Commission Regulation (EU) No 234/2010 of 19 March 2010 laying down certain detailed rules for the application of Council Regulation (EC) No 1234/2007 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals (codified version)

COMMISSION REGULATION (EU) No 234/2010

of 19 March 2010

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(codified version)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular Articles 170 and 187 in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) The export refunds, corrective amounts and export taxes on certain products covered by the common organisation of agricultural markets must be fixed, as a special measure in the event of a disturbance on the market, in accordance with certain criteria enabling the difference between the quotations and prices for such products in the Union and those on the world market to be covered.

(3) Given the disparity in the prices at which cereals are offered by the different exporting countries on the world market, account should be taken in particular of the different internal forwarding costs and the refund should be fixed bearing in mind the difference between the representative prices in the Union and the most favourable quotations and prices applying on the world market.

(4) In order to make it possible to export flour, groats, meal and malt, the factors to be taken into account when fixing the refund are, on the one hand, the prices of the basic cereals, the quantities needed to manufacture the products concerned and the value of the by-products and, on the other hand, the opportunities and conditions for the sale of the products on the world market.

(5) It is a requirement of the system of corrective amounts provided for in Article 164(4) of Regulation (EC) No 1234/2007 that they be capable of differentiation according to the destination of the products to be exported.

(6) With a view to the efficient administration of Union funds and to take account of the export possibilities for those products, provision should be made for the export refunds and taxes on the products listed in points (a), (b) and (c) of Part I of Annex I to Regulation (EC) No 1234/2007 to be fixed by invitation to tender covering a given quantity.

(7) In order to ensure equal treatment for all interested parties within the Union, invitations to tender must be organised in accordance with uniform principles. To that end, decisions opening invitations to tender should be published together with a notice of invitation to tender in the *Official Journal of the European Union*.

(8) Tenders must contain the data needed to assess them and must be accompanied by certain formal undertakings.

(9) A maximum export refund or minimum export tax should be fixed. That procedure ensures that all the quantities concerned are allocated.

(10) Situations may arise on the market in which the economic aspects of the exports contemplated result in no further action being taken in respect of tenders received rather than in the fixing of an export refund or tax.

(11) A tendering security should ensure that the quantities exported are so exported pursuant to the licence issued under the invitation to tender. That obligation can be met only if tenders submitted are maintained. The security must accordingly be forfeited where tenders are withdrawn.

(12) Detailed rules must be laid down to ensure that tenderers are notified of the outcome of the invitation to tender and that the necessary licences are issued for the export of the quantities allocated.

(13) For the purposes of fixing export refunds on the products listed in points (a), (b) and (c) of Part I of Annex I to Regulation (EC) No 1234/2007 and in order to avoid the need to introduce checks to detect the slightest variations in quantities of the basic materials and without any noticeable effect on the quality of the product, a standard method of assessment should be adopted. The analysis of the ash content of products manufactured has proved the most effective technical means of assessing the quantity of basic cereals used. The analysis should be carried out following the same procedure throughout the Union.

(14) Granting export refunds on cereals imported from third countries and re-exported to third countries does not appear justified. Refunds should accordingly be granted on Union products only.

(15) Commission Regulation (EC) No 612/2009 of 7 July 2009 laying down common detailed rules for the application of the system of export refunds on agricultural products[(4)], requires that, where refunds vary according to destination, payment of the

refund be made conditional in particular on presentation of proof that the product has been imported in its unaltered state into the third country or into one of the third countries for which the refund applies. As regards cereals, the only refund lower than that applicable to exports to third countries as a whole is that on exports to Switzerland and Liechtenstein. In order to avoid obstructing most exports from the Union by requiring proof of arrival at destination, other means must be found to ensure that products on which a refund applying to all third countries has been paid are not exported to the abovementioned countries. To that end, the need to present proof of arrival should be waived in all cases where export is effected by sea. Certificates drawn up by the competent authorities of the Member States stating that the products have left the customs territory of the Union on board a vessel suitable for sea transport are considered to provide a sufficient guarantee.

(16) In accordance with Article 162 of Regulation (EC) No 1234/2007 products listed in that article to be exported with or without further processing may be eligible to export refunds if they comply with specific conditions laid down in Article 167 of that Regulation. Moreover, Article 167(7) of Regulation (EC) No 1234/2007 gives the possibility to the Commission to establish further conditions for the granting of export refunds for one or more products. Those conditions were laid down in the Council Regulations on the common organisation of the market in the sectors listed in Article 162(1) of Regulation (EC) No 1234/2007. Since those Regulations were repealed, horizontal provisions should be established.

(17) Horizontal provisions already exist in Regulation (EC) No 612/2009. It is therefore appropriate to adapt that Regulation in order to establish the conditions referred to in Article 167(7) of Regulation (EC) No 1234/2007 and to delete those conditions in this Regulation.

