COMMISSION REGULATION (EC) No 1433/2007

of 5 December 2007

amending Regulation (EC) No 1623/2000 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1], and in particular Article 33(1) thereof,

Whereas:

(1) Article 31(1) of Regulation (EC) No 1493/1999 stipulates that alcohol taken over by the intervention agencies is disposed of either by public sale or by tendering procedures.

(2) Tendering procedures for alcohol are the only sales from intervention in the agricultural sector for which the Commission manages the decision on and opens each sale of this product. In the interests of simplifying legislation and with a view to harmonising measures to manage agricultural markets under the single common organisation of the market, a standing invitation to tender for the sale of alcohol should be opened by the Commission as well as partial invitations to tender opened by the Member States.

(3) To ensure that the information on the partial invitations to tender in the Member States is accessible by all approved undertakings in the Community, that information should be published in electronic form.

(4) To prevent all the alcohol in stock from being sold all at once or for the benefit of just one undertaking, the maximum quantity that may be put up for sale under each partial invitation to tender should be limited.

(5) To ensure that alcohol is disposed of regularly and optimally, and taking account of the slack period during the summer and at Christmas, a deadline for the partial invitations to tender should be laid down once a month, except in July and December.

(6) The various stages and characteristics of the partial invitations to tender should be specified.

(7) Recent experience has shown that plans of the plants where the alcohol is processed into absolute alcohol are not essential for approval of undertakings that may participate in the sale of alcohol for use in the form of bioethanol in the Community. That requirement should therefore be removed from the list of documents to be provided for approval.

(8) To protect the interests of tendering undertakings during the partial invitations to tender, provision should be laid down to limit the physical movement of alcohol put up for sale between the time when the notice for the partial invitation to tender is published and its removal by the undertaking awarded the contract.

(9) Commission Regulation (EC) No 1623/2000 [2] should therefore be amended accordingly.

(10) 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 (EC) No 1623/2000 is hereby amended as follows:

1. Title III, Chapter IV is amended as follows:

(a) in subsection III, Articles 92 to 94(d) shall be replaced by the following:

'*Article 92*

Standing invitation to tender

1. A standing invitation to tender for alcohol is hereby issued for exclusive use in the fuel sector in the form of bioethanol in the Community.

[1] OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1).

[2] OJ L 194, 31.7.2000, p. 45. Regulation as last amended by Regulation (EC) No 923/2007 (OJ L 201, 2.8.2007, p. 9).

2. A notice of a standing invitation to tender shall be published in the *Official Journal of the European Union*.

Article 92a

Partial invitations to tender

1. Intervention agencies shall organise partial tendering rounds during the term of validity of the standing invitation to tender. To that end, intervention agencies shall publish notices of invitation to tender and ensure that they are properly publicised, in particular by displaying them at their head offices and on their website or the website of the competent ministry.

2. The notice of invitation to tender shall indicate in particular the time limit and place for the submission of tenders. Each partial invitation to tender shall cover a maximum quantity of 100 000 hl.

3. The time limit for the submission of tenders for each partial invitation to tender shall be the last working day of each month at 13.00 Brussels time. No tenders shall be submitted in July and December.

4. The first partial invitation to tender shall take place in the month following that in which the standing invitation to tender is published.

5. Each Member State whose stocks of Community wine alcohol reach or exceed 100 000 hl shall open a partial invitation to tender within the meaning of this Article.

Article 93

Notices of partial invitations to tender

For the quantities of alcohol which they hold, intervention agencies shall indicate, in addition to the information referred to in Article 92a(2):

(a) the special rules applicable to the tendering procedure and the location of the stores in which the alcohol to be sold is stored;

(b) the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol., covered by the partial tendering procedure;

(c) the lots;

(d) the payment terms;

(e) the formalities for obtaining samples;

(f) the amount of the tendering security referred to in the first subparagraph of Article 94(1) and the performance guarantee referred to in Article 94c(3).

Article 93a

Approval of undertakings

1. The alcohol shall be awarded to undertakings established in the Community and must be used for the purposes laid down in Article 92.

