COMMISSION REGULATION (EEC) No 2568/90

of 5 September 1990

amending Regulation (EEC) No 1780/89 laying down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Council 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 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 (1), and in particular Articles 2 and 3 thereof,

Whereas regular individual sales by tender should be held for export of the alcohol awarded to the countries of the Caribbean area for final use in the fuel sector only so as to give these countries greater continuity of supply; whereas experience shows that this outlet is most unlikely to disrupt the market and constitutes a major market gap;

Whereas the volume of the lots put up for sale by tender for export to the Caribbean countries should be linked to normal sea transport capacity, thereby reducing the cost to the traders concerned of providing performance guarantees; whereas the time limits laid down for the removal of the alcohol awarded should be adjusted accordingly;

Whereas certain of the conditions governing special sales by tender for the use of vinous alcohol in the fuel sector within the Community should be amended so as to give tenderers certain assurances as regards supplies and to take account of the cost of the investments that need to be made in processing plants for that particular use without, however, completely preventing the physical movement of the quantity of alcohol put up for sale;

Whereas it should be laid down that special invitations to tender may relate to several lots of alcohol where large quantities are set aside for this type of tendering procedure, in view of the obligation for the alcohol in the vats in question to undergo no further physical movement until a removal order has been issued in respect thereof;

Whereas, in the case of special sales by tender, a lower performance guarantee, the purpose of which is to ensure that the alcohol awarded is put to the intended use, should be required than for other types of tendering procedure given the possibility for supervising and checking the use of the alcohol concerned within the Community; whereas the said performance guarantee may even by replaced by inspection by an international surveillance firm until the alcohol in question has been put to its final use;

Whereas the successful tenderer should be obliged to lodge a 'removal guarantee' in respect of each lot in a special sale to ensure that the alcohol is physically removed within the time limits laid down so as to reduce the financial costs associated with the storage of certain alcohols; whereas the timetable for the physical removal of the alcohol awarded should be revised accordingly;

Whereas certain of the uses to which the alcohol sold by individual or special sales by tender is to be put require that the alcohol be first rectified or dehydrated; whereas these operations produce foul-tasting alcohol unsuitable for the uses initially intended for these tendering procedures; whereas, therefore, the conditions governing the release of performance guarantees should be amended;

Whereas in the event of a special sale by tender for use in the fuel sector which will require physical removal and processing over a period of several years, the price agreed for the first lot should be adjusted by a coefficient which takes account of a margin within which there is to be no change to the said price, so as to match the price trend of other raw materials used in the said sector;

Whereas Commission Regulation (EEC) No 1780/89 (2), as last amended by Regulation (EEC) No 141/90 (3), must therefore be amended;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1780/89 is hereby amended as follows:

1. The following Article 11a is inserted:

'Article 11a

Several individual invitations to tender may be issued during each four-month period, each relating to quantities of not less than 50 000 hectolitres and

(1) OJ No L 346, 15. 12. 1988, p. 7.

(2) OJ No L 178, 24. 6. 1989, p. 1.
(3) OJ No L 16, 20. 1. 1990, p. 23.

taken together relating to not more than 600 000 hectolitres, expressed in hectolitres of alcohol at 100% vol, for the export of vinous alcohol to certain third countries for final use in the fuel sector only.'

2. The following is added to the first subparagraph of Article 17 (2):

'However, this time limit may not be less than two months.'

3. Article 18 (2) is replaced by the following:

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

4. In Article 19, '600 000 hectolitres' is replaced by '300 000 hectolitres'.

5. In the second subparagraph of Article 20:

(a) the third indent is replaced by the following:

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

(b) the fifth indent is replaced by the following:

'— the time limit for removal as referred to in Articles 25 (2) and 26 (3) and (4),'.

6. The second indent of Article 24 (2) is replaced by the following:

— provide, at the same time, proof of the lodging with each of the intervention agencies concerned of:

— a performance guarantee to ensure that the total quantity of alcohol for which a contract is awarded is in fact used for the purposes specified in the notice of invitation to tender, unless the Commission has decided, in its discretion and in accordance with the procedure laid down in Article 83 of Regulation (EEC) No 822/87, to replace such guarantee by the obligation for the successful tenderer to submit to an inspection by an international surveillance firm in accordance with Article 37. In this event, should the surveillance firm be prevented by the successful tenderer from carrying out the required inspection, the intervention agencies concerned shall stay the issue of the removal orders referred to in Article 28,

— a removal guarantee to ensure that the alcohol constituting the first lot is removed within the time limit laid down in Article 25.'

7. In the first subparagraph of Article 25 (2), '75 000 hectolitres' is replaced by '54 000 hectolitres'.

8. Article 26 is replaced by the following:

'Article 26

1. The removal of the alcohol constituting the second lot must not begin until all of the alcohol constituting the first lot has been physically removed from the stores of the intervetion agencies concerned.

