

COMMISSION REGULATION (EEC) No 377/93**of 12 February 1993****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 1756/92 ⁽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 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy ⁽⁴⁾,

Whereas 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 ⁽⁵⁾, as last amended by Regulation (EEC) No 3821/92 ⁽⁶⁾, has been substantially amended on a number of occasions; whereas it is appropriate, for reasons of clarity and rationality, to consolidate the said Regulation;

Whereas one feature of the Community market for alcohol is the existence of 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 on 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 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 invitations 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, 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 to permit intermediate-scale industrial tests of new uses devised for alcohol by certain operators and thus in the long term to develop ways of disposing of significant quantities of Community alcohol without disrupting the market in spirituous beverages, provision should be made under certain conditions for submitting tenders for more than 5 000 hectolitres in respect of a partial invitation to tender;

Whereas it is necessary to determine processing which may be considered equivalent to real industrial uses from processing into goods exported under inward processing arrangements;

Whereas the term of validity of a new standing invitation to tender should be unlimited so that the industry concerned is assured of better continuity in supply in view of the investments needed to process spirits distilled from wine; whereas a quantity of alcohol should be set aside for the standing invitation to tender, care being taken to avoid any disturbance of certain markets;

Whereas notices of invitations to tender issued by the Commission must contain particulars necessary to identify the quantities of alcohol concerned; whereas in addition lots of alcohol comprising one or more vats should be specified solely in partial invitations to tender in order to prevent a substantial quantity of alcohol from being immobilized, given the unlimited duration of the standing invitation to tender;

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 180, 1. 7. 1992, p. 27.

⁽³⁾ OJ No L 346, 15. 12. 1988, p. 7.

⁽⁴⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ No L 178, 24. 6. 1989, p. 1.

⁽⁶⁾ OJ No L 387, 31. 12. 1992, p. 24.

Whereas there is provision for a special tendering procedure for alcohol for use in the fuel sector and therefore there should be restrictions in the partial invitation to tender on the quantities tendered for industrial uses comparable to alcohol combustion where these do not specifically concern the fuel sector;

Whereas, in order to ensure that alcohol sold under a partial invitation to tender is really used for purposes not likely to disrupt the market in alcohol, tenders submitted for that invitation to tender must give a precise indication of the anticipated use;

Whereas tenderers should be able to submit tenders by type of alcohol, by type of end use and by partial invitation to tender; whereas the legal consequences for the tenderer who submits more than one tender in respect of each partial invitation to tender should also be specified;

Whereas, to make it possible to verify that tenderers submit only one tender in response to a partial invitation to tender, the list of tenderers accompanied by the particulars required under this Regulation should give the tenderers' name;

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, in order to be able to grant contracts in respect of the greatest number possible of tenders in respect of a partial invitation to tender where the prices proposed are deemed satisfactory and where the end uses to which the alcohol is to be put are suitable for developing new industrial outlets for the product, provision should be made within certain limits for tenderers who have submitted such tenders to be allocated a replacement lot; whereas this procedure is likely to increase sales of Community alcohol and thus achieve a reduction in stocks management of which entails a high cost to the budget;

Whereas, despite the margin of tolerance relating to the overall quantity of alcohol put up for sale by invitation to tender, the price paid prior to the presentation of a removal order must be calculated on the basis of a quantity of alcohol at 100 % vol, determined to the nearest hectolitre;

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 affords a major market opportunity;

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 laid down 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 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 per hectolitre of alcohol at 100 % vol offered by the successful tenderer should be revised every three months by adjusting by a coefficient described in the notice of the invitation to tender concerned, in order to fix prices to be paid for the alcohol awarded which follow more closely the fluctuation of fuel prices on international markets;

Whereas, in view of the size of certain vats in which part of the alcohol obtained from compulsory distillation is held and of the lengthy duration of storage of some of this alcohol, it is impossible to know exactly in practice what quantity of marketable alcohol is contained in certain storage vats;

Whereas, accordingly, provision should be made so that any invitation to tender ultimately found to relate to a quantity of marketed alcohol representing between 99 and 101 % of the quantity of alcohol originally put up for sale shall be deemed to have been executed;

Whereas it should be made clear that the tenderer's statement waiving all claims in respect of the quality and characteristics of the alcohol awarded to him does not extend to hidden impurities that by their nature could not be detected by him beforehand and make it unfit for the use intended;

Whereas provision should be made where appropriate 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 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 purpose 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 rule 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⁽¹⁾, as last amended by Regulation (EEC) No 3745/89⁽²⁾, which also covers wine, should be taken into account; whereas the primary requirements of the obligations secured should consequently be determined;

Whereas some end uses envisaged for the alcohol in connection with a partial invitation to tender require all or some of the alcohol awarded to be processed into rectified alcohol; whereas certain of the uses to which the alcohol sold by individual or special sales by tender is to be put require that the 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 Regulation (EEC) No 3819/92 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 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 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 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

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 to tender may be issued 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 processing into goods exported for industrial purposes by an operator who has made use of inward processing arrangements at least once in the previous two years, other than processing consisting solely of redistillation, rectification, dehydration, purification or denaturing of the alcohol.

If the use laid down for the alcohol is exported to third countries in the form of manufactured goods, proof must be provided that during the two preceding years authorization was granted to use alcohol from third countries to manufacture under inward processing arrangements the same goods as those exported.

⁽¹⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽²⁾ OJ No L 364, 14. 12. 1989, p. 54.

Article 3

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 covering quantities of alcohol obtained from distillation as provided for in Articles 35, 36 and 39 of that Regulation. The quantities of alcohol awarded under this invitation to tender shall not exceed 400 000 hectolitres of alcohol at 100 % vol per year.

Article 4

1. The Commission shall organize partial invitations to tender in the framework of a standing invitation to tender.

2. Notices issuing partial invitations to tender shall be published in the *Official Journal of the European Communities* in the first fortnight of each quarter.

Such notices shall specify:

- one or more vats which constitute a lot in a given Member State,
- the quantity of alcohol, expressed in hectolitres of alcohol at 100 % vol, covered by the partial invitation to tender,
- the tendering security as referred to in Article 6 (2) and the performance guarantee as referred to in the second indent of Article 8 (2),
- the special conditions governing the standing invitation to tender and the names and addresses of the intervention agencies concerned.

Article 5

1. Apart from the particulars listed in Article 30, the tender shall specify:

- the type of goods exported if the use laid down for the alcohol is exported to third countries in the form of manufactured goods,
- the number(s) of the vat(s) in which the alcohol to which the tender relates is stored, the vats all being situated in the same Member State,
- the quantity of alcohol to which the tender relates, broken down by vat and expressed in hectolitres of alcohol at 100 % volume.

The quantity may not be less, in the case of each tender, than 100 hectolitres and may not exceed 5 000 hectolitres of alcohol at 100 % volume where the industrial end use is comparable to use in the fuel sector.

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.

3. Tenderers may submit only one tender by type of alcohol, by type of end use and by partial invitation to tender. If a tenderer submits more than one tender by type of alcohol, by type of end use and by partial invitation to tender, none of those tenders shall be admissible.

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 for submission of tenders, a list of the names of the tenderers whose tenders are pursuant to Article 31 eligible for consideration, the prices offered, the quantities requested, the locations and the alcohol types concerned and the precise uses to be made of the alcohol.

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 and where appropriate depending on the type of end use laid down for the alcohol:

- either to award contracts,
- or to make no awards.

2. Should contracts be awarded, the Commission, acting in accordance with the procedure referred to in paragraph 1, may decide to fix, where appropriate for each type of industrial use, a minimum price below which tenders will not be considered, taking account in particular 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 price offered in decreasing order until the contracts awarded cover the entire quantity of alcohol specified in the notice issuing the partial invitation to tender.

4. Where several admissible tenders relate totally or in part to the same vats, the Commission shall allocate the quantity of alcohol in question to the tenderer submitting the highest tender in absolute value.

The Commission may, in the decision referred to in paragraph 1, opt to propose tenderers whose tenders as referred to in the first subparagraph cannot be met that their tenders be accepted for a replacement quantity of alcohol of the same type. In that case, the relevant tenders shall be deemed to have been accepted provided that the tenderers in question do not express their disagreement with such transfer in writing to the intervention agency concerned within 10 working days from the date of notification of the Commission decisions referred to in the first indent of paragraph 6.

To that end the Commission decision shall indicate, with the agreement of the intervention agency concerned, the vat in which the replacement quantity of alcohol is stored.

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 Commission :

- shall notify the decisions taken pursuant to this Article only to those Member States and intervention agencies holding alcohol which have accepted tenders,
- shall publish in a simplified form the results of the partial invitation to tender in the *Official Journal of the European Communities*.

7. The intervention agency shall notify each 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.

Where the Commission proposes substitution pursuant to Article 7 (4) and there is no ensuing dissent by the tenderer, the statement of award referred to in the first subparagraph shall be issued by the intervention agency concerned on the working day following the expiry of the time limit referred to in the second subparagraph of Article 7 (4).

2. Within the two weeks following the date of receipt of the statement of award referred to in Article 7 (7) and, where the second subparagraph of paragraph 1 is applied,

within the two weeks following the date of issue of the statement of award, each successful tenderer shall :

- obtain from the intervention agency the statement of award referred to in paragraph 1,
- provide the intervention agency concerned with proof that a performance security has been lodged to ensure that the alcohol in question is in fact used for the purposes specified in his tender.

Article 9

1. Removal of the alcohol must be completed three months after 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. That quantity shall be determined to the nearest hectolitre of alcohol at 100 % vol.

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 Commission, 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 alcohol may 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

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 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.

Article 13

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 15 (2) and the performance guarantee referred to in the second indent of Article 17 (2),
- the Commission department to which tenders should be sent,
- the time limit for the removal of the alcohol as referred to in Article 18 (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 14

Tenderers may submit only one tender in response to each individual invitation to tender; if a tenderer submits more than one, none of those tenders shall be admissible.

Article 15

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. For the purposes of paragraph 2, the intervention agencies concerned:

- shall immediately provide the tenderers with a certificate attesting that the tendering security has been lodged in respect of the quantities for which each intervention agency is responsible,
- shall forward to the Commission, within two working days of the last date for the submission of tenders, a list of the tendering securities checked and accepted.

Article 16

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 inform, in writing with advice of receipt, tenderers whose offers are not been accepted of the decision taken on their tenders,
- shall notify its decision to the Member States holding the alcohol and to the successful tenderer,
- shall publish in a simplified form the results of the invitation to tender in the *Official Journal of the European Communities*.

Article 17

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 16 (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 18

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

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. That quantity shall be determined to the nearest hectolitre of alcohol at 100 % vol.

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 relates 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 19

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. The alcohol may 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 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 28.

Article 20

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 300 000 hectolitres but not more than 1,2 million hectolitres expressed in hectolitres of alcohol at 100 % vol.

Article 21

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 23 (2) and the performance guarantee referred to in the second indent of Article 25 (2) and in Article 27 (2),
- the Commission department to which tenders should be sent,
- the time limit for removal as referred to in Articles 26 (2) and 27 (3),
- the formalities for obtaining samples,
- the conditions relating to payment,
- whether the alcohol is to be denatured.

Article 22

Tenderers may submit only one tender in response to each special invitations to tender, if a tenderer submits more than one, none of those tenders shall be admissible.

Article 23

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. For the purposes of paragraph 2, the intervention agencies concerned:

- shall immediately provide the tenderers with a certificate attesting that the tendering security has been lodged in respect of the quantities for which each intervention agency is responsible,
- shall forward to the Commission, within two working days of the last date for the submission of tenders, a list of the tendering securities checked and accepted.

Article 24

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 inform, in writing with advice of receipt, tenderers whose offers have not been accepted of the decision taken on their tenders,
- shall notify its decision to the Member States holding the alcohol and to the successful tenderer,
- shall publish in a simplified form the results of the invitation to tender in the *Official Journal of the European Communities*.

Article 25

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 24 (3) :

- obtain a statement of award as referred to in paragraph 1 from each of the intervention agencies holding the alcohol,
- provide proof of the lodging with the intervention agency of the Member State where the successful tenderer has his principal place of business, 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.

Article 26

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 54 000 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 27

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 intervention 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 notification 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.

2. 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 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.

3. Where a special invitation to tender relates to more than two lots, the rules laid down in paragraphs 1 and 2 shall apply to the removal of the lots following the first two.

Article 28

The price per hectolitre of alcohol at 100 % vol offered by the successful tenderer shall apply up to the first revision made on the first day of the fifth month following the final date for submission of tenders. This tender price shall be adjusted every three months by a coefficient and taking account of a margin within which application of the said coefficient shall result in no change to the price offered.

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

Article 29

1. The removal operations referred to in Articles 26 and 27 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. That quantity shall be determined to the nearest hectolitre of alcohol at 100 % vol.

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.

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 of each lot must be completed within one year from the date of the last removal of each lot.

TITLE IV

General provisions and control arrangements

Article 30

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. The quantity may vary up to 1 % ;
 - (c) the alcoholic strength of the alcohol in each vat, expressed in % vol, to the nearest tenth ;
 - (d) if possible, 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 ;
 - (e) 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.
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 two months before the final date planned in the provisional timetables referred to in Article 26 (1) for the total physical removal from the stores of the intervention agencies of the last lot described.

For this purpose, the aforementioned provisional timetables shall be communicated to the Commission in the month following the first removal of the lots described in the notice of invitation to tender.

Article 31

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

- (a) the reference number of the notice of invitation to tender ;
- (b) the name and address of the tenderer ;
- (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 ;
- (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 ;
- (g) in the case of individual and special invitations to tender, the certificates attesting that the tendering security referred to respectively in Articles 15 (3) and 23 (3) has been lodged ;
- (h) in the case of partial invitations to tender, the precise industrial use of the alcohol.

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 all the lots.

