# COMMISSION REGULATION (EC) No 2177/2002

## of 6 December 2002

## opening a standing invitation to tender for the export of barley held by the Swedish 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]), as last amended by Regulation (EC) No 1666/2000 ([2]), and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 ([3]), as last amended by Regulation (EC) No 1630/2000 ([4]), 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 36 093 tonnes of barley held by the Swedish 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 barley 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 Swedish intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of barley held by it.

*Article 2*

1. The invitation to tender shall cover a maximum of 36 093 tonnes of barley for export to third countries, with the exception of the United States of America, Canada and Mexico.

2. The regions in which the 36 093 tonnes of barley 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.

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 ([5]).

*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 09.00 (Brussels time) on 12 December 2002.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 09.00 (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall expire at 09.00 (Brussels time) on 22 May 2003.

4. Tenders must be lodged with the Swedish intervention agency.

*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.

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 193, 29.7.2000, p. 1.
([3]) OJ L 191, 31.7.1993, p. 76.
([4]) OJ L 187, 26.7.2000, p. 24.
([5]) OJ L 152, 24.6.2000, p. 1.

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:

— two kilograms per hectolitre as regards specific weight, which must not, however, be less than 60 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 barley 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 barley 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.

2. However, if the barley 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 [2], the documents relating to the sale of barley 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:

— Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 2177/2002

— Byg fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 2177/2002

— Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 2177/2002

— Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 2177/2002

— Intervention barley without application of refund or tax, Regulation (EC) No 2177/2002

— Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 2177/2002

— Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 2177/2002

— Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 2177/2002

— Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 2177/2002

— Interventio-ohraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 2177/2002

— Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 2177/2002.

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

[2] OJ L 301, 17.10.1992, p. 17.