For this purpose:

— each intervention agency concerned shall notify the Commission as soon as the part of the first lot which concerns it has been fully removed from its stores,

— the Commission, having received all the notifications referred to in the preceding indent, shall immediately advise the intervention agencies concerned and the successful tenderer that removal of the second lot may commence at a date specified in the advice on condition that the guarantee referred to in paragraph 2 has been lodged.

2. Before the second lot is removed, the successful tenderer shall provide proof that the removal guarantee has been lodged with the intervention agency concerned to ensure that the alcohol constituting the second lot is removed within the time limit laid down in paragraph 3.

3. The alcohol constituting the second lot must have been physically removed from the stores of the intervention agencies concerned within a time limit set by reference to 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 54 000 hectolitres of alcohol at 100% vol.

The time limit shall be calculated as from the first day of the month following the date specified in the advice referred to in the second indent of the second subparagraph of paragraph 1.

4. Where a special invitation to tender relates to more than two lots, the rules laid down in paragraphs 1, 2 and 3 shall apply, *mutatis mutandis,* to the removal and the lodging of the removal guarantee for the lots following the first two.'

9. Article 27 is replaced by the following:

'Article 27

The price per hectolitre of alcohol at 100% vol for each lot other than the first shall be the price agreed for the first lot, as adjusted by a coefficient and taking account of a margin within which application of the said coefficient shall result in no change to the price agreed for the first lot.

The coefficient and the margin shall be specified in the notice of invitation to tender.'

10. In Article 28:

(a) the second subparagraph of paragraph 1 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

'4. Utilization of the alcohol in all the lots must be completed within one year from the date of the last removal of the last lot.'

11. The following paragraph 5 is added to Article 29:

'5. Where a special invitation to tender concerns more than two lots, only the first lot or the first two lots, up to a quantity of one million hectolitres of alcohol at 100% vol, shall be given a description in the notice of invitation in accordance with paragraph 4.

For the subsequent lot or lots the description laid down in paragraph 4 shall be published in the *Official Journal of the European Communities* at least three months before the deadline for the total physical removal from the stores of the intervention agencies of the last lot described.'

12. In Article 30:

(a) paragraph 1 (a) is replaced by the following:

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

(b) paragraph 1 (c) is replaced by the following:

'(c) in the case of a partial invitation to tender only, the identification of the vat or vats covered by the tender and referred to in the notice of invitation to tender;'

(c) paragraph 2 (b) is replaced by the following:

'(b) they relate to the entire lot concerned, except in the case of a special invitation to tender where they must relate to all the lots.'

13. Article 33 is replaced by the following:

'Article 33

For the application of this Regulation:

1. (a) As regards 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, that a performance guarantee must be lodged where necessary and, in the case of special invitations to tender, that a removal guarantee for the first lot must be lodged.

(b) — As regards the performance guarantee, in relation to invitations to tender as referred to in Titles I and II, the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that the alcohol removed must in fact be used for the purposes specified in the relevant invitation to tender and that the entire quantity of alcohol must be physically removed from the stores of each of the intervention agencies concerned before the deadline.

— In relation to invitations to tender as referred to in Title III,

— as regards the performance guarantee, the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that the alcohol removed must in fact be used for the purposes specified in the relevant invitation to tender,

— as regards the removal guarantee, the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that the entire quantity of alcohol in the lot concerned must be physically removed from the stores of each of the intervention agencies concerned before the deadline.

2. The alcohol removed shall be deemed to have been used entirely for the specified purposes if, where utilization is accompanied by:

(a) prior rectification,

— at least 90% of the total quantities of alcohol removed under a partial invitation to tender are used for the specified purposes,

— at least 95% of the total quantities of raw alcohol removed under an individual invitation to tender are used for the specified purposes and proof is provided by the successful tenderer that this operation took place in Community territory. In that case the successful tenderer shall inform the Commission of the destination and final use or the by-products;

(b) prior dehydration, at least 99% of the total quantities of alcohol removed are used for the specified purposes.

3. (a) The tendering security shall be released immediately if the tender has not been accepted or if the successful tenderer has met the conditions laid down in paragraph 1 (a).

(b) 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 quantity removed in question, with the proof required to that end by Title V of Regulation (EEC) No 2220/85.

(c) The removal guarantee shall be released immediately by each of the intervention agencies holding the alcohol on the date specified in the advice referred to in the second indent of the second subparagrah of Article 26 (1) and in Article 26 (4).'

14. In Article 34:

(a) the third indent is replaced by the following:

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

(b) the following is added as the fourth indent:

'— removal guarantees as referred to in the second indent of Article 24 (2) and in Article 26 (2), expressed in ecus per hectolitres of alcohol at 100% vol,'.

15. The phrase preceding the indents in the first subparagraph of Article 35 (2) is replaced by the following:

'2. For the purposes of drawing up the notices issuing individual or special invitations to tender and the description of lots as provided for in the second subparagraph of Article 29 (5), the Commission shall send to the Member States concerned a request for information, specifying for each Member State:'.

Article 2

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, 5 September 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission