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COMMISSION REGULATION (EEC) No 2131/93

of 28 July 1993

laying down the procedure and conditions for the sale of cereals held by intervention agencies

(OJ L 191, 31.7.1993, p. 76)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Commission Regulation (EC) No 120/94 of 25 January 1994	L 21	1	26.1.1994

Corrected by:

► **C1** Corrigendum, OJ L 14, 20.1.1995, p. 14 (2131/93)



COMMISSION REGULATION (EEC) No 2131/93
of 28 July 1993

**laying down the procedure and conditions for the sale of cereals
held by intervention agencies**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals⁽¹⁾, and in particular Article 5 thereof,

Whereas cereals may be bought in by intervention agencies either under compulsory intervention measures as provided for in Article 4 of Regulation (EEC) No 1766/92 or under special intervention measures as referred to in Article 6 of that Regulation;

Whereas cereals held by the intervention agencies must be sold without any discrimination between Community purchasers; whereas in principle invitations to tender permit that objective to be achieved; whereas, however, in certain cases it must be possible to use other methods of sale;

Whereas, to ensure that all interested parties in the Community are treated equally, notices of invitation to tender must be published in the *Official Journal of the European Communities* and a reasonable time must elapse between the date of such publication and the first closing date for the submission of tenders; whereas, however, such publicity is necessary for quantities of less than 2 000 tonnes;

Whereas sale on the internal market must take place at prices which do not disturb the market; whereas that aim can be achieved if the selling price is equal to the local market price, account being taken of the quality put up for sale by tender, without being below a given level in relation to the intervention price; whereas in certain cases observing such a price level may not be in the interests of sound management of the market or of the intervention arrangements and may result in disturbance in the way the market organization functions; whereas provision should therefore be made for the possibility of disposing of intervention stocks and special prices in such cases;

Whereas, in addition, the purchase on the market of cereals particularly suited to certain uses may be especially difficult; whereas provision should therefore be made for the possibility of facilitating the supply of that market from intervention stocks; whereas, however, that possibility must be restricted to exceptional cases;

Whereas the sale of cereals for export must take place at prices to be determined in each case in the light of market trends and requirements; whereas such sales must not however, lead to distortions to the detriment of exports from the open market; whereas a minimum selling price should therefore be fixed by the Commission on the basis of tenders submitted;

Whereas the minimum selling price is to be established by the Commission in the light of all the relevant data available on the day on which tenders are submitted; whereas, in order to prevent speculation and ensure identical conditions for all concerned in the invitation to tender, tenders must be accompanied by an application for advance fixing of the export refund;

Whereas tenders for different lots are comparable one with another only where they relate to cereals in identical situations; whereas cereals put up for tender are stored in different places; whereas comparability may be better ensured by reimbursing to the successful tenderer the lowest

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

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costs of transport from the place where the cereals in question are stored and the place of exit; whereas, however, for budgetary reasons, such reimbursement can only be made in respect of the place of exit which can be reached at the lowest cost; whereas that place must be determined by reference to its facilities for exporting cereals;

Whereas invitations to tender can take place properly only if those concerned submit genuine tenders; whereas that objective can be achieved by requiring that a security be paid, to be released on payment of the selling price within the time limit laid down;

Whereas, in the case of invitations to tender for export, steps must be taken to ensure that the cereals are not put back on the Community market; whereas that risk exists if the selling price is less than the minimum price to be observed in the case of resale on the internal market; whereas provision should accordingly be made in such cases for the lodging of a second security, which must be equal to the difference between the selling price and that minimum price; whereas, as a consequence, that security can be released only if the successful tenderer intending to export the cereals provides the proof referred to in Article 18 of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽¹⁾, as last amended by Regulation (EEC) No 1708/93 ⁽²⁾;

Whereas, in order to ensure that intervention stocks are disposed of rapidly and as far as possible in line with commercial practice, a certain time limit should be laid down in respect of the rights and obligations deriving from the award;

Whereas Commission Regulation (EEC) No 1836/82 of 7 July 1982 laying down the procedure and conditions for the disposal of cereals held by intervention agencies ⁽³⁾, as last amended by Regulation (EEC) No 966/93 ⁽⁴⁾, has been amended on numerous occasions; whereas, for the sake of clarity, it should be replaced;

Whereas it is necessary for all sales effected during the 1993/94 marketing year to be treated in the same manner;

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

1. Cereals bought in by the intervention agencies in accordance with Article 4 of Regulation (EEC) No 1766/92 shall be put up for sale by invitation to tender or, in the case of resale on the Community market, by public auction.

2. For the purposes of this Regulation, 'invitation to tender' means competition between interested parties in response to a call for tenders, the contract being awarded to the person submitting the most favourable bid in accordance with this Regulation.

TITLE I

Sale on the Community market

Article 2

1. Decisions issuing invitations to tender shall be taken in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92. Such decisions shall lay down in particular:

⁽¹⁾ OJ No L 351, 14. 12. 1987, p. 1.

⁽²⁾ OJ No L 159, 1. 7. 1993, p. 77.

⁽³⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁴⁾ OJ No L 98, 24. 4. 1993, p. 25.

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- (a) the quantities to be put up for tender;
- (b) the closing date for the submission of tenders in the case of specific invitations to tender and the first and final closing dates for the submission of tenders in the case of standing invitations to tender.

The decisions referred to in the first subparagraph shall be brought to the notice of all interested parties by their publication in the *Official Journal of the European Communities*.

A period of at least eight days must elapse between the date of such publication and the first closing date for the submission of tenders.

2. Paragraph 1 shall not apply to invitations to tender covering quantities of less than 2 000 tonnes.

Article 3

1. The intervention agencies shall draw up notices of invitations to tender in accordance with Article 12 and shall publicize them, in particular by displaying them at their head offices. In the case of standing invitations to tender, they shall specify therein the closing dates for the submission of tenders for each partial invitation to tender.

2. Notices of invitation to tender shall specify the minimum quantities which tenders must cover.

Article 4

Invitations to tender as provided for in Article 2 may be restricted to specified uses and/or destinations.

Article 5

1. For resale other than as referred to in paragraph 3, successful tenders must quote a price at least equal to the price recorded for an equivalent quality and for a representative quantity on the market at the place of storage or, failing that, on the nearest market, account being taken of transport costs. Bids may in no circumstances be lower than the intervention price applicable on the closing date for the submission of tenders.

2. For the purposes of paragraph 1, the intervention prices to be taken into account during the 12th month of the marketing year shall be those applicable for the 11th month, plus one monthly increase.

3. In the case of resale of maize and grain sorghum during the first three months of the marketing year and of common wheat, durum wheat, rye and barley during the first two months on the marketing year, successful tenders must quote a price at least equal to the intervention price applicable for the 11th month of the preceding marketing year, plus one monthly increase fixed for that year.

4. If, during a marketing year, the operation of the market organization is disturbed on account in particular of difficulty in selling cereals at prices which comply with paragraph 1, special price conditions may be laid down in accordance with the procedure provided for in Article 23 of Regulation (EEC) No 1766/92.

Article 6

In the second month following that of the closure of the invitation to tender, the Member States concerned shall inform the Commission of the outcome of the tendering procedure, indicating in particular the average selling prices of the various lots and the quantities sold.

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TITLE II

Sale for export*Article 7*

1. Decisions issuing invitations to tender shall be taken in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92. Such decisions shall lay down in particular:

- (a) the quantities to be put up for tender;
- (b) the regions where the quantities are stored;
- (c) the closing date for the submission of tenders in the case of specific invitations to tender and the first and final closing date for the submission of tenders in the case of standing invitations to tender.

The decisions referred to in the first subparagraph shall be brought to the notice of all interested parties by their republication in the *Official Journal of the European Communities*.

