# COMMISSION REGULATION (EC) No 1448/97

## of 24 July 1997

## amending Regulation (EEC) No 377/93 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 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 536/97 [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,

Whereas alcohol losses may occur during land and sea transport operations and processing operations prior to final use; whereas account should be taken of the relevant technical standards to evaluate changes in volume of alcohol recorded on loading and unloading of alcohol and a specific tolerance limit should be set for each category of loss;

Whereas an overall tolerance limit should be set for losses of alcohol due to multiple land and sea transport operations in connection with an individual invitation to tender for the export of alcohol processed in one of the third countries listed in Annex II to Commission Regulation (EEC) No 377/93 [4], as last amended by Regulation (EC) No 3152/94 [5]; whereas a higher tolerance limit should also be set for alcohol losses due to processing operations in such third countries by comparison with similar operations in the Community to take account of operational, climatic and other conditions and the fact that some equipment is less efficient in those third countries;

Whereas penalties should be applied for losses exceeding the tolerance limits established by withholding a standard amount of the performance guarantee covering the cost price of the alcohol delivered to the intervention agency under the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87; whereas part of the performance guarantee should be released only after the successful tenderer has produced evidence concerning all the losses relating to the tender in question so that the amount of security available is sufficient to penalize such illegal losses of alcohol;

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 377/93 is hereby amended as follows:

1. Article 34 (2) is replaced by the following:

'2. (a) The alcohol awarded must be used entirely for the purposes specified in the invitation to tender in question without prejudice to any losses of alcohol occurring as a result of the transport or processing operations required for the final use of the alcohol.

Each individual loss of alcohol shall be accepted only if it has been checked at the final destination and, in the case of alcohol for export, at the place where it left the customs territory of the Community, and certified by the competent inspection authority and/or by the international surveillance firm where such a firm has been appointed under Article 38, in so far as such losses are within the limits specified in point (b).

(b) For alcohol awarded under a partial, individual or special invitation to tender, where alcohol losses during the operations referred to below exceed the following limits, an amount of ECU 96 per hectolitre of the performance guarantee shall be withheld except in the case of *force majeure*:

— 0,4 % of the quantities of alcohol removed from storage in the case of an alcohol loss due to one or more land transport operations,

[1] OJ No L 84, 27. 3. 1987, p. 1.
[2] OJ No L 83, 25. 3. 1997, p. 5.
[3] OJ No L 346, 15. 12. 1988, p. 7.
[4] OJ No L 43, 20. 2. 1993, p. 6.
[5] OJ No L 332, 22. 12. 1994, p. 34.

— 1 % of the quantities of alcohol removed from storage in the case of alcohol losses due to one or more land transport operations combined with one or more sea or inland waterway transport operations,

— 2 % of the quantities of alcohol removed from storage in the case of alcohol losses due to land and sea transport required in connection with an individual invitation to tender for export of alcohol to one of the third countries listed in Annex II,

— 0,9 % of the quantities of alcohol subjected to rectification in the case of an alcohol loss due to rectification in the Community,

— 0,9 % of the quantities of alcohol subjected to dehydration in the case of an alcohol loss due to dehydration in the Community,

— 1,2 % of the quantities of alcohol subjected to rectification in the case of an alcohol loss due to rectification in one of the third countries listed in Annex II,

— 1,2 % of the quantities of alcohol subjected to dehydration in the case of an alcohol loss due to dehydration in one of the third countries listed in Annex II.

The fourth and/or fifth percentage may be added to the first two percentages.

The sixth and/or seventh percentage may be added to the third percentage.

For the purposes of applying the abovementioned percentages, the quantities of alcohol shall be determined on the basis of tonnage certificates or similar documents issued by the competent inspection authorities.

(c) For alcohol awarded under a partial invitation to tender and having to be rectified prior to the final use specified, the alcohol removed shall be deemed to have been used entirely for the specified purposes where at least 90 % of the total quantities of alcohol removed under a partial invitation to tender is used for those purposes; the successful tenderer shall inform the Commission of the quantity, destination and use of the products derived from rectification. However, losses may not exceed the limits specified in point (b).'

2. Article 34 (3) (b) is replaced by the following:

'(b) The performance guarantee shall be released immediately by each of the intervention agencies holding alcohol once the successful tenderer provides each of those intervention agencies, for the relevant quantity removed, with the proof required in points 2 and 3 and in Title V of Regulation (EEC) No 2220/95.'

3. The following point (3) (c) is added to Article 34:

'(c) By way of derogation from Article 27 of Regulation (EEC) No 2220/85 an amount equal to 10 % of the performance guarantee shall not be released until the successful tenderer provides each intervention agency concerned, for the relevant quantity removed, with proof of the use of the alcohol, indicating any losses of alcohol in connection with the tendering procedure in question. If such proof is not produced within 12 months from the time limit specified for the final use of the alcohol, an amount of ECU 96 per hectolitre shall be withheld on the quantities of alcohol lost over and above the limits specified in point 2.'

4. The Annex to Regulation (EEC) No 377/93 is renumbered I and the following new Annex II is inserted:

*'ANNEX II*

— Costa Rica
— Guatemala
— Honduras, including the Swan Islands
— El Salvador
— Nicaragua
— Saint Kitts and Nevis
— Bahamas
— Dominican Republic
— Antigua and Barbuda
— Dominica
— British Virgin Islands and Montserrat
— Jamaica
— Saint Lucia
— Saint Vincent, including the North Grenadines
— Barbados
— Trinidad and Tobago
— Belize
— Grenada, including the South Grenadines
— Aruba
— Netherlands Antilles (Curaçao, Bonaire, Saint Eustatius, Saba and the southern part of Saint Martin)
— Guyana
— United States Virgin Islands
— Haiti'.

*Article 2*

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

This Regulation shall apply to invitations to tender for which the notices referred to in Articles 4 (2), 13 (1) and 21 of Regulation (EEC) No 377/93 have been published since its entry into force. However, at the request of successful tenderers, it may be applied to current invitations to tender for which the performance guarantees have not yet been released.

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

Done at Brussels, 24 July 1997.

*For the Commission*

Franz FISCHLER

*Member of the Commission*