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(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 1780/89

of 21 June 1989

laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and 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 822/87 of 16 March 1987 on the common organization of the market in wine (1), as last amended by Regulation (EEC) No 1236/89 (2), and in particular Articles 37 (2) and 40 (5) thereof,

Having regard to Council Regulation (EEC) No 3877/88 of 12 December 1988 laying down general rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies (3), and in particular Articles 2 and 3 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (4), as amended by Regulation (EEC) No 1636/87 (5), and in particular Article 2 (4) thereof,

Whereas one feature of the Community market for alcohol is the existence of large stocks resulting from intervention under Articles 35, 36 and 39 of Regulation (EEC) No 822/87; whereas Regulation (EEC) No 3877/88 lays down general rules the disposal of such stocks by the issuing of invitations to tender in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87;

Whereas specific detailed rules of application should be laid down for such invitations to tender in order to ensure equality of treatment of operators;

Whereas provisions should be made so that these stocks of alcohol may be disposed of by three types of invitation to tender, depending on the quantities of alcohol at 100 % vol. covered by such invitations to tender and on the use and destination for which the alcohol is intended;

Whereas notices of invitations to tender issued by the Commission must contain particulars necessary to identify the quantities of alcohol concerned;

Whereas, since the objective of invitations to tender is to obtain the most favourable price, the contract must be awarded to the tenderer offering the highest price where the Commission decides to take action in respect of tenders; whereas it is also necessary to lay down provisions for the eventuality that several tenders relating to the same lot are submitted for the same price;

Whereas, in order not to affect competition with products which the alcohol may replace, the Commission should be given the possibility of taking no action in respect of tenders received;

Whereas a system of securities should be introduced to ensure the proper conduct of the invitations to tender and to ensure that the alcohol is in fact used for the purposes specified in the relevant invitation to tender; whereas the securities should be set at a level which will prevent any disturbance involving utilization contrary to the objectives of the invitation to tender on the market in alcohol and spirituous beverages produced in the Community within the meaning of Articles 37 and 40 of Regulation (EEC) No 822/87; whereas the rules laid down in Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (6), as last amended by Regulation (EEC) No 1181/87 (7), which also covers wine, should be taken into account; whereas the primary requirements of the obligations secured should consequently be determined;

Whereas provision should also be made for the denaturing of the alcohol for certain sales by invitation to tender in order to prevent it from being used for other purposes; whereas denaturing should entail the addition of petrol to the quantity of alcohol covered by the contract awarded;

Whereas the checks made to verify whether the alcohol is used for the purposes specified in the relevant invitations to tender should comprise at least checks equivalent to those applied to the monitoring of home-produced

(1) OJ No L 84, 27. 3. 1987, p. 1.
(2) OJ No L 128, 11. 5. 1989, p. 31.
(3) OJ No L 346, 15. 12. 1988, p. 7.
(4) OJ No L 164, 24. 6. 1985, p. 1.
(5) OJ No L 153, 13. 6. 1987, p. 1.
(6) OJ No L 205, 3. 8. 1985, p. 5.
(7) OJ No L 113, 30. 4. 1987, p. 31.

alcohol; whereas for the purposes of checks on certain uses or destinations, recourse may be had to the services of an international surveillance firm to verify whether the contract awarded is duly fulfilled; whereas, as the internal market is being reinforced and developed, physical checks should be conducted at the place of departure or of destination of alcohol transport operations;

Whereas Regulation (EEC) No 1676/85 lays down provisions governing the conversion rates for the ecu into national currencies to be used for the purposes of the common agricultural policy; whereas the detailed rules for the application thereof should be laid down;

Whereas the provisions of Commission Regulation (EEC) No 569/88 of 16 February 1988 laying down common detailed rules for verifying the use and/or destination of products from intervention [1], as last amended by Regulation (EEC) No 1456/89 [2], should be made applicable to the disposal operations covered by this Regulation and the special particulars to be entered on the control documents provided for in Regulation (EEC) No 569/88 be specified;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87, hereinafter referred to as 'alcohol'.