2. For the purpose of the award referred to in paragraph 1, Member States shall approve undertakings deemed eligible by them which have submitted an application accompanied by the following documents:

(a) a declaration by the undertaking stating that it is capable of using at least 50 000 hl of alcohol a year;

(b) the location of the undertaking's administrative offices;

(c) the names and addresses of the plants where the alcohol is processed into absolute alcohol, and an indication of their annual processing capacity;

(d) a copy of the permit granted by the national authorities of the Member State concerned to operate the plants;

(e) an assurance by the undertaking that all final purchasers of the alcohol will only use it for the production of fuel in the Community in the form of bioethanol.

3. Approval by a Member State shall be valid throughout the Community.

4. Undertakings approved by 9 December 2007 shall be considered to have been approved for the purposes of this Regulation.

5. Member States shall inform the Commission without delay of any new approval or withdrawal of approval, indicating the exact date of the decision.

6. After each amendment, the Commission shall make an updated list of the approved undertakings available to the Member States without delay.

Article 93b

Rule applicable to alcohol

Intervention agencies shall take the necessary steps to ensure that the alcohol in the vats to which the sale relates is not physically moved until a removal order covering it has been issued, except in the case of a substitution decided by the intervention agency for logistical reasons, the conditions for which shall be clearly set out in the notice of partial invitation to tender.

Article 93c

Submission of tenders

1. Undertakings approved by the date of publication of the notice of partial invitation to tender may submit tenders in writing either by delivery by hand to the intervention agency holding the alcohol against proof of receipt, or by any other written means of telecommunication against proof of receipt.

2. Tenderers may submit only one tender in response to a lot. If a tenderer submits more than one, none of those tenders shall be admissible.

Article 94

Rules applicable to tenders

1. To be eligible for consideration, tenders, when submitted, must be accompanied by proof that a tendering security of EUR 4 per hectolitre of alcohol at 100 % vol. has been lodged with the intervention agency holding the alcohol concerned.

To that end, the intervention agencies concerned shall immediately issue tenderers with a statement certifying that the tendering security has been lodged for the quantities for which each agency is responsible.

2. The primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that tenders are not withdrawn after the closing date for their submission, that a performance guarantee is lodged and that the price is paid.

Article 94a

Notifications relating to tenders

1. On the day following the closing date referred to in Article 92a(3), intervention agencies shall inform the Commission of the lots and the prices offered by tenderers and the quantity of alcohol making up each lot. Intervention agencies shall also indicate whether any tenders have been rejected and, if so, the reasons for such rejection.

2. Intervention agencies shall send this information to the Commission in the form of an anonymous list.

3. If no tenders have been submitted, intervention agencies shall communicate this to the Commission within the same time limit.

Article 94b

Award of contracts

1. On the basis of the tenders submitted, the Commission, acting in accordance with the procedure laid down in Article 75 of Regulation (EC) No 1493/1999, shall decide whether or not to award contracts.

2. Should a contract be awarded, the Commission shall accept the most favourable tender per lot and shall set the sale price for each lot. If for the same lot several tenders quote the same price, the intervention body shall allocate the quantity concerned either by sharing the quantity between these tenderers, with their agreement, or by drawing lots.

3. The Commission shall notify the decisions taken under this Article to those Member States and intervention agencies holding alcohol to which tenders have been submitted.

4. The Commission shall publish the results of the tendering procedure in a simplified form in the *Official Journal of the European Union*.

Article 94c

Statement of award

1. The intervention agency shall inform tenderers in writing, without delay against a receipt, of the decision taken on their tenders.

2. Within two weeks of the date of receipt of the information notice referred to in paragraph 1, the intervention agency shall issue each successful tenderer with a statement of award certifying that their tender has been accepted.

3. Within two weeks of the date of receipt of the information notice referred to in paragraph 1, each successful tenderer shall provide proof that they have lodged with the intervention agency concerned a performance guarantee of EUR 40 per hectolitre of alcohol at 100 % vol. to ensure that all the alcohol awarded is used for the purposes laid down in Article 92.

Article 94ca

Notifying the Commission

Within five working days of receipt of the decision referred to in Article 94b(3), the intervention agency shall inform the Commission of the name and address of the tenderer for each tender submitted.

Article 94d

Removal of the alcohol

1. The intervention agency holding the alcohol and the successful tenderer shall agree on a provisional timetable for the staggered removal of the alcohol.

