Commission Regulation (EC) No 616/2005 of 21 April 2005 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

COMMISSION REGULATION (EC) No 616/2005

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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 thereof,

Whereas:

(1) Commission Regulation (EC) No 1623/2000[(2)] provides for a system of disposal by public sale of wine alcohol for use as bio-ethanol in the Community. In order to enable the highest price offered by a tenderer to be obtained for such alcohol, the public sale system should be replaced by a tendering system.

(2) To that end, the same rules should be applied to the different types of disposal of wine alcohol, while the characteristics necessary for each use or final destination of the alcohol should be respected.

(3) In order to check that the alcohol is to be used for the production of bio-ethanol, Member States approve firms which they deem eligible on the basis of their capacity, the plants where the alcohol is processed, their annual processing capacity, and the certificates from the national authorities of the Member State of the final purchaser attesting that the final purchaser uses the alcohol only to produce bio-ethanol and that the bio-ethanol is used only in the fuel sector.

(4) Sales by tender should be held each quarter, first in order to ensure that the alcohol stored by Member States' intervention agencies is disposed of, and second in order to provide some guarantee of supply for firms established in the European Community which use alcohol in the fuel sector.

(5) The Member States should send information at the end of each month on the quantities of wine, wine lees and fortified wine which have been distilled in the previous month, as well as the quantities of alcohol, broken down into neutral alcohol, raw alcohol and spirits.

(6) Regulation (EC) No 1623/2000 should be amended accordingly.

(7) 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. Articles 92 to 94 are replaced by:

Article 92

Opening tendering procedures

1 The Commission, acting in accordance with the procedure laid down in Article 75 of Regulation (EC) No 1493/1999, may issue one or more invitations to tender each quarter for alcohol to be used only in the fuel sector, in the form of bio-ethanol, in the Community.

The quantities of alcohol awarded under such tendering procedures shall not exceed 700 000 hectolitres of alcohol at 100 % vol per procedure.

2 The alcohol shall be assigned to firms established in the Community and shall be used in the fuel sector.

To this end, Member States shall approve firms deemed eligible by them which have submitted an application accompanied by the following documents and information:

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

b the location of the firm's administrative offices;

c the place of establishment and a copy of the plans of the plant where the alcohol is processed, and an indication of the annual processing capacity;

d a copy of the permit, granted by the national authorities of the Member State concerned, to operate the plant; and

e certificates from the national authorities of the Member State of any final purchaser, attesting that the final purchaser is able to use the alcohol only to produce bio-ethanol and that the bio-ethanol will be used only in the fuel sector.

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

4 Firms approved by the Commission at 1 March 2005 shall be considered to have been approved for the purposes of this Regulation.

5 Member States shall inform the Commission of any new approval or withdrawal of approval.

6 The Commission shall regularly publish a list of the firms approved by the Member States.

Article 93

Notice of invitation to tender

The notice of invitation to tender shall be published in the *Official Journal of the European Union*.

Such notices shall specify:

(a) the special rules applicable to the tendering procedure and the names and addresses of the intervention agencies concerned;

(b) the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol, covered by the 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 Article 94(4) and of the performance guarantee referred to in Article 94c(3).

Article 94

Rules applicable to tenders

1 Tenderers may submit only one tender for each lot to be awarded. If a tenderer submits more than one tender for each lot, none of those tenders shall be admissible.

2 To be eligible for consideration, tenders shall indicate the Member State of final use of the alcohol awarded and contain an undertaking by the tenderer to comply with that destination.

3 Tenders shall reach the intervention agency of the Member State concerned not later than 12 noon (Brussels time) on the closing date set for the submission of tenders in the notice of invitation to tender.

4 Tenders shall be valid only if proof is provided, before the closing date for the submission of tenders, that a tendering security of EUR 4 per hectolitre of alcohol at 100 % vol has been lodged with the intervention agency concerned in respect of the entire quantity of the lot put up for sale.

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 intervention agency is responsible.

5 For the purposes of the tendering security, 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 and that a performance guarantee is lodged.

Article 94a

Notification concerning tenders

Not more than two working days after the closing date for the submission of tenders, the intervention agency concerned shall submit to the Commission an anonymous list showing, for each tender:

(a) the prices offered;

(b) the lots requested;

(c) the final destination of the alcohol.

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(2) of Regulation (EC) No 1493/1999, shall decide as quickly as possible whether or not to award contracts.

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

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

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 30 per hectolitre of alcohol at 100 % vol to ensure that the alcohol awarded is used for the purposes stated in the tender.