# COMMISSION REGULATION (EC) No 1185/2004

## of 25 June 2004

## opening a standing invitation to tender for the export of rye 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], and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 1 000 000 tonnes of rye held by the German intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the rye 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 should pay compensation.

(5) 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 this Regulation, the German intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of rye held by it.

*Article 2*

1. The invitation to tender shall cover a maximum of 1 000 000 tonnes of rye for export to third countries.

2. The regions in which the 1 000 000 tonnes of rye are stored are set out in Annex I.

*Article 3*

1. As an exception to 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, without monthly increase

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

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

*Article 4*

1. 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 under Article 49 of Commission Regulation (EC) No 1291/2000 [3].

[1] OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 23, 27.4.2004, p. 50).

[3] OJ L 152, 24.6.2000, p. 1.

*Article 5*

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 1 July 2004.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday thereafter, with the exception of 22 July 2004, 5 August 2004, 19 August 2004, 2 September 2004, 23 December 2004, 24 March 2005, 5 May 2005 and 26 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the German intervention agency:

Bundesanstalt für Landwirtschaft und Ernährung
BLE
Adickesallee 40
D-60322 Frankfurt am Main
(Telefax: 00 49 691 56 49 62).

*Article 6*

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

In the event of a dispute, the analysis results shall be forwarded to the Commission.

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 do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 68 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [1], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, 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 concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention rye 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. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention rye 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.

[1] OJ L 100, 20.4.2000, p. 31.

2. However, if the rye 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 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 the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed 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) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

*Article 7*

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 ([1]), the documents relating to the sale of rye under 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 applicable, the T5 copy shall carry the entry:

— Centeno de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº …/2004

— Intervenční žito nepodléhá vývozní náhradě ani clu, nařízení (ES) č. …/2004

— Rug fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. …/2004

— Interventionsroggen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. …/2004

— Sekkumisrukis, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr …/2004

— Σίκαλη παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. …/2004

— Intervention rye without application of refund or tax, Regulation (EC) No …/2004

— Seigle d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº …/2004

— Segala d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. …/2004

— Intervences rudzi bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. …/2004

— Intervenciniai rugiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. …/2004

— Intervenciós rozs, visszatérítés, illetve adó nem alkalmazandó, …/2004/EK rendelet

— Rogge uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. …/2004

— Żyto interwencyjne niedające prawa do refundacji ani do opłaty, rozporządzenie (WE) nr …/2004

— Centeio de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º …/2004

— Intervenčný jačmeň, nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. …/2004

— Intervencija rži brez zahtevkov za nadomestila ali carine, Uredba (ES) št. …/2004

— Interventioruista, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o …/2004

— Interventionsråg, utan tillämpning av bidrag eller avgift, förordning (EG) nr …/2004.

*Article 8*

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

([1]) OJ L 301, 17.10.1992, p. 17.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

As an exception to Article 15(2) of Regulation (EEC) No 3002/92:

— the part of the security lodged when the licence is issued shall be released within 20 working days of the date on which the successful tenderer provides proof that the cereals removed have left the customs territory of the Community.

As an exception to Article 17(3) of Regulation (EEC) No 2131/93:

— the remainder of the security shall be released within 15 working days of the date on which the successful tenderer provides the proof referred to in Article 16 of Commission Regulation (EC) No 800/1999 [1].

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, where the securities provided for in this Article are released after the time limits specified in this Article, the Member State shall be required to pay compensation amounting to EUR 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 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, 25 June 2004.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

[1] OJ L 102, 17.4.1999, p. 11.

*ANNEX I*

*(in tonnes)*

| Place of storage | Quantity |
|---|---|
| Schleswig-Holstein/Hamburg/Niedersachsen/Bremen/ Mecklenburg-Vorpommern | 139 719 |
| Berlin/Brandenburg/Sachsen-Anhalt/Sachsen/Thüringen | 860 281 |

*ANNEX II*

**Communication of refusal of lots under the standing invitation to tender for the export of rye held by the German intervention agency**

(Article 6(1) of Regulation (EC) No 1185/2004)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

| Number of lot | Quantity in tonnes | Address of the silo | Reason for refusal to take over |
|---|---|---|---|
| | | | — PS (kg/hl)<br>— % of sprouted grains<br>— % of miscellaneous impurities (Schwarzbesatz)<br>— % of matter other than basic cereals of unimpaired quality<br>— Other |

*ANNEX III*

**Standing invitation to tender for the export of rye held by the German intervention agency**

(Regulation (CE) No 1185/2004)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Serial numbers of tenderers | Number of lot | Quantity in tonnes | Tender price (EUR/t) [1] | Increases (+) Reductions (–) (EUR/t) (for the record) | Commercial costs (EUR/t) | Destination |
| 1<br>2<br>3<br>etc. | | | | | | |

[1] This price includes the increases and reductions relating to the lot covered by the tender.

*ANNEX IV*

The following numbers only for the Agriculture DG (C/1) in Brussels are to be used:

fax: (+32) 2 296 49 56
(+32) 2 295 25 15.