2. The alcohol may be removed on presentation of a removal order issued by the intervention agency once the quantity to be removed has been paid for. That quantity shall be determined to the nearest hectolitre of alcohol at 100 % vol.

Each removal order shall cover a quantity of at least 1 500 hectolitres, except in the case of the last removal in each Member State.

The removal order shall state the date by which the alcohol must be physically removed from the warehouse of the intervention agency concerned. The deadline for removal shall not be more than eight days from the day following the date of issue of the removal order. However, where the removal order covers a quantity in excess of 25 000 hectolitres, that deadline may be more than eight days, but not more than 15 days.

3. Ownership of the alcohol covered by a removal order shall be transferred on the date indicated in the order, which may not be after its date of validity, and the quantities concerned shall be deemed 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.

4. Physical removal of the alcohol must be completed six months after the date of receipt of the notification of acceptance referred to in Article 94c(1).

5. The alcohol must be fully used within two years from the date of first removal.

Article 94e

Release of the tendering security

Where a tender has been unsuccessful, the security provided for in Article 94(1) shall be released immediately.'

(b) in subsection IV, Articles 95 and 96 shall be replaced by the following:

'Article 95

Rules applicable to public sales of alcohol

1. With a view to drawing up the rules for opening a public sale of alcohol, the Commission shall request each Member State concerned to inform it of:

(a) the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol., that may be offered for sale;

(b) the type of alcohol concerned;

(c) the quality of the lots of alcohol, laying down maximum and minimum values for the characteristics referred to in Article 96(4)(d)(i) and (ii) of this Regulation.

No more than 12 days after 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 quality requirements and containing a total quantity of alcohol not less than that referred to in (a) in the first subparagraph of this paragraph.

2. Once the information referred to in the second subparagraph of paragraph 1 has been forwarded to the Commission, the alcohol in the vats concerned may not be moved until a removal order covering it has been issued.

This prohibition shall not relate to alcohol in vats not covered by the notices of public sale of alcohol concerned or not specified in the Commission decision referred to in Articles 83 to 93.

For logistical reasons in particular, the intervention agencies holding the vats of alcohol specified in the notification from the Member States referred to in paragraph 1 may replace the alcohol concerned with other alcohol of the same type or mix it with other alcohol delivered to the intervention agency until a removal order is issued for the alcohol concerned. The intervention agencies of the Member States shall notify the Commission that the alcohol has been replaced.

Article 96

Rules applicable to lots

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.

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

4. Each lot shall be described. The following information at least shall be given:

(a) the location of the lot, including a reference identifying each vat containing the alcohol, and the quantity of alcohol in each vat;

(b) the total quantity, expressed in hectolitres of alcohol at 100 % vol. The quantity may vary by up to 1 % and may not exceed 50 000 hectolitres;

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

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

(i) the acidity, expressed in grams of acetic acid per hectolitre of alcohol at 100 % vol.;

(ii) the methanol content, expressed in grams per hectolitre of alcohol at 100 % vol.;

(e) reference to the intervention measure which gave rise to the production of the alcohol, specifying the relevant Article of Regulation (EC) No 1493/1999.'

2. Article 101(4) is replaced by the following:

'4. Without prejudice to paragraph 1, when the alcohol is exported to third countries for end use in the motor fuel sector only, the checks on its actual use shall be carried out up to the moment when the alcohol is mixed with a denaturing agent in the country of destination.

Where the alcohol is disposed of for use as bioethanol in the Community, those checks shall be carried out up to the moment when the alcohol is delivered to an approved firm as indicated in Article 93a.

In the cases provided for in the first and second subparagraphs, the alcohol concerned must remain under the supervision of an official body which guarantees its use in the motor fuel sector under special tax arrangements which require that enduse.'

3. Article 102 shall be replaced as follows:

'*Article 102*

Use of surveillance firms

The partial notice of invitation to tender referred to in Article 92a(1) may stipulate that an independent surveillance firm is to be used to check on the proper conduct of the tendering procedure, particularly the final destination and/or end use of the alcohol. The cost of such services shall be borne by the successful tenderer, as shall the cost of analysis and verification pursuant to Article 99 of this Regulation.'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 December 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission