COMMISSION REGULATION (EC) No 318/2004

of 23 February 2004

amending Regulation (EC) No 2771/1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], and in particular Article 10 thereof,

Whereas:

(1) Articles 4(1) and 6(1) of Regulation (EC) No 1255/1999, as amended by Regulation (EC) No 1787/2003, provide for reductions of the intervention prices and the intervention system for butter. It is therefore necessary to lay down in Commission Regulation (EC) No 2771/1999 [2] detailed rules with regard to an intervention system for the buying-in of butter at fixed prices.

(2) Moreover, in accordance with Article 6(1) of Regulation (EC) No 1255/1999, the Commission may decide to suspend intervention buying-in once certain quantities offered for intervention have been reached. In order to put the Commission into the position to take such a decision, provisions should be adopted for the Commission to follow the quantities of butter offered for public intervention.

(3) Once these quantities have been reached, the Commission may also decide to carry on buying-in by way of a standing tendering procedure. Relevant detailed rules should be determined.

(4) Proper management of intervention stock requires the butter to be resold as soon as outlets become available. In the light of experience gained concerning the sale of butter from intervention stocks, in particular with regard to quantitative requirements and pricing, it is appropriate to introduce a tendering procedure for the sale of butter from public intervention.

(5) The intervention agency shall sell the intervention butter according to the date when it was placed in storage. In order to meet demand, the tenderers should have the possibility to distinguish between sweet cream and sour cream butter in their offer and the selling price fixed may vary according to the location of the butter offered for sale.

(6) Regulation (EC) No 2771/1999 should therefore be amended accordingly.

(7) The detailed rules provided for in this Regulation should be applicable as of 1 March 2004, date on which Article 6(1) of Regulation (EC) No 1255/1999, as amended by Regulation (EC) No 1787/2003, applies.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Milk and Milk Products Management Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2771/1999 is amended as follows:

1. Article 2 is replaced by the following:

'*Article 2*

1. Once the Commission has observed, in accordance with Article 8(4), that the market price in one or more Member States is lower than 92 % of the intervention price, for two weeks in succession, it shall commence buying in butter offered for intervention in the Member State(s) concerned in the period from 1 March to 31 August, at 90 % of the intervention price, in accordance with the first subparagraph of Article 6(1) of Regulation (EC) No 1255/1999.

2. Once the Commission has observed, in accordance with Article 8(4), that the market price in the Member State(s) concerned is equal to or higher than 92 % of the intervention price, for two weeks in succession, it shall suspend buying in.'

2. Article 4(3) is replaced by the following:

'3. The butter shall have been made during the 23 days preceding the day on which the intervention agency received the offer to sell.'

3. In Article 6(1), the first subparagraph is replaced by the following:

'Where the butter is offered to intervention in a Member State other than that in which it was produced, buying-in shall be subject to the presentation of a certificate supplied, not later than 45 days after the day on which the offer was received, by the competent agency of the Member State of production.'

[1] OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1787/2003 (OJ L 270, 21.10.2003, p. 121).
[2] OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 359/2003 (OJ L 53, 28.2.2003, p. 17).

4. In Article 8(2), the following subparagraph is added:

'If the prices recorded are unchanged for a period of five or more consecutive weeks, Member States shall provide the Commission with their evaluation of the reasons why prices have remained unchanged during the period in question.'

5. In Chapter II, Section 3 is replaced by the following:

'SECTION 3

Procedure for buying-in of butter at 90 % of the intervention price

Article 9

Once the Commission has decided to commence buying in butter pursuant to Article 2(1), the intervention agency concerned shall proceed in accordance with this Section.

Article 10

1. Sellers shall submit a written offer against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

2. Offers shall contain:

(a) the name and address of the seller;

(b) the quantity offered;

(c) the place where the butter is held.

3. Offers shall be valid only if:

(a) they relate to a quantity of butter meeting the requirements of Article 4(4);

(b) they are accompanied by a written undertaking by the seller to comply with Articles 4(3) and 14(2);

(c) proof is furnished that the seller has lodged a security of EUR 5 per 100 kg in the Member State in which the offer was submitted no later than the day on which the offer is received.

4. The undertaking provided for in paragraph 3(b), if forwarded initially to the intervention agency, shall be deemed to be tacitly renewed for subsequent offers until explicitly cancelled by the seller or by the intervention agency, provided that:

(a) the original offer stipulates that the seller intends to avail himself/herself of the provisions of this paragraph;

(b) subsequent offers refer to the provisions of this paragraph and to the date of the original offer.

5. The intervention agency shall record the day on which the offer was received, the quantities involved and their respective dates of manufacture and the place where the butter offered is stored.

6. Offers may not be withdrawn after they have been received by the intervention agency.

Article 11

Maintenance of the offer and delivery of the butter to the depot designated by the intervention agency within the time limit laid down in Article 12(2) shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 (*).

Article 12

1. After checking the offer, and within five working days following the day of receipt, the intervention agency shall issue a dated and numbered delivery order showing:

(a) the quantity to be delivered;

(b) the final date for delivery of the butter;

(c) the cold storage depot to which it must be delivered.

2. Within 21 days of the day of receipt of the offer to sell, the seller shall deliver the butter to the loading bay of the cold store. Delivery may be in several consignments.

Any costs incurred in unloading the butter at the loading bay of the cold store shall be borne by the seller.

3. The security referred to in Article 10(3)(c) shall be released as soon as the seller has delivered all the quantity indicated on the delivery order within the time limit laid down therein.

Where the checks referred to in Article 4(1) show that the butter does not conform to the requirements laid down in that Article, the security shall be forfeit in respect of the quantity delivered. As regards the remaining quantities, buying-in shall be cancelled and the security be released.

4. Except in cases of force majeure, where the seller fails to deliver the butter within the time limit laid down in the delivery order, the security provided for in Article 10(3)(c) shall be forfeit in proportion to the quantities not delivered and buying-in shall be cancelled in respect of these quantities not yet delivered.

5. For the purpose of this Article, the butter shall be deemed to be delivered to the intervention agency on the day when the full quantity of butter covered by the offer enters the storage depot designated by the intervention agency, but no earlier than the day following that on which the delivery order was issued.

6. The rights and obligations resulting from the sale shall not be transferable.

Article 13

1. The intervention agency shall pay the seller for each quantity of butter taken over, between the 45th and 65th days after the day of the taking over, provided that compliance with Articles 3 and 4 has been confirmed.

2. For the purpose of this Article, the day of the taking over shall mean the day on which the butter enters the cold store designated by the intervention agency, but no earlier than the day following that on which the delivery order referred to in Article 12(1) was issued.

Article 14

1. The butter shall be put through a trial storage period. This period shall be fixed at 30 days starting from the day of taking over.

2. By their offers, sellers shall undertake that, where the inspection on entry into the store designated by the intervention agency shows that the butter does not meet the requirements of Articles 3 and 4, or where, at the end of the trial storage period, the minimum organoleptic quality of the butter proves to be below that set in Annex I:

(a) they will take back the butter in question and

(b) they will pay the storage costs of the butter concerned from the day on which it was taken over until the date of its removal from storage.

The storage costs to be paid shall be determined on the basis of the standard amounts for entry, removal and storage costs laid down pursuant to Article 6 of Council Regulation (EEC) No 1883/78 (**).

Article 15

1. Not later than 12 noon (Brussels time) of each Tuesday, the Member States shall inform the Commission of the quantities of butter which, during the preceding week, have been the subject of an offer to sell in accordance with Article 10.

2. Once it is observed that the offers reach 75 % of the quantities referred to in the second subparagraph of Article 6(1) of Regulation (EC) No 1255/1999 for the respective year, the information referred to in paragraph 1 of this Article shall be communicated each day before 12 noon (Brussels time) for the quantities of butter offered the preceding day.

Once it is observed that the offers reach the quantities referred to in the second subparagraph of Article 6(1) of Regulation (EC) No 1255/1999 for the respective year buying-in may be suspended in accordance with the procedure referred to in Article 42(2) of that Regulation.

Article 15a

In the case of suspension of buying-in in accordance with Articles 2(2) or the second subparagraph of Article 15(2), no new offers shall be accepted as of the day following the day of the entry into force of the decision suspending buying-in.

(*) OJ L 205, 3.8.1985, p. 5.

(**) OJ L 216, 5.8.1978, p. 1. Regulation as last amended by Regulation (EC) No 1259/96 (OJ L 163, 2.7.1996, p. 10).'

6. After Article 15a, the following Section 3a is inserted:

'SECTION 3a

Procedure for buying-in of butter by tendering

Article 16

1. Where the Commission decides to commence buying-in butter through an open standing invitation to tender pursuant to the second subparagraph of Article 6(1) of Regulation (EC) No 1255/1999 and in accordance with the procedure referred to in Article 42(2) thereof, Articles 3, 4, 5, 6, 12, 13 and 14 of this Regulation shall apply unless otherwise provided in this Section.

2. A notice of invitation to tender shall be published in the *Official Journal of the European Union*.

3. The closing date for submission of tenders for each individual invitation to tender shall fall on every second and fourth Tuesday of the month at noon (Brussels time), except the second Tuesday in August. If Tuesday is a public holiday, the closing date shall be the last preceding working day at noon (Brussels time).

Article 17

1. Interested parties shall participate in the tendering procedure announced by the intervention agency of a Member State either by submitting a written tender against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

2. Tenders shall contain:

(a) the name and address of the tenderer;

(b) the quantity offered;

(c) the proposed price per 100 kilograms of butter, exclusive of national taxes and charges, delivered to the loading bay of the cold store, expressed in euro to no more than two decimal places;

(d) the place where the butter is held.

3. Tenders shall be valid only if:

(a) they relate to a quantity of butter meeting the requirements of Article 4(4);

(b) they are accompanied by the written undertaking by the tenderer to comply with Articles 4(3) and 14(2);

(c) proof is furnished that the tenderer has lodged a security of EUR 5 per 100 kg for the invitation to tender concerned, in the Member State in which the tender was submitted, before the closing date for submission of tenders.

4. The undertaking provided for in paragraph 3(b), if forwarded initially to the intervention agency, shall be deemed to be tacitly renewed for subsequent tenders until explicitly cancelled by the tenderer or by the intervention agency, provided that:

(a) the original tender stipulates that the tenderer intends to avail himself of the provisions of this paragraph;

(b) subsequent tenders refer to the provisions of this paragraph and to the date of the original tender.

5. The intervention agency shall record the day on which the tender was received, the quantities involved and their respective dates of manufacture and the place where the butter offered is stored.

6. Tenders may not be withdrawn after the closing date referred to in Article 16(3) for the submission of tenders relating to the invitation to tender concerned.

Article 17a

Maintenance of the tender after the closing date for submission of tenders, and delivery of the butter to the depot designated by the intervention agency within the time limit laid down in Article 17d(3), shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 17b

1. The Member States shall inform the Commission of the quantities and prices offered by tenderers, no later than 9 a.m. (Brussels time) on the day following the closing date referred to in Article 16(3).

2. In the light of the tenders received for each invitation to tender, the Commission shall fix a maximum buying-in price, by reference to the intervention prices applicable, in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999.

3. A decision may be taken not to proceed with the invitation to tender.

Article 17c

Tenders shall be refused if the price proposed is higher than the maximum price referred to in Article 17b(2), applying to the tendering procedure concerned.

Article 17d

1. Tenderers shall be informed immediately by the intervention agency of the outcome of their participation in the tendering procedure.

Where tenders have been unsuccessful, the securities provided for in Article 17(3)(c) shall be released immediately.

The rights and obligations resulting from the tendering procedure shall not be transferable.

2. The intervention agency shall immediately issue to the successful tenderer a dated and numbered delivery order indicating:

(a) the quantity to be delivered;

(b) the final date for delivery of the butter;

(c) the cold storage depot to which it must be delivered.

3. Within 21 days of the closing date for submission of tenders, the successful tenderer shall deliver the butter to the loading bay of the cold store. Delivery may be in several consignments.

Any costs incurred in unloading the butter at the loading bay of the cold store shall be borne by the successful tenderer.

4. The security provided for in Article 17(3)(c) shall be released as soon as the successful tenderer has delivered all the quantity indicated on the delivery order within the time limit laid down therein.

Where the checks referred to in Article 4(1) show that the butter does not conform to the requirements laid down in that Article, the security shall be forfeit in respect of the quantity delivered. As regards the remaining quantities, buying-in shall be cancelled and the security be released.

5. Except in cases of force majeure, where the successful tenderer fails to deliver the butter within the time limit laid down in the delivery order, the security provided for in Article 17(3)(c) shall be forfeit in proportion to the quantities not delivered, and buying-in shall be cancelled in respect of the quantities not yet delivered.

6. For the purpose of this Article, the butter shall be deemed to be delivered to the intervention agency on the day when the full quantity of butter covered by the delivery order enters the storage depot designated by the intervention agency, but no earlier than the day following that on which the delivery order was issued.'

7. In Chapter II, Section 5 is replaced by the following:

'SECTION 5

Procedure for sales of butter by tendering

Article 21

1. Butter shall be sold by means of a standing invitation to tender organised by each intervention agency.

2. Sales shall concern butter taken into storage before 1 September 1999.

3. A standing invitation to tender shall be published in the *Official Journal of the European Union* at least eight days before the first closing date laid down for the submission of tenders.

4. The intervention agencies shall draw up a notice of standing invitation to tender indicating in particular the closing date and address for submission of tenders.

They shall also indicate, for the butter they hold:

(a) the locations of the cold store where the butter to be sold is in store,

(b) the quantity for sale in each cold store.

5. Intervention agencies shall keep an up-to-date list of the information referred to in paragraph 4, which they shall make available to interested parties on request. They shall also publish regular updates of the list in an appropriate form, to be indicated in the notice of standing invitation to tender.

6. Intervention agencies shall make the necessary arrangements to enable interested parties:

(a) to examine samples of the butter put up for sale at their own expense before submitting a tender;

(b) to verify the results of the analyses referred to in Article 8 of Commission Regulation (EC) No 213/2001 (*).

Article 22

1. Intervention agencies shall organise individual tendering rounds during the term of validity of the standing invitation to tender.

2. The closing date for submission of tenders for each individual round shall be 12 noon (Brussels time) on the second and fourth Tuesdays of the month, except for the second Tuesday of August and the fourth Tuesday of December. If Tuesday is a public holiday the time limit shall be 12 noon (Brussels time) on the previous working day.

Article 23

1. Tenders under each individual round shall be submitted by written offer against issuance of a receipt, or by any written means of telecommunication with proof of receipt.

Tenders shall be submitted to the intervention agency holding the butter for which an offer is made.

2. Offers shall contain:

(a) the name and address of the tenderer;

(b) the quantity desired;

(c) the price in euro tendered per 100 kilograms, not including national taxes and charges, delivered to the loading-bay of the cold store;

(d) if appropriate, the cold store where the butter is held and, if desired, a substitute cold store;

(e) if appropriate, an indication of the kind of butter referred to in Article 4(6)(e) for which the offer is being submitted.

3. Offers shall not be valid unless:

(a) they relate to at least five tonnes or, if the quantity available in a cold store is less than five tonnes, to the actual quantity available;

(b) proof is provided that the tenderer has lodged a tendering security of EUR 70 per tonne, in the Member State where the tender is submitted, for the tendering round in question before the closing date for submission of tenders.

4. Tenders may not be withdrawn after the closing date provided for in Article 22(2).

Article 24

For the purposes of the tendering security provided for in Article 23(3), the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 are fulfilled as regards the taking-over of the butter within the time limit laid down in Article 24f(2) of this Regulation.

Article 24a

1. The Member States shall inform the Commission of the quantities and prices offered by tenderers and the quantity of butter offered for sale, no later than 9 a.m. (Brussels time) on the day following the closing date referred to in Article 22(2).

2. A minimum selling price for the butter on the basis of the offers received under each round shall be fixed in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999. This price may vary according to the location of the quantities of butter offered for sale.

It may be decided to make no award under the round.

Article 24b

Offers shall be rejected if the price offered is lower than the established minimum price.

Article 24c

1. The intervention agency shall make the award in accordance with paragraphs 2 to 5.

2. The butter shall be allocated on the basis of its date of entry into storage, starting with the oldest product of the total quantity or, as the case may be, the oldest of the quantity of sweet or sour cream butter available in the cold store designated by the tenderer.

3. Without prejudice to Article 24b, the successful tenderer shall be the tenderer offering the highest price. If the full quantity available is not allocated, the remainder shall be awarded to the other tenderers on the basis of the prices tendered, starting with the highest price.

4. Where acceptance of a tender would result in contracts being awarded in excess of the quantity of butter available in a particular cold store, only the quantity available shall be awarded to the tenderer in question.

However, the intervention agency may designate other cold stores to make up the quantity set out in the tender, provided the tenderer agrees.

5. Where acceptance of two or more tenders offering the same price for butter in a particular cold store would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocating the quantity available in proportion to the quantities tendered for.

However, should such allocation lead to the award of quantities of less than five tonnes, the award shall be made by drawing lots.

Article 24d

The rights and obligations resulting from the tendering procedure shall not be transferable.

Article 24e

1. The intervention agency shall immediately inform tenderers of the outcome of their participation in the invitation to tender.

Securities provided for in Article 23(3)(b) lodged for unsuccessful tenders shall be released immediately.

2. Before removing the butter and within the period specified in Article 24f(2), successful tenderers shall pay the intervention agency the amount corresponding to their tender for each quantity that they wish to withdraw.

Article 24f

1. Once the amount referred to in Article 24e(2) has been paid the intervention agency shall issue a removal order indicating:

(a) the quantity in respect of which the corresponding amount has been paid;

(b) the cold store in which the butter is in store;

(c) the final date for removal of the butter.

2. Successful tenderers shall remove the butter awarded to them within 30 days of the closing date for the submission of tenders. Removal may be effected by instalments of not less than five tonnes each. However, where the quantity remaining in a cold store is less than five tonnes, that smaller quantity may be delivered.

Except in cases of force majeure, if the butter has not been removed within the period laid down in the first subparagraph, the cost of storing shall be borne by the successful tenderer from the day following that on which the period expired. Moreover, storage shall be at his/her own risk.

3. The security lodged in accordance with Article 23(3)(b) shall be released immediately in respect of quantities removed within the period provided for in the first subparagraph of paragraph 2 of this Article.

It shall be forfeit in the case of the second subparagraph of paragraph 2.

In the event of force majeure referred to in the second subparagraph of paragraph 2, the intervention agency shall take such action as it considers necessary having regard to the circumstances invoked.

Article 24g

Member States shall inform the Commission not later than Tuesday of each week of the quantities of butter which, during the preceding week:

(a) have been the subject of a sale contract;

(b) have been taken over.

(*) OJ L 37, 7.2.2001, p. 1.'

Article 2

The purchase of butter suspended in certain Member States at the time of the entry into force of this Regulation shall continue to be suspended until a new decision in that respect is taken by the Commission and published in the *Official Journal of the European Union*.

Article 3

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

It shall apply as of 1 March 2004.

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

Done at Brussels, 23 February 2004.

For the Commission

Franz FISCHLER

Member of the Commission