

COMMISSION REGULATION (EEC) No 429/90

of 20 February 1990

on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 3879/89 ⁽²⁾, and in particular Article 7a (3) thereof,Having regard to Council Regulation (EEC) No 1677/85 of 11 June 1985 on monetary compensatory amounts in agriculture ⁽³⁾, as last amended by Regulation (EEC) No 1889/87 ⁽⁴⁾,Whereas Commission Regulation (EEC) No 3143/85 ⁽⁵⁾, as last amended by Regulation (EEC) No 2690/89 ⁽⁶⁾, establishes a scheme for the sale at reduced prices of intervention butter intended for direct consumption in the form of concentrated butter; whereas that measure has helped to increase the disposal of intervention butter and to boost the consumption of concentrated butter;

Whereas having regard, on the one hand, to the promotional and commercial action undertaken, which has enabled part of the market in oils and fats to be conquered since the entry into force of the said Regulation and, on the other hand, to the current situation on the market in butter, the scheme provided for by Regulation (EEC) No 3143/85 should be continued and supplemented by providing for the possibility of granting aid for concentrated butter obtained from butter or cream originating from the market and intended for direct consumption in the Community;

Whereas, pursuant to Article 7a (2) (b) of Regulation (EEC) No 804/68, special measures may be taken with a view to increasing the possibility of disposing of butter which has not been the subject of purchase by intervention agencies nor of private storage aid and the possibility of disposing of cream; whereas provisions should therefore be laid down to ensure that the butter has not been the subject of the measures provided for in Title II of Regulation (EEC) No 804/68;

Whereas disposal measures may provide for the granting of an aid; whereas to ensure that such aid is established at

the level which is strictly necessary and to supervise effectively the quantities concerned, a standing invitation to tender procedure should be used, which will also ensure equal access for interested operators;

Whereas measures should be taken to ensure differentiation at all stages of marketing between concentrated butter disposed of under the terms of this Regulation and other types of butter; whereas, to that end, provisions should be adopted concerning the composition and description of concentrated butter; whereas, in order to ensure compliance with the aims of this Regulation, a time limit for the processing of the butter and the cream into concentrated butter and for packing should be fixed;

Whereas a sufficiently high butterfat content should be laid down;

Whereas a system of checks should be applied to ensure that the concentrated butter is not used for purposes other than those stipulated; whereas in view of the specific character of the operation, particularly in connection with the manufacture of the concentrated butter, provision should be made for the keeping of stock records by the parties concerned; whereas, however, such checks should end at the stage immediately preceding taking-over by the retail sector;

Whereas, as regards the monetary compensatory amounts fixed pursuant to Regulation (EEC) No 1677/85, account should be taken of the value of the butter or the concentrated butter; whereas, to that end, provision should be made for the application of a coefficient to the monetary compensatory amounts applicable to concentrated butter pursuant to the Commission Regulation fixing the monetary compensatory amounts;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. An aid shall be granted for concentrated butter produced in an establishment approved in accordance with Article 9 and made from either cream or butter manufactured in the Community, provided that the butter has not been the subject of buying in by intervention agencies or of private storage aids. The concentrated butter, which shall meet the specifications set out in the Annex hereto, shall be intended for direct consumption in the Community.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 378, 27. 12. 1989, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 6.

⁽⁴⁾ OJ No L 182, 3. 7. 1987, p. 1.

⁽⁵⁾ OJ No L 298, 12. 11. 1985, p. 9.

⁽⁶⁾ OJ No L 261, 7. 9. 1989, p. 6.

2. For the purposes of this Regulation, 'direct consumption' shall mean purchases by consumers for the purposes of final utilization, including those made by hotels, restaurants, hospitals, homes, boarding schools, prisons and all similar establishments for the preparation of food for direct consumption.

3. The aid shall be granted by the Member State on whose territory the cream or butter has been processed into concentrated butter in accordance with the formulae set out in the Annex hereto.

4. The aid shall be fixed in ecus in accordance with the standing invitation to tender procedure, which shall be administered by each of the intervention agencies.

Article 2

1. Notice of a standing invitation to tender shall be published in the *Official Journal of the European Communities* at least eight days before the first closing date for submission of tenders.

2. The intervention agency shall issue a notice of invitation to tender, indicating in particular the closing date and place for the submission of tenders.

Article 3

1. During the period of validity of the standing invitation to tender, the intervention agency shall issue individual invitations to tender.

2. The period for the submission of tenders in response to individual invitations shall expire at 12 noon each second and fourth Tuesday of the month except the fourth Tuesday of December. If Tuesday is a public holiday the period shall be extended to 12 noon on the following working day.

3. As regards the first individual invitation to tender, the period for the submission of tenders shall expire at 12 noon on 13 March 1990.

Article 4

1. A tender shall not be valid unless it is accompanied by a written undertaking to manufacture the quantity of concentrated butter stipulated in the tender. If the concentrated butter is manufactured from butter, the tenderer must also give a written undertaking that he will use butter which has not been the subject of buying in by intervention agencies or of private storage aid.

2. Tenders shall be submitted either by registered post or delivered by hand to the intervention agency against acknowledgement of receipt, or by any written means of telecommunication.

3. Tenders shall be submitted to the intervention agency on whose territory the concentrated butter is to be manufactured.

4. Tenders shall state :

- (a) the name and address of the tenderer ;
- (b) the amount of aid proposed, expressed in ecus per 100 kilograms of concentrated butter ;
- (c) the quantity of concentrated butter for which the aid is applied for ;
- (d) the name and address of the establishment where the entire quantity of concentrated butter is to be manufactured, tracers added and packing carried out, in accordance with Articles 9 and 10 and, where appropriate, of the establishment where the entire quantity of concentrated butter is to be packed for marketing, in accordance with Article 10 (5). However, with the agreement of the competent agency, the entire quantity of concentrated butter may be packed for marketing in an establishment other than that indicated in the tender, in accordance with Article 10 (5).

5. A tender shall not be valid unless :

- (a) it is accompanied by the written undertakings referred to in paragraph 1 ;
- (b) it relates to a quantity of at least four tonnes of concentrated butter ;
- (c) proof is furnished that, before expiry of the period set for the submission of tenders, the tenderer has lodged the tendering security referred to in Article 5 (1).

6. No tender may be withdrawn after the closing date referred to in Article 3 (2) for the submission of tenders relating to the individual invitation to tender concerned.

Article 5

1. For the purposes of this Regulation, maintenance of the tender after the closing date for the submission of tenders and the lodging of an end-use security shall constitute primary requirements, compliance with which shall be ensured by the lodging of a tendering security of ECU 150 per tonne.

2. Tendering securities shall be lodged in the Member State in which the tender is submitted.

Tendering securities shall be released when the end-use security referred to in paragraph 3 is lodged.

3. Taking-over of the concentrated butter by the retail trade in the Community shall be a primary requirement compliance with which shall be ensured by the lodging of an end-use security the amount of which shall be set at the same time and in line with the aid per 100 kilograms.

Article 6

In the light of the tenders received in response to each individual invitation to tender and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount of aid shall be fixed for the concentrated butter with a minimum fat content of 96 %.

Under the abovementioned procedure a decision may be taken to make no award in respect of an invitation to tender.

Article 7

1. Tenders shall be rejected if the aid proposed is more than the maximum amount fixed for the individual invitation to tender concerned.
2. Rights and obligations arising in connection with the invitation to tender shall not be transferable.

Article 8

1. Each tenderer shall be notified without delay by the intervention agency of the result of his participation in an individual invitation to tender.
2. Where the tenderer has been declared successful, such notification shall indicate :
 - (a) the amount of the aid granted for the quantity of concentrated butter concerned and the tender, identified by a serial number, to which it relates ;
 - (b) the final date for packing the concentrated butter ;
 - (c) the amount of the end-use security.
3. Except in cases of *force majeure*, the aid shall be paid to the successful tenderer :
 - within 60 days from the date on which proof is furnished that the concentrated butter has been manufactured, had tracers added and been packed in accordance with Articles 9 and 10 and shall be paid in proportion to the quantities for which such proof is furnished.
 - and after the end-use security referred to in Article 5 (3) has been lodged.

The end-use security shall be released in respect of the quantities for which proof of taking-over by the retail trade is furnished within a maximum of 15 months from the deadline for the submission of tenders referred to in Article 3 (2).

However, 85 % of the end-use security shall be released if the proof concerned is furnished within six months of the 15-month time limit referred to in the second subparagraph.

Where a T 5 control copy must be used as proof of taking-over by the retail trade and has, owing to circumstances beyond the control of the interested party, not been returned to the customs office of departure or to the central return office within 12 months of the deadline for the submission of tenders referred to in Article 3 (2), that party may lodge with the competent authorities a reasoned application before the expiry of the 15-month time limit referred to in the second subparagraph for equivalence of treatment, together with supporting documents, which must include the transport document and a document proving that the butter has been taken over by the retail trade.

4. Where, for example because of uneven distribution, the content of each of the products listed in point 1 (c) of the Annex is found to be more than 5 % but less than

20 % below the minimum quantities prescribed, the aid shall be reduced by 1,5 % of its amount per percentage point below the prescribed minimum quantities.

5. Where the period referred to in Article 9 (1) is exceeded by less than a total of 60 days, the aid shall be reduced by ECU 4 per tonne per day. At the end of this period, the remaining amount of the aid shall be reduced by 15 %, and thereafter by 2 % for each extra day.
6. In cases of *force majeure* or where an administrative inquiry concerning entitlement to the aid has been initiated, payment shall not be made until entitlement to the aid has been acknowledged.

Article 9

1. Manufacture of the concentrated butter, the addition of tracers in accordance with the specifications laid down in the Annex and packing the concentrated butter, including the packing for marketing referred to in Article 4 (4) (d), must take place :
 - within 90 days of the closing date for the submission of tenders referred to in Article 3 (2),
 - in an establishment approved for that purpose by the Member State on whose territory the said establishment is located.
2. Approval may be granted to an establishment only if it :
 - (a) has the appropriate technical installations to process an average quantity of at least two tonnes of concentrated butter per month ;
 - (b) has premises on which any stocks of non-butter fat can be stored separately and identified as such ;
 - (c) undertakes to keep permanent records of the origin of the butter used, the date of manufacture of the butter, the quantity and composition of the concentrated butter obtained, the removal date of that product and the names and addresses of holders substantiated by reference to delivery notes and invoices ; and
 - (d) undertakes to forward its manufacturing programme for each consignment, in accordance with the arrangements decided on by the Member State concerned, to the body responsible for the checks referred to in Article 11.
3. If the establishment processes various products qualifying for aid or a price reduction, it must also undertake :
 - to keep the records referred to in paragraph 2 (c) as a separate entity,
 - to process successively the said products. However, on application by the party concerned, the Member States may agree to waive this obligation if the establishment has premises ensuring that the stocks of the products in question can be stored separately and identified as such.
4. Approval shall be given with a serial number by the Member State on whose territory the concentrated butter is manufactured and packed.

5. Approval shall be withdrawn in the event of failure to comply with the provisions of this Article; approval may also be withdrawn where the undertaking concerned is found not to have complied with any other obligation arising from this Regulation.

On application by the establishment concerned, approval shall be reinstated after a minimum period of six months and following a detailed inspection.

6. Paragraphs 2 and 5 notwithstanding, until 31 December 1990 Member States may treat as valid for the purposes of this Regulation, but not where cream is concerned, approvals previously given pursuant to Article 4 of Regulation (EEC) No 3143/85.

Article 10

1. During the manufacture of the concentrated butter, one of the tracers referred to in the Annex shall be incorporated, in accordance with the formula chosen, in such a way as to ensure its homogeneous distribution.

The competent agency shall ensure that the requirements as to the quality and characteristics, in particular the degree of purity, of the products to be incorporated into the concentrated butter have been complied with.

2. Nitrogen gas may be added to concentrated butter immediately before packing to cause foaming; the increase in volume resulting from this treatment may not exceed 10 % of the volume of the concentrated butter before treatment.

However, in the case of concentrated butter with a minimum butterfat content of 99,8 % before the addition of tracers and additives, the increase in volume resulting from this treatment may not exceed 20 % of the volume of the concentrated butter before treatment.

3. Concentrated butter to which tracers have been added in accordance with formula I set out in the Annex must be put up in sealed packs. Depending on the products incorporated in accordance with paragraphs 1 and 2 and subject to the national provisions governing the description of food products, the packs shall bear, in clear and legible print, of a single font, one or more of the following statements:

- «Mantequilla concentrada — Reglamento (CEE) n° 429/90» o «mantequilla concentrada para la cocina — Reglamento (CEE) n° 429/90» o «mantequilla concentrada para la cocina y la pastelería — Reglamento (CEE) n° 429/90»;
- Stege- og bagesmør — Forordning (EØF) nr. 429/90;
- „Butterfett — Verordnung (EWG) Nr. 429/90” oder „Butterschmalz — Verordnung (EWG) Nr. 429/90”;
- «Συμπυκνωμένο βούτυρο — Κανονισμός (ΕΟΚ) αριθ. 429/90» ή «Συμπυκνωμένο βούτυρο για μαγειρική — Κανονισμός (ΕΟΚ) αριθ. 429/90» ή «Συμπυκνωμένο βούτυρο για μαγειρική και ζαχαροπλαστική — Κανονισμός (ΕΟΚ) αριθ. 429/90 ή

«Μαγειρικό βούτυρο — Κανονισμός (ΕΟΚ) αριθ. 429/90»;

- ‘Butteroil — Regulation (EEC) No 429/90’ or ‘concentrated butter for cooking and baking — Regulation (EEC) No 429/90’;
- «Beurre concentré — Règlement (CEE) n° 429/90» ou «beurre concentré pour la cuisine — Règlement (CEE) n° 429/90» ou «beurre concentré pour la cuisine et la pâtisserie — Règlement (CEE) n° 429/90» ou «beurre cuisinier — Règlement (CEE) n° 429/90»;
- «Burro concentrato — Regolamento (CEE) n. 429/90»;
- „Bak- en braadboter — Verordening (EEG) nr. 429/90” of „boterconcentraat — Verordening (EEG) nr. 429/90”.

Concentrated butter to which tracers have been added in accordance with formula II set out in the Annex must be put in sealed packs bearing, in clear and legible print, of a single font, one or more of the following statements:

- Ghee obtenido de mantequilla — Reglamento (CEE) n° 429/90
- Ghee — Forordning (EØF) nr. 429/90
- Aus Butter gewonnenes Ghee — Verordnung (EWG) Nr. 429/90
- Βούτυρο ghee — Κανονισμός (ΕΟΚ) αριθ. 429/90
- Butter ghee — Regulation (EEC) No 429/90
- Ghee obtenu du beurre — Règlement (CEE) n° 429/90
- Ghee ottenuto da burro — Regolamento (CEE) n. 429/90
- Ghee — Verordening (EEG) nr. 429/90.

4. The packs referred to in paragraph 3 shall have a maximum net content of three kilograms.

5. The entire quantity of concentrated butter may be packed for marketing in an establishment other than that in which it was processed provided that packing takes place in an establishment approved for that purpose by the Member State on whose territory the two establishments are located.

Article 11

1. During the manufacture of the concentrated butter, the competent agency shall carry out on-the-spot checks on the basis of the establishment's manufacturing programme as referred to in Article 9 (2) (d) in such a way that each tender as described in Article 4 is checked at least once.

Such checks shall entail taking and analysing samples and shall relate in particular to the conditions of manufacture, to the quantity and composition of the product obtained and to the packs. They shall entail taking samples of concentrated butter from each consignment identified by the serial number of the tender.

These checks shall be accompanied periodically, depending on the quantities processed, by a thorough and random inspection of the records referred to in Article 9 (2) (c) and by verification of compliance with the conditions laid down for the approval of the establishment.

The cost of the checks shall fall to the establishment.

2. A 'consignment' means a quantity of concentrated butter produced in a single manufacturing unit and corresponding to all or part of a tender as described in Article 4 (3).

Article 12

1. Within the meaning of this Regulation, butter shall also be deemed to be taken over by the retail trade where purchases are made by the establishments referred to in Article 1 (2), by distributing establishments to which access is reserved to holders of a purchaser's card ('cash and carry') and by the purchasing departments of retail distribution undertakings.

2. Until such time as the concentrated butter is taken over by the retail trade, any person holding concentrated butter must keep stock records showing for each delivery the names and addresses of the purchasers of the concentrated butter and the quantities purchased in each case.

Where the holder of concentrated butter under this Regulation also holds concentrated butter subject to the provisions of Commission Regulation (EEC) No 570/88⁽¹⁾ and/or Regulation (EEC) No 3143/85, separate stock records shall be kept for the products held by virtue of each of the said Regulations.

3. In order to ensure that the provisions referred to in paragraph 2 are complied with, control operations shall be supplemented by thorough unannounced checking of the commercial documents and stock records of all holders of concentrated butter referred to in that paragraph.

Article 13

Member States shall notify the Commission at the beginning of each quarter of the retail selling prices for concentrated butter recorded during the preceding quarter.

Article 14

Where packed concentrated butter is dispatched to be taken over by the retail trade in another Member State, box 104 of the T 5 control copy shall carry the following entry:

- Mantequilla concentrada y envasada destinada al consumo inmediato en la Comunidad (para su aceptación por el comercio minorista)
- Emballeret koncentreret smør bestemt til direkte forbrug i Fællesskabet (til detailhandelen)

- Verpacktes Butterfett zum unmittelbaren Verbrauch in der Gemeinschaft (vom Einzelhandel zu übernehmen)
- Συμπυκνωμένο και συσκευασμένο βούτυρο που προορίζεται για άμεση κατανάλωση στην Κοινότητα (θα αναληφθεί από το λιανικό εμπόριο)
- Packed concentrated butter for direct consumption in the Community (to be taken over by the retail trade)
- Beurre concentré et emballé destiné à la consommation directe dans la Communauté (à prendre en charge par le commerce de détail)
- Burro concentrato ed imballato destinato al consumo diretto nella Comunità (da consegnare ai commercianti al minuto)
- Verpakt boterconcentraat bestemd voor rechtsstreekse consumptie in de Gemeenschap (over te nemen door de detailhandel).

and 'Regulation (EEC) No 429/90 shall be marked in box 107.

Article 15

The tendering security referred to in Article 5 (1), the maximum amount of the aid referred to in Article 6, the aid payable to the successful tenderer and the end-use security referred to in Article 5 (3) shall be converted into national currency using the agricultural exchange rate applicable on the closing date for the submission of tenders for the individual invitation to tender concerned.

Article 16

The monetary compensatory amounts applicable to packed concentrated butter shall be equal to the monetary compensatory amounts fixed pursuant to Regulation (EEC) No 1677/85 multiplied by the coefficient given in Part 5 of Annex I to the Commission regulation fixing the monetary compensatory amounts.

Article 17

The aid for concentrated butter provided for in Article 1 of this Regulation shall be regarded as intervention intended to stabilize the agricultural markets within the meaning of Article 3 (1) of Council Regulation (EEC) No 729/70⁽²⁾.

Article 18

Commission Regulation (EEC) No 2220/85⁽³⁾ shall apply except where this Regulation specifically provides otherwise.

Article 19

This Regulation shall enter into force on 1 March 1990.

⁽¹⁾ OJ No L 55, 1. 3. 1988, p. 31.

⁽²⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽³⁾ OJ No L 205, 3. 8. 1985, p. 5.

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

Done at Brussels, 20 February 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

SPECIFICATIONS FOR CONCENTRATED BUTTER FOR DIRECT CONSUMPTION

1. REQUIREMENTS REGARDING COMPOSITION

(per 100 kilograms of concentrated butter for direct consumption):

- (a) *Milk fat content*: minimum 96 kilograms;
- (b) *Non-fat constituents of milk*: maximum two kilograms;
- (c) *Tracers, depending on the formula chosen*:

Formula I:

- either 15 grams of stigmaterol ($C_{29}H_{48}O = \Delta$ 5,22-stigmastene-3-beta-ol), at least 95 % pure, calculated on the product ready for incorporation,
- or 17 grams of stigmaterol ($C_{29}H_{48}O = \Delta$ 5,22-stigmastene-3-beta-ol), at least 85 % pure, calculated on the product ready for incorporation, containing not more than 7,5 % brassicasterol ($C_{28}H_{46}O = \Delta$ 5,22-ergostene-3-beta-ol and not more than 6 % sitosterol ($C_{29}H_{50}O = \Delta$ 5-stigmastene-3-beta-ol),
- or 1,1 kilograms of triglycerides of enanthic (n-heptanoic) acid, at least 95 % pure, calculated as triglycerides on the product ready for incorporation, with a maximum acid value of 0,3, a saponification number between 385 and 395, and a 95 % minimum content of enanthic acid in the esterified acid part.

Formula II:

- either 10 grams of ethyl ester of butyric acid and 15 grams of stigmaterol ($C_{29}H_{48}O = \Delta$ 5,22-stigmastene-3-beta-ol), at least 95 % pure, calculated on the product ready for incorporation,
 - or 10 grams of ethyl ester of butyric acid and 17 grams of stigmaterol ($C_{29}H_{48}O = \Delta$ 5,22-stigmastene-3-beta-ol), at least 85 % pure, calculated on the product ready for incorporation, containing not more than 7,5 % brassicasterol ($C_{28}H_{46}O = \Delta$ 5,22-ergostene-3-beta-ol and not more than 6 % sitosterol ($C_{29}H_{50}O = \Delta$ 5-stigmastene-3-beta-ol),
 - or 10 grams of ethyl ester of butyric acid and 1,1 kilograms of triglycerides of enanthic (n-heptanoic) acid, at least 95 % pure, calculated as triglycerides on the product ready for incorporation, with a maximum acid value of 0,3, a saponification number between 385 and 395, and a 95 % minimum content of enanthic acid in the esterified acid part;
- (d) *The following may be incorporated to the exclusion of all other additives*:
- non-fatty components of milk (maximum two kilograms) referred to in (b), and/or
 - sodium chloride: maximum 0,750 kilogram,
 - lecithin (E 322): maximum 0,500 kilogram.

2. QUALITY REQUIREMENTS

- *Free fatty acids*: maximum 0,35 % (expressed as oleic acid).
- *Peroxide number*: maximum 0,5 (in milliequivalents of active oxygen per kilogram).
- *Flavour*: fresh.
- *Smell*: absence of extraneous odours.
- *Neutralizing agents, antioxidants and preservatives*: absent.