A period of at least eight days must elapse between the date of such publication and the first closing date for the submission of tenders.

2. In the notices of invitation to tender provided for in Article 12, the intervention agencies shall specify for each lot the port or place of exit which may be reached at the lowest transport costs and which has adequate technical facilities for exporting the cereals put up for tender.

The lowest transport costs between the place of storage and the place of loading at the port or place of exit referred to in the first subparagraph shall be reimbursed to the successful tenderer by the intervention agency in respect of the quantities exported. In particular cases a decision may be taken in accordance with the procedure referred to in paragraph 1 for carriage to be undertaken by the intervention agency under the same conditions.

3. In the case of standing invitations to tender, the intervention agency shall set the closing dates for the submission of tenders for each partial invitation to tender.

Article 8

1. Tenders:

- (a) may be rejected if they relate to lots of less than 500 tonnes;
- (b) may stipulate that they are valid only for specified quantities;
- (c) shall be considered as relating to a cereal delivered to, but not unloaded at, the ports or places of exit referred to in Article 7 (2).

2. Without prejudice to Article 13 (2), tenders shall be valid only if they are accompanied by an application for an export licence together with an application for advance fixing of the export refund or levy for the relevant destination. All countries for which the same rate of export refund or levy applies shall be considered as one destination.

Article 9

Notwithstanding Article 21 (1) of Commission Regulation (EEC) No 3719/88 ⁽¹⁾, export licences issued pursuant to this Regulation shall be considered, for the purposes of determining their term of validity, as having been issued on the closing date for the submission of tenders.

Article 10

When each period for the submission of tenders has expired, the Member State concerned shall forward to the Commission a list of the tenders, without names, in each case showing in particular the quantity, the price and the price increases and reductions applying thereto. In accordance with the procedure laid down in Article 23 of Regulation

⁽¹⁾ OJ No L 331, 2. 12. 1988, p. 1.

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(EEC) No 1766/92, the Commission shall fix the minimum selling price or shall decide to take no action in respect of the tenders received.

The minimum price shall be fixed at a level which does not prejudice other export operations.

Article 11

Where the export licence application submitted by the successful tenderer pursuant to Article 8 (2) is based on Article 44 of Regulation (EEC) No 3719/88, the intervention agency shall cancel the contract in respect of the quantities for which the licence is not issued in accordance with that Article.

TITLE III

General and final provisions*Article 12*

At least eight days before the first closing date for the submission of tenders, the intervention agencies shall publish a notice of invitation to tender setting out:

- supplementary terms and conditions of sale compatible with this Regulation,
- the main physical and technical characteristics of the various lots ascertained at the time of buying in by the intervention agency or during checks conducted thereafter,
- the places of storage and the names and addresses of the storers.

The notice and any amendments thereto shall be forwarded to the Commission before the first closing date for the submission of tenders.

Article 13

1. In the case of sales on the Community market, tenders shall be drawn up by reference to the standard quality defined in Council Regulation (EEC) No 2731/75 ⁽¹⁾.

Where the quality of the cereal differs from the standard quality, the successful tender price shall be adjusted by applying the price increases or reductions determined pursuant to Articles 4 and 5 of Regulation (EEC) No 1766/92.

2. In the case of sales for export, tenders shall be drawn up by reference to the actual quality of the lot to which the tender relates.

3. In the case of sales for export, provision may be made for tenders submitted pursuant to Article 44 of Regulation (EEC) No 3719/88 not to be admissible.

4. Once submitted, tenders may not be amended or withdrawn.

Tenders shall be valid only if they are accompanied by proof that the tenderer has lodged a security of:

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- ECU 5 per tonne in the case of a sale for export,

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- ECU 5 to 10 per tonne, to be fixed by Member State concerned, in the case of a sale on the Community market.

Article 14

Intervention agencies shall take all measures necessary to enable interested parties to assess the quality of cereals put up for sale before submitting their tenders.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 22.

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Intervention agencies shall immediately inform all tenderers of the outcome of their tender. They shall forward statements of award of contract to the successful tenderers within three working days of the said notification, by registered letter or written telecommunication.

Article 16

Successful tenderers shall pay for the cereals before they are removed and at the latest within one month of the date on which the statement referred to in Article 15 was forwarded. They shall bear all risks and storage costs in respect of cereals not removed within the period allowed for payment.

Cereals covered by contracts awarded and not removed within the period allowed for payment shall be deemed to all effects to have been removed on expiry of that term. In that case, where sales on the internal market are concerned, the price tendered shall be adjusted by reference to the quality characteristics described in the notice of invitation to tender.

In the case of sales for export, the price to be paid shall be that quoted in the tender, plus a monthly increase where removal takes place in the month following that of award of the contract.

Where the successful tenderer has not paid for the cereals within the period laid down in the first paragraph, the contract shall be cancelled by the intervention agency in respect of the quantities not paid for.

Article 17

1. The securities referred to in this Regulation shall be lodged in accordance with Title II of Commission Regulation (EEC) No 2220/85 ⁽¹⁾.

2. The security provided for in Article 13 (4) shall be released where it covers quantities for which:

- no contract has been awarded,
- the selling price has been paid within the period laid down, and in the case of sales for export and where the price paid is less than the minimum price for resale on the Community market, in accordance with Article 5 (1), (2) and (3), a security covering the difference between those two prices has been lodged.

3. The security provided for in the second indent of paragraph 2 shall be released where it covers quantities in respect of which:

- proof has been furnished that the goods have become unfit for human or animal consumption,

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- the proof referred to in Article 18 of Regulation (EEC) No 3665/87 has been provided. However, the security shall be released where the operator provides proof that a quantity of at least 1 500 tonnes of cereals products has left the customs territory of the Community on a vessel suitable for sea transport. Such proof shall be provided by the following indication, certified by the competent authority, on the control copy referred to in Article 6 of Regulation (EEC) No 3665/87, on the single administrative document or on the national document proving that the goods have left the customs territory of the Community:

Exportación de cereales por vía marítima; artículo 17 del Reglamento (CEE) nº 2131/93

Ekspport af korn ad søvejen — Artikel 17 i forordning (EØF) nr. 2131/93

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

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Getreideausfuhr auf dem Seeweg — Verordnung (EWG) Nr. 2131/93 Artikel 17

Εξαγωγή σιτηρών διά θαλάσσης — Άρθρο 17 του κανονισμού (ΕΟΚ) αριθ. 2131/93

Export of cereals by sea — Article 17 of Regulation (EEC) No 2131/93

Exportation de céréales par voie maritime — Règlement (CEE) n° 2131/93, article 17

Esportazione di cereali per via marittima — articolo 17 del regolamento (CEE) n. 2131/93

Uitvoer van graan over zee — (EEG) nr. 2131/93, artikel 17

Exportação de cereais por via marítima — artigo 17.º do Regulamento (CEE) n.º 2131/93,

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— the licence has not been issued in accordance with Article 44 of Regulation (EEC) No 3719/88,

— the contract has been cancelled in accordance with the fourth paragraph of Article 16.

4. The security provided for in Article 13 (4) shall be forfeited in respect of quantities for which:

— the security referred to in the second subparagraph of Article 44 (6) of Regulation (EEC) No 3719/88 has been forfeited,

— except in cases of *force majeure*, payment has not been made within the period laid down in Article 16.

5. Except in cases of *force majeure*, the security provided for in the second indent of paragraph 2 shall be forfeited in respect of quantities for which the proof referred to in the second indent of paragraph 3 has been provided within the period laid down in Article 47 of Regulation (EEC) No 3665/87.

Article 18

Regulation (EEC) No 1836/82 is repealed.

References to that Regulation shall be construed as references to this Regulation.

Article 19

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.