(18) Article 187 of Regulation (EC) No 1234/2007 provides that the necessary measures may be taken when the quotations or prices on the world market for one or more of the products referred to in Part I of Annex I to that Regulation reach a level that disrupts or threatens to disrupt the availability of supply on the Union market and when that situation is likely to continue or to deteriorate. To that end, sufficient supplies of cereals must be ensured. For that purpose, export taxes may be levied and the issuing of export licences totally or partly suspended.

(19) Because of the non-commercial nature of the Union and national food aid measures provided for under international agreements or other supplementary programmes, as well as other Union free supply measures, exports made for this purpose are excluded from the field of application of the export tax applicable to commercial exports in cases of disturbance on the cereals market.

(20) Since the situation envisaged in Article 187 of Regulation (EC) No 1234/2007 may arise at relatively short notice, the Commission must be able to suspend the issue of export licences at any time.

(21) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 234/2010. (See end of Document for details)*

HAS ADOPTED THIS REGULATION:

Article 1

Export refunds, export taxes as referred to in Article 15(a) of this Regulation, and corrective amounts as referred to in Article 164(4) of Regulation (EC) No 1234/2007, in the case of the products listed in points (a), (b) and (c) of Part I of Annex I to that Regulation, shall be fixed in the light of the following factors in particular:

(a) the prices charged on the representative Union markets and their trends, and the quotations recorded on the markets of third countries;

(b) the marketing costs and the most favourable costs of transport from the representative Union markets to the port or other place of export, and the costs of forwarding on the world market;

(c) in the case of processed products, the quantity of cereals required for the manufacture thereof;

(d) the prospects for and conditions governing the sale of the relevant products on the world market;

(e) concern to avoid disturbance on the Union market;

(f) the economic aspect of the exports contemplated;

(g) the quantitative and budgetary limits arising from agreements concluded in accordance with Article 218 of the Treaty.

Article 2

The provisions of the first paragraph of Article 166 of Regulation (EC) No 1234/2007 shall apply, in whole or in part, to all the products listed in points (c) and (d) Part I of Annex I to that Regulation and to the products referred to in Part I of Annex I to that Regulation exported in the form of goods as listed in Part I of Annex XX thereto.

The provisions of Article 164(4) of Regulation (EC) No 1234/2007 shall apply in respect of cereals and to products that are exported in the form of the goods listed in Annex XX to that Regulation.

Article 3

Corrective amounts may vary according to destination.

Article 4

1 Export refunds on the products listed in points (a), (b) and (c) of Part I of Annex I to Regulation (EC) No 1234/2007 and the export taxes provided for in Article 15(a) of this Regulation may be fixed by invitation to tender.

The terms of invitations to tender must guarantee equality of access for all persons established in the Union.

Such invitations to tender shall relate to the export refund or tax.

2 Decisions to issue invitations to tender shall be taken in accordance with the procedure referred to in Article 195 of Regulation (EC) No 1234/2007.

3 Decisions to issue invitations to tender shall be accompanied by the publication of notices of invitation to tender drawn up by the Commission setting out in particular the dates on which tenders may be submitted and the relevant departments of the Member States to which they are to be sent.

4 Decisions to issue invitations to tender and notices of invitation to tender shall be published in the *Official Journal of the European Union*.

At least five days must elapse between the publication of the notice of invitation to tender and the first date for the submission of tenders.

Article 5

1 Interested parties shall submit tenders in writing or by any means of written telecommunication to the competent department of the Member State.

2 Tenders shall indicate:

a the reference of the invitation to tender;

b the name and address of the tenderer;

c the type and quantity of product to be exported;

d the export refund per tonne or, where applicable, the export tax per tonne, expressed in euro.

3 Tenders shall be valid only if:

a proof is provided before the expiry of the time limit laid down for the submission of tenders that the tenderer has lodged the tendering security;

b they are accompanied by a written undertaking to submit, in respect of quantities awarded and within two days of receipt of the notification of award pursuant to Article 7(3), an export licence application or, where applicable, an application for an export licence with advance fixing of an export tax equal to the amount tendered;

c they do not include any conditions other than those provided for in the notice of invitation to tender.

4 Tenders submitted may not be withdrawn.

Article 6

Tenders shall be opened by the competent departments of the Member States. They shall not be opened in public. Persons authorised to be present at the opening of the tenders shall be under an obligation of secrecy.

The Commission shall be notified forthwith of the tenders without the tenderers being mentioned by name.

Article 7

1 On the basis of tenders notified, the Commission shall, in accordance with the procedure referred to in Article 195 of Regulation (EC) No 1234/2007, decide to fix a maximum export refund or, where applicable, a minimum export tax or to take no further action in respect of the invitation to tender.

2 Where a maximum export refund is fixed, the contract shall be awarded to the tenderer or tenderers whose bids are equal to or lower than the maximum refund, as well as to the tenderer or tenderers whose bid relates to an export tax.