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 32

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. After the closing date for the submission of tenders :

- the successful tenderer may obtain samples of the alcohol awarded,
- any tenderer to whom a substitution pursuant to Article 7 (4) is proposed may obtain samples of the replacement alcohol proposed.

Such samples may be obtained from the intervention agency against payment of ECU 2 per litre, quantities not exceeding five litres per vat.

3. 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.

4. If the tenderer finds, within the time limit set in Article 9 (1), Article 18 (2), Article 26 (2) or Article 27 (2) for removal of the lot of alcohol concerned, that a quantity of alcohol awarded is, subject to confirmation of this finding by the intervention agency, unsuitable for the uses planned owing to hidden impurities that by their nature could not be discovered at the time when it was possible for a check to be made before the alcohol was awarded, the Commission may indicate a replacement quantity, in agreement with the relevant intervention agency. The vat in which the replacement quantity is stored shall be determined in agreement with the intervention agency concerned. If the tenderer does not indicate his disagreement with the transfer, by writing to the intervention agency concerned within 10 working days from the date of notification of the Commission's decision indicating the replacement quantity, he shall be deemed to have agreed to the substitution.

Article 33

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 the ratio 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 34

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, and that a performance guarantee must be lodged ;

(b) as regards the performance guarantee, 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.

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 of 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.

Article 35

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), 18 (3) and 29 (1), expressed in ecus at the time when the tender is submitted,
- tendering securities as referred to in Articles 6 (2), 15 (2) and 23 (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 17 (2) and the second indent of Article 25 (2), expressed in ecus per hectolitre of alcohol at 100 % vol,
- payments for samples in accordance with Article 32 (1) and (2), 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 36

1. For the purposes of drawing up the notices issuing invitations to tender and the description of lots as provided for in the second subparagraph of Article 30 (5), the Commission shall send to the Member States concerned a request for informations, specifying for each Member State :

- 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 lots of alcohol, laying down maximum and minimum values for the characteristics referred to in the first and second indents of Article 30 (4) (d).

Within fifteen days of receiving this request in the case of partial invitation to tender, and within eight days in the case of individual and special invitations to tender, 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.

2. After the information referred to in the second subparagraph of paragraph 1 has been forwarded to the Commission, the alcohol in the vats concerned shall not be moved until a removal order relating thereto has been issued.

This prohibition shall not relate to alcohol in vats not covered by the notices of invitation to tender concerned or not specified in the Commission decision referred to in Articles 7, 16 and 24.

3. 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.

Article 37

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 month,
- verification of accounts, records, utilization procedures and stocks.

If the alcohol has been denatured checks shall be made at least every two months.

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 control measures laid down for the application of paragraph 1. Where appropriate the Commission shall forward to the Member State concerned the observations required to ensure effective verification.

3. The measures taken by the Member States shall be notified to the Commission before any control operations are begun.

Article 38

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 final 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 37.

Article 39

1. Regulation (EEC) No 1780/89 is hereby repealed.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 40

This Regulation shall enter into force on the seventh 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, 12 February 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

CORRELATION TABLE

Regulation (EEC) No 1780/89	Regulation (EEC) No 377/93
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 6
Article 7 (1)	Article 7 (1)
Article 7 (2)	Article 7 (2)
Article 7 (3)	Article 7 (3)
Article 7 (4) (a)	Article 7 (4)
Article 7 (5)	Article 7 (5)
Article 7 (5) (a)	Article 7 (6)
Article 7 (6)	Article 7 (7)
Article 8	Article 8
Article 9	Article 9
Article 10	Article 10
Article 11	Article 11
Article 11 (a)	Article 12
Article 12	Article 13
Article 13	Article 14
Article 14	Article 15
Article 15	Article 16
Article 16	Article 17
Article 17	Article 18
Article 18	Article 19
Article 19	Article 20
Article 20	Article 21
Article 21	Article 22
Article 22	Article 23
Article 23	Article 24
Article 24	Article 25
Article 25	Article 26
Article 26	Article 27
Article 27	Article 28
Article 28	Article 29
Article 29	Article 30
Article 30	Article 31
Article 31 (1)	Article 32 (1)
Article 31 (1) (a)	Article 32 (2)
Article 31 (2)	Article 32 (3)
Article 31 (3)	Article 32 (4)
Article 32	Article 33
Article 33	Article 34
Article 34	Article 35
Article 35 (1) & (2)	Article 36 (1)
Article 35 (3)	Article 36 (2)
Article 35 (4)	Article 36 (3)
Article 36 (1)	Article 37 (1)
Article 36 (2)	Article 37 (2)
Article 35 (5)	Article 37 (3)
Article 37	Article 38
Article 38	Article —
Article —	Article 39
Article 39	Article 40