Disposal may be effected either by a standing invitation to tender (Title I) or by individual invitations to tender (Title II) or by special invitations to tender (Title III).

2. For the purposes of this Regulation, 'invitation to tender' shall mean the organization of a competition among interested parties in the form of a call for bids, the contract being awarded to the party submitting the most advantageous bid complying with the rules laid down in this Regulation.

TITLE I

Standing invitation to tender

Article 2

A standing invitation may be issued to tender for the implementation within the Community of small-scale projects relating to new industrial end-uses such as:

— the heating of glasshouses,
— the drying of feedingstuffs,
— the fuelling of transport vehicles,
— the fuelling of heating systems, including those at cement works,

and the processing of goods which are exported for industrial purposes and which have been the subject of inward processing arrangements during the last two years.

Article 3

1. The Commission, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, shall issue a standing invitation to tender. This standing invitation to tender shall specify, for each Member State holding at least one million hectolitres, at least three lots each consisting of not less than 10 000 hectolitres expressed in hectolitres of alcohol at 100 % vol. Each of these lots shall consist of vats which shall be individually identified and located at the same place.

The lots shall be designated by the intervention agencies of the Member States concerned, bearing in mind that, when the alcohol is disposed of, a balance must be maintained between the alcohol obtained by the distillation operations referred to in Article 39 of Regulation (EEC) No 822/87 and the alcohol obtained from the distillation operations referred to in Articles 35 and 36 of the same Regulation. Once the lots have been designated, the alcohol which they contain must not be physically moved.

The Regulation issuing the standing invitation to tender shall also contain a reference to the intervention measure under which the alcohol has been produced, specifying the relevant article of Regulation (EEC) No 822/87 and the period of validity of the standing invitation to tender.

2. The Regulation issuing the standing invitation to tender may be amended or replaced during the period of validity of the standing invitation to tender if, during the said period of validity, there is any change in the terms on which the alcohol is disposed of.

Article 4

1. During the period of validity of the standing invitation to tender, partial invitations to tender shall be issued.

2. Notices issuing partial invitations to tender shall be published in the 'C' series of the *Official Journal of the European Communities* during the first fortnight of each quarter, except for the first of these notices, which shall be published as soon as possible after the entry into force of this Regulation.

Each such notice shall specify:

— one or more vats which constitute a lot in a given Member State and which are among those designated in the Regulation issuing the standing invitation to tender,
— the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol., covered by the partial invitation to tender,

[1] OJ No L 55, 1. 3. 1988, p. 1.
[2] OJ No L 144, 27. 5. 1989, p. 21.

— the level of the tendering security referred to in Article 6 (2) and the performance guarantee referred to in the second indent of Article 8 (2).

Article 5

1. Apart from the particulars listed in Article 30, the tender shall specify the quantity to which it relates, expressed in hectolitres of alcohol at 100 % vol., and the use to which the alcohol will be put. Such quantity must be not less than 100 hectolitres and not more than 5 000 hectolitres at 100 % vol. per tender.

2. A tender may state that it is to be considered as having been submitted only if the contract is awarded for the entire quantity specified in the tender or for a part thereof specified by the tenderer.

3. Tenderers may submit only one tender in respect of each partial invitation to tender.

Article 6

1. Tenders must reach the intervention agency of the Member State concerned by 12 noon Brussels time at the latest on the closing date set for the submission of tenders in the notice of partial invitation to tender. That date must fall between the 15th and the 25th day following the date of publication of the partial invitation to tender.

2. Tenders shall be valid only if proof is provided, within the time limit laid down for the submission of tenders, that a tendering security has been lodged with the intervention agency concerned.

3. The intervention agency concerned shall communicate to the Commission, within the two working days following the final date of the submission of tenders, a list of the tenderers whose tenders may be considered in accordance with Article 30 the prices quoted, the quantities requested and the uses to be made thereof.

Article 7

1. The Commission, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, may decide, in the light of the tenders submitted :

— either to award contracts,

— or to make no award.

2. Should contracts be awarded, the Commission, acting in accordance with the procedure referred to in paragraph 1, may decide to fix a minimum price below which tenders shall not be considered, taking account of such factors as market conditions, available outlets and the use to be made of the alcohol.

3. The Commission shall draw up a list of the tenders accepted, listing the prices offered in decreasing order until the contacts awarded cover the entire quantity of alcohol specified in the notice issuing the partial invitation to tender.

4. The decisions taken by the Commission under paragraphs 1 and 2 shall be communicated immediately to the intervention agency concerned.

5. Should several tenders propose the same price so that the quantity tendered for exceeds the quantity of alcohol covered by the partial invitation to tender, the intervention agency concerned shall award the quantity in question :

(a) either in proportion to the quantities specified in the tenders concerned ;

(b) or by dividing that quantity among the tenderers by agreement with the latter ;

(c) or by drawing lots.

6. The intervention agency shall notify teach tenderer in writing, without delay against a receipt, of the decision taken on his tender.

Article 8

1. The intervention agency shall hold, at the disposal of each successful tenderer, a statement of award certifying that their tender has been accepted.

2. Each successful tenderer shall, within the two weeks following receipt of the notification referred to in Article 7 (6) :

— obtain from the intervention agency the statement of award referred to in paragraph 1,

— provide the intervention agency concerned with proof that a performance guarantee has been lodged to ensure that the alcohol in question is in fact used for the purposes specified in his tender.

Article 9

1. The removal of the alcohol must :

— begin no later than one month of the date of receipt of the notification of acceptance,

— be completed within three months of the date of receipt of the notification of acceptance.

2. Removal of the alcohol shall be subject to the presentation of a removal order issued by the intervention agency once the quantity to be removed has been paid for.

3. Ownership of the alcohol to which a removal order refers shall be transferred at the time when the removal order is issued and the corresponding quantities shall be considered to have been removed on that date. From then onwards the purchaser shall be responsible for any theft, loss or destruction and for the storage costs of any alcohol awaiting removal.

4. The removal order shall specify the date by which the alcohol must be physically removed from the stores of the intervention agency concerned.

5. Utilization of the alcohol must be completed within two years from the date of first removal.

TITLE II

Individual invitations to tender

Article 10

The Commisson, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, shall issue individual invitations to tender for the sale of alcohol to the Community market or for the export of alcohol from the Community. The invitation to tender may stipulate that the alcohol is to be sold only for specific uses or for shipment to specific destinations or may prohibit certain uses or destinations.

Article 11

Unless otherwise decided in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, the lot to which an individual invitation to tender relates shall consist of at least 200 000 hectolitres but not more than one million hectolitres, expressed in hectolitres of alcohol at 100 % vol.

Article 12

1. The notices issuing individual invitations to tender shall be published in the *Official Journal of the European Communities*. Such notices shall specify:

— the formalities for the submission of tenders,

— the final use and/or destination for which the alcohol is intended,

— the level of the tendering security referred to in Article 14 (2) and the performance guarantee referred to in the second indent of Article (2),

— the Commission department to which tenders should be sent,

— the time limit for the removal of the alcohol as referred to in Article 17 (2),

— the formalities for obtaining samples,

— the conditions relating to payment,

— whether the alcohol is to be denatured.

2. Each notice issuing an individual invitation to tender shall relate to a single lot although the alcohol constituting such lot may be located in several Member States.

Article 13

Tenderers may submit only one tender in response to each individual invitation to tender.

Article 14

1. Tenders must reach the competent Commission department by 12 noon Brussels time on the last date set for the submission of tenders in the notice issuing the individual invitation to tender. That date must fall between the 15th and the 25th day following the date of publication of the individual invitation to tender.

2. Tenders shall be valid only if proof has been provided, before the expiry of the time limit for the submission of tenders, that the tendering security has been lodged with such intervention agency concerned.

3. The intervention agencies concerned shall communicate to the Commission, within the two working days of the last date for the submission of tenders, a list of the tendering securities lodged with them for the quantities for which they are responsible.

Article 15

1. The Commission, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87 and within 15 working days of the last date for the submission of tenders, may decide, in the light of the tenders submitted:

— either to award a contract,

— or to make no award.

2. Should a contract be awarded, the Commission shall accept the most favourable tender. If two or more tenders quote the same price, the Commission shall make the award by drawing lots.

3. The Commission shall immediately notify tenderers, in writing against a receipt, of the decision taken on their tender. It shall similarly notify the intervention agencies holding the alcohol.

Article 16

1. The intervention agency shall keep, at the disposal of the successful tenderer, a statement of award certifying that his tender has been accepted.

2. Successful tenderers shall, within the 20 days following the date of receipt of the notification referred to in Article 15 (3):

— obtain a statement of award as referred to in paragraph 1 from each intervention agency holding the alcohol,

— provide, at the same time, proof that a performance guarantee has been lodged with each intervention agency concerned to ensure that the alcohol in question is in fact used for the purposes specified in the notice of invitation to tender.

Article 17

1. The intervention agency holding the alcohol and the successful tenderer shall agree on a provisional timetable for the removal of the alcohol. That timetable shall be notified to the Commission with a view to the coordination of removal operations in accordance with the provisions of this Regulation.

2. The physical removal of the alcohol from the storehouses of the intervention agencies concerned must be completed within a time limit to be set by reference to the quantity offered for sale, on the basis of one month per full instalment of 75 000 hectolitres of alcohol at 100 % vol.

The time limit shall be calculated as from the end of the first month following the date of receipt of the notification of acceptance.

3. Removal of the alcohol shall be subject to the presentation of a removal order issued by the intervention agency holding the alcohol once payment has been made for the quantity to be removed.

Each removal order shall cover a quantity of at least 5 000 hectolitres except in the case of the last removal in each Member State.

4. Ownership of the alcohol to which a removal order is related shall be transferred at the time when the removal order is issued and the corresponding quantities shall be considered to have been removed on that date. From then on the purchaser shall be responsible for any theft, loss or destruction and for the storage costs of any alcohol awaiting removal.

5. The removal order shall state the time limit by which the alcohol must be physically removed from the storehouses of the intervention agency concerned.

6. Utilization of the alcohol must be completed within three years from the date of the first removal.

TITLE III

Special invitation to tender

Article 18

1. The Commission, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, shall issue special invitations to tender for the sale of alcohol to the Community market. It may stipulate that the alcohol is to be sold only for a specific purpose or for shipment to a specific destination or it may prohibit certain uses or destinations.

2. Each notice issuing a special invitation to tender shall relate to two lots which shall be covered by one removal order. Tenders shall be invited for the price of the first lot, the price of the second lot being determined in accordance with Article 27.

Article 19

Unless otherwise decided in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, the lots to which a special invitation to tender relates shall consist of at least 600 000 hectolitres but not more than 1,2 million hectolitres expressed in hectolitres of alcohol at 100 % vol.

Article 20

The notices issuing special invitations to tender shall be published in the *Official Journal of the European Communities*.

Such notices shall specify:

— the formalities for the submission of tenders,

— the final use and/or destination for which the alcohol is intended,

— the level of the tendering security referred to in Article 22 (2) and the performance guarantee referred to in the second indent of Article 24 (2) and Article 26 (2),

— the Commission department to which tenders should be sent,

— the time limit for the removal of the alcohol as referred to in Articles 25 (2) and 26 (3),

— the formalities for obtaining samples,

— the conditions relating to payment,

— whether the alcohol is to be denatured.

Article 21

Tenderers may submit only one tender in response to each special invitation to tender.

Article 22

1. Tenders must reach the competent Commission department by 12 noon Brussels time on the last date set for the submission of tenders in the notice issuing the special invitation to tender. That date must fall between the 15th and the 25th day following the publication of the said notice.

2. Tenders shall be valid only if proof has been provided, before the expiry of the time limit for the submission of tenders, that a tendering security has been lodged with each intervention agency concerned.

3. The intervention agencies concerned shall communicate to the Commission, within two working days of the last date for the submission of tenders, a list of the tendering securities lodged with them for the quantities for which they are responsible.

Article 23

1. The Commission, acting in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87 and within 15 working days of the last date for the submission of tenders, may decide in the light of the tenders submitted:

— either to award a contract,

— or to make no award.

2. Should a contract be awarded, the Commission shall accept the highest tender. If two or more tenders quote the same price, the Commission shall make the award by drawing lots.

3. The Commission shall immediately notify tenderers, in writing and against a receipt of the decision taken on their tender. It shall similarly notify the intervention agencies holding the alcohol.

Article 24

1. The intervention agency shall keep, at the disposal of the successful tenderer, a statement of award certifying that his tender has been accepted.

2. Successful tenderers shall, within the 20 days following receipt of the notification referred to in Article 23 (3):

— obtain a statement of award as referred to in paragraph 1 from each of the intervention agencies holding the alcohol,

— provide at the same time, proof that a performance guarantee has been lodged with each intervention agency concerned to ensure that the alcohol constituting the first lot is in fact used for the purposes specified in the notice of invitation to tender.

Article 25

1. The intervention agency holding the alcohol and the successful tenderer shall agree, in respect of each lot, on a provisional timetable for the removal of the alcohol. That timetable shall be notified to the Commission with a view to the coordination of the removal operations in accordance with the provisions of this Regulation.

2. All the alcohol constituting the first lot must have been physically removed from the storehouses of each intervention agency concerned within a time limit set by reference to the quantity of alcohol in that lot, on the basis of one month per full instalment of 75 000 hectolitres of alcohol at 100 % vol.

The time limit shall be calculated as from the end of the first month following the date of receipt of the notification of acceptance.

Article 26

1. The removal of the alcohol constituting the second lot must not begin until the time limit laid down in Article 25 (2) for the removal of the first lot has expired.

2. Before the second lot is removed, successful tenderers shall provide proof that a performance guarantee has been lodged with each intervention agency concerned to ensure that the alcohol constituting the second lot is in fact used for the purposes specified in the notice of invitation to tender.

3. The alcohol constituting the second lot must have been physically removed from the storehouses of the intervention agencies concerned within a time limit set by reference to the quantity of alcohol in that lot, on the basis of one month per full instalment of 75 000 hectolitres of alcohol at 100 % vol.

The time limit shall be calculated as from that laid down in Article 25 (2) for the removal of the first lot.

Article 27

The price per hectolitre of alcohol at 100 % vol. for the second lot shall be the price agreed for the first lot, as adjusted by a coefficient to be specified in the notice of invitation to tender.

Article 28

1. The removal operations referred to in Articles 25 and 26 shall be subject to the presentation of a removal order issued by the intervention agency holding the alcohol once payment has been received for the quantities to be removed.

Each removal order shall cover a quantity of at least 5 000 hectolitres except in the case of the last removal in each Member State.

2. Ownership of the alcohol to which a removal order refers shall be transferred at the time when the removal order is issued and the corresponding quantities shall be considered to have been removed on that date. From then onwards the purchaser shall be responsible for any theft, loss or destruction and for the storage costs of any alcohol awaiting removal.

3. The removal order shall state the time limit by which the alcohol which has been paid for must be physically removed from the storehouse of the intervention agency concerned.

4. Utilization of the alcohol in both lots must be completed within three years from the date of the first removal of the first lot.

TITLE IV

General provisions and control arrangements

Article 29

1. The alcohol shall be sold in lots.

2. A lot shall consist of a quantity of alcohol of sufficiently uniform quality which may be contained in several vats and kept at several locations and in several Member States.

3. Each lot shall be numbered. The letters 'EC' shall precede the numbers of the lots.

4. Each lot shall be given a description. Such description shall contain at least the following information:

(a) the location of the lot, including a reference for the identification of the vat or vats containing the alcohol, and the quantity of alcohol in each vat;

(b) the total quantity, expressed in hectolitres of alcohol at 100 % vol.;

(c) the alcoholic strength of the alcohol in each vat, expressed in % vol., to the nearest tenth;

and if possible,

(d) the quality of the lot, specifying upper and lower limits for the following:

— the acidity, expressed in grams of acetic acid per hectolitre of alcohol at 100 % vol.,

— the methanol content, expressed in grams per hectolitre of alcohol at 100 % vol.,

— the reference to the intervention measure which gave rise to the production of the alcohol, specifying the relevant Article of Regulation (EEC) No 822/87.

