concerned.

Article 16

Regulation (EEC) No 314/88 and Regulation (EC) No 94/98 are hereby repealed.

Article 17

This Regulation shall enter into force on the third day following 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.