Article 30

1. To be considered, tenders must be submitted in writing and must include the following:

(a) the reference number of the invitation to tender;

(b) the name and address of the tenderer;

(c) the identification of the lot referred to in the invitation to tender, except in the case of a partial invitation to tender as referred to in Title I where the identification should relate to the vat or vats referred to in such invitation;

(d) the price proposed, expressed in ecus per hectolitre of alcohol at 100 % vol. In the case of a special invitation to tender the price proposed should relate only to the first lot.

(e) an undertaking from the tenderer to the effect that he will comply with all the rules relating to the tendering procedure in question;

(f) a statement by the tenderer to the effect that:

— he waives all claims in respect of the quality and characteristics of the alcohol awarded to him,

— he agrees to submit to any checks made on the destination and use of the alcohol,

— he accepts that it is his responsibility to provide evidence that the alcohol is used as specified in the notice of invitation to tender.

2. Tenders shall be valid only if:

(a) the tenderer is established in the Community;

(b) they relate to the entire lot concerned, except in the case of a special invitation to tender where they must relate to the two lots together;

3. Tenders eligible for consideration may not be withdrawn.

4. Tenders may be rejected if the tenderer does not provide all the necessary guarantees that he will carry out his obligations.

Article 31

1. On publication of a notice of invitation to tender and until the last date for the submission of tenders in response to such invitation, all interested parties may obtain samples of the alcohol offered for sale, against payment of the sum ECU 2 per litre. The quantity made available to each interested party must not exceed five litres per vat.

2. The intervention agency of the Member State on whose territory the alcohol is held shall take the necessary steps to enable interested parties to avail themselves of this right.

Article 32

1. If the alcohol is to be denatured, the quantity denatured must be that removed between the time when the removal order is handed over and the time when the alcohol is physically removed under the supervision of the Member States concerned. The cost of such denaturing shall be borne by the successful tenderer.

2. The denaturing shall take the form of the addition of petrol, in proportions of 1 : 100, to the appropriate quantity of alcohol at 100 % vol.

3. Denaturing may be carried out in a vat provided for this purpose.

Article 33

For the purposes of this Regulation:

1. In the case of the tendering security, the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that tenders must not be withdrawn after the expiry of the time limit for their submission and that the alcohol awarded to the successful tenderer must be removed.

2. In the case of the performance guarantee, the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that the alcohol

must in fact be used for the purposes specified in the relevant indication to tender.

3. The tendering security shall be released immediately :

— if the tender has not been accepted,

— if the successful tenderer has furnished proof that he has lodged a performance guarantee covering the entire lot in question.

4. The performance guarantee shall be released immediately by each of the intervention agencies holding the alcohol once the successful tenderer provides each of those intervention agencies in respect of the relevant quantity with the proof required to that end in Title V of Regulation (EEC) No 2220/85.

Article 34

Notwithstanding Article 2 (1) of Regulation (EEC) No 1676/85,

— payments made prior to the issue of the removal orders referred to in Articles 9 (2), 17 (3) and 28 (1), expressed in ecus at the time when the tender is submitted,

— tendering securities as referred to in Articles 6 (2), 14 (2) and 22 (2), expressed in ecus per hectolitre of alcohol at 100 % vol.,

— performance guarantees as referred to in the second indent of Article 8 (2), the second indent of Article 16 (2), the second indent of Article 24 (2) and Article 26 (2), expressed in ecus per hectolitre of alcohol at 100 % vol.,

— payments made for samples in accordance with Article 31 (1), expressed in ecus,

shall be converted into national currencies at the average weekly exchange rate used for the fixing or adjustment of the monetary compensatory amounts in force on the day before the publication of the notice of invitation to tender.

Article 35

1. For the purposes of the standing invitation to tender, Member States shall notify the Commission, at the latter's request and within 15 days, of the quantity of alcohol at 100 % vol. contained in each of the vats referred to in the first indent of Article 3 (1), giving the precise location and references thereof.

2. For the purposes of drawing up the notices issuing individual or special invitations to tender, the Commission shall send to the Member States concerned a request for information, specifying for each Member State concerned :

— the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol., which it plans to offer for sale by tender,

— the type of alcohol concerned,

— the quality of the alcohol, laying down maximum and minimum values for the characteristics referred to in the first and second indents of Article 29 (4) (d).

Within eight days of receiving this request, the Member States concerned shall inform the Commission of the exact location and references of the various vats of alcohol meeting the required quality criteria and containing a total quantity of alcohol not less than that referred to in the first indent of the first subparagraph.

The Member States concerned shall make a balanced selection between the alcohol obtained from the distillation operations referred to in Article 39 of Regulation (EEC) No 822/87, on the one hand, and that obtained from the distillation operations referred to in Articles 35 and 36 of the same Regulation, on the other hand.

3. Once the information referred to in the second subparagraph of paragraph 2 has been communicated to the Commission, the alcohol in the vats concerned shall not be physically moved until the removal order relating thereto has been issued.

4. Each month the Member States holding the alcohol covered by individual or special invitations to tender shall inform the Commission of the progress made with the physical removal of the alcohol specified in the relevant invitation to tender.

5. The measures taken by the Member States to implement Article 36 shall be notified to the Commission before any control operations are begun.

Article 36

1. The Member States concerned shall take the necessary measures to facilitate the operations provided for in this Regulation and to ensure compliance with the applicable Community rules. They shall designate one or more bodies to be responsible for checks on compliance with the said rules.

The controls shall consist of at least checks equivalent to those used to monitor home-produced alcohol and must include at least the following :

— physical checks on the quantity of alcohol transported,

— verification of the use made of the alcohol, by frequent spot checks at least once per week,

— verification of accounts, records, utilization procedures and stocks.

Where the alcohol has been denatured, checks must be made at least twice monthly.

2. The Member States shall determine which documents, records and other supporting evidence or information must be supplied by the successful tenderer. They shall inform the Commission of the controls laid down for the application of the first indent of paragraph 1. Where appropriate the Commission shall forward to the Member State concerned the observations required to ensure effective verification.

Article 37

The notice of invitation to tender may stipulate that recourse is to be had to the services of an international surveillance firm to check on the proper conduct of the invitation to tender, and in particular the final destination and/or use of the alcohol. The cost of such services shall be borne by the successful tenderer.

Article 38

Regulation (EEC) No 569/88 is hereby amended as follows:

1. The following indent is added to Article 1 (2):

   '— products which are sold pursuant to Articles 37 and 40 of Regulation (EEC) No 822/87 (*).

   (*) OJ No L 84, 27. 3. 1987, p. 1.'

2. The following item is added to Part I of the Annex, 'Products to be exported in the same state as that in which they were removed from intervention stock':

   '46. Regulation (EEC) No .../89 [number of the Regulation issuing the invitations to tender provided for in Regulation (EEC) No .../89] on the sale, under the procedure laid down in Regulation (EEC) No 1780/89, of alcohol held by certain intervention agencies and intended for export (46).

   (46) OJ No L 178, 24. 6. 1989.'

3. The following item is added to Part II of the Annex, 'Products subject to a use and/or destination other than that mentioned under I':

   '30. Regulation (EEC) No .../89 [number of the Regulation issuing the invitations to tender provided for in Regulation (EEC) No .../89] on the sale, under the procedure laid down in Regulation (EEC) No 1780/89, of alcohol held by certain intervention agencies and intended for a specific use or destination (30)

   — Section 104 of the control copy T5:
   "destination: ... [see notice of invitation to tender — OJ No C 160 A 27. 6. 1989."

   — Section 107 of the control copy T5:
   "Regulation (EEC) No .../89 [number of the Regulation issuing the invitations to tender provided for in Regulation (EEC) No .../89]"

   (30) OJ No L 178, 24. 6. 1989.'

Article 39

This Regulation shall enter into force on the third day following 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.

Done at Brussels, 21 June 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission