COMMISSION REGULATION (EC) No 212/97

of 4 February 1997

opening an individual sale by invitation to tender for the export of vinous alcohol held by the Portuguese intervention agency

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 (EC) No 1592/96 (2),

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),

Whereas Commission Regulation (EEC) No 377/93 (4), as last amended by Regulation (EC) No 3152/94 (5), lays down detailed rules for the disposal of alcohol obtained from distillation as provided for in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies;

Whereas, in view of the cost of storing alcohol, a sale should be organized by individual invitation to tender for alcohol of vinous origin obtained from distillation as provided for in Article 35 of Regulation (EEC) No 822/87 and held by the Portuguese intervention agencies;

Whereas the sale by invitation to tender should cover alcohol of vinous origin from Community distillation measures in Portugal for the 1993/94, 1994/95 and 1995/96 wine years held by the Portuguese intervention agency, to be sent to certain countries in Central America and the Caribbean under the Caribbean Basin Initiative for use as motor fuel, in view of the possible outlets for such alcohol and in order not to disturb the market for alcohol and spirituous beverages;

Whereas Commission Regulation (EEC) No 2192/93 (6), concerning the operative events for the agricultural conversion rates used in the wine sector and amending Regulation (EEC) No 377/93, specifies the agricultural conversion rates to be used to convert the payments and securities provided for in connection with individual invitations to tender into national currency;

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. A total of 70 372 hl of alcohol obtained from distillation as provided for in Article 35 of Regulation (EEC) No 822/87 and held by the Portuguese intervention agency shall be sold by individual invitation to tender No 217/97 EC.

2. The alcohol offered for sale:

— shall be for export outside the European Community,

— must be imported into and dehydrated in one of the following third countries:

  — Nicaragua,
  — St Christopher and Nevis,
  — Bahamas,
  — Dominican Republic,
  — Antigua and Barbuda,
  — Dominica,
  — British Virgin Islands and Montserrat,
  — Jamaica,
  — St Lucia,
  — St Vincent, including the Northern Grenadines,
  — Barbados,
  — Trinidad and Tobago,
  — Belize,
  — Costa Rica,
  — Guatemala,
  — Honduras, including the Swan Islands,
  — El Salvador,
  — Grenada including the Southern Grenadines,
  — Aruba,

(1) OJ No L 84, 27. 3. 1987, p. 1.
(2) OJ No L 206, 16. 8. 1996, p. 31.
(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.
(6) OJ No L 196, 5. 8. 1993, p. 19.

— Netherlands Antilles: Curaçao, Bonaire, St Eustace, Saba and the southern part of St Martin,

— Guyana,

— Virgin Islands of the United States,

— must be used only as motor fuel.

Article 2

The location and reference numbers of the vats concerned, the quantity of alcohol contained in each vat, the alcoholic strength and the characteristics of the alcohol as well as certain specific conditions are given in Annex I hereto.

Article 3

The sales shall take place in accordance with Articles 13 to 18 and 30 to 38 of Regulation (EEC) No 377/93.

However, notwithstanding Article 15 of Regulation (EEC) No 377/93, the final date for the submission of tenders for the invitation to tender referred to in this Regulation, shall fall between the eighth and the 25th day following the date of publication of the individual invitation to tender.

Article 4

1. The tendering security referred to in Article 15 of Regulation (EEC) No 377/93 shall be ECU 3,622 per hectolitre of alcohol at 100 % volume and shall be lodged for the total quantity of alcohol offered for sale in the invitation to tender referred to in Article 1.

Maintenance of the tender after the time limit for submitting tenders and the lodging of a guarantee to ensure export and of a performance guarantee shall constitute the primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 [1] as regards the tendering security.

The tendering security lodged for the invitation to tender referred to in Article 1 shall be released immediately if the tender is not accepted or if the successful tenderer had lodged the entire guarantee to ensure export and the entire performance guarantee.

2. The guarantee to ensure export shall amount to ECU 5 per hectolitre of alcohol at 100 % volume and shall be lodged for each quantity of alcohol for which there is a removal order under the invitation to tender referred to in Article 1 of this Regulation.

This guarantee shall be released only by the intervention agency holding the alcohol for each quantity of alcohol for which proof has been furnished that it has been exported within the time limit laid down in Article 5 of this Regulation. Notwithstanding Article 23 of Regulation (EEC) No 2220/85, and except in cases of *force majeure*, where the time limit referred to in Article 5 has not been complied with, the guarantee to ensure export of ECU 5 per hectolitre of alcohol at 100 % volume shall be forfeit as follows:

(a) 15 % in all cases;

(b) 0,33 % of the amount remaining after deduction of the 15 %, for each day the time limit in question is exceeded.

3. The performance guarantee shall be ECU 25 per hectolitre of alcohol at 100 % volume.

This guarantee shall be released in accordance with Article 34 (3) (b) of Regulation (EEC) No 377/93.

4. Notwithstanding Article 17 of Regulation (EEC) No 377/93, the guarantees on export and performance shall be lodged simultaneously with the intervention agency concerned, for the invitation to tender referred to in Article 1 of this Regulation not later than the day of issue of a removal order for the quantity of alcohol concerned.

5. In the case of the guarantee to ensure export, as expressed in ecus per hl at 100 % volume, the agricultural conversion rate to be applied for the conversion into national currency shall be that in force on the final day for the submission of tenders.

Article 5

1. The alcohol awarded under the invitation to tender referred to in Article 1 shall be exported by 30 June 1997 at the latest.

2. The alcohol awarded shall be used within two years from the date of first removal.

Article 6

To be valid, tenders must indicate the place where end use of the alcohol awarded is to take place and must include an undertaking by the tenderer to the effect that the alcohol will be sent to that destination and used for that purpose. The tender shall also include proof that the tenderer has binding commitments with an operator in the motor fuel sector in one of the third countries listed in Article 1 who has undertaken to dehydrate the alcohol awarded in one of those countries and to export it for use solely as motor fuel.

[1] OJ No L 205, 3. 8. 1985, p. 5.

Article 7

1. Before the awarded alcohol is removed, the intervention agency and the successful tenderer shall take a reference sample and shall analyse that sample to verify the alcoholic strength expressed in % volume of the alcohol in question.

Where the final results of the analysis of the sample show a difference between the alcoholic strength by volume of the alcohol to be removed and the minimum alcoholic strength by volume stated in Annex I the following provisions shall apply:

(i) the intervention agency shall, the same day, inform the Commission thereof in accordance with Annex II, as well as the storer and the successful tenderer;

(ii) the successful tenderer may:

— either agree to take over the lot with its characteristics as established, subject to the Commission's agreement,

— or refuse to take over the lot in question.

In either case, the successful tenderer shall, the same day, inform the intervention agency and the Commission thereof in accordance with Annex III.

Once these formalities have been completed, if he has refused to take over the lot concerned, he shall be immediately released from all his obligations relating to that lot.

2. Where the successful tenderer refuses the merchandise, as provided for in paragraph 1, the intervention agency shall supply him with another quantity of alcohol of the requisite quality, at no extra charge, within a maximum of eight days.

3. If physical removal of the alcohol is delayed by more than five working days in relation to the date of acceptance of the lot to be removed by the successful tenderer for reasons attributable to the intervention agency, the Member State shall be responsible for the payment of compensation.

Article 8

Notwithstanding the first subparagraph of Article 36 (2) of Regulation (EEC) No 377/93, the alcohol contained in the vats indicated in the communication from the Member States referred to in Article 36 of Regulation (EEC) No 377/93 and covered by the invitation to tender referred to in Article 1 of this Regulation may be substituted by alcohol of the same type by the intervention agency holding the alcohol in agreement with the Commission, or mixed with other alcohol delivered to the intervention agency until a removal order is issued for that alcohol, in particular for logistical reasons.

Article 9

This Regulation shall enter into force on the day of 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, 4 February 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

INDIVIDUAL INVITATION TO TENDER No 217/97 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
PORTUGAL	Santarém		22 633	35	raw
	Mealhada		47 739	35	raw
	Total		70 372		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in Portuguese escudos, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 1 (2) of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 70 372 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

   Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

   — be sent by registered mail to the Commission of the European Communities, rue de la Loi/Wetstraat 200, B-1049 Brussels, or

   — be submitted at the reception of the Loi 120 building of the Commission of the European Communities, rue de la Loi/Wetstraat 130, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 217/97 EC (alcohol), DG VI-E-2 — to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 18 February 1997.

5. Tenders must state the name and address of the tenderer and must:

   (a) include a reference to individual sale by tender No 217/97 EC;

   (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;

   (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, as well as the final destination of the alcohol awarded, and the statement referring to the engagement of an operator for dehydration and use solely in the motor fuel sector as provided for in Article 6 of this Regulation.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

   — IVV, R. Mouzinho da Silveira, 5, P-1200 Lisboa (tel.: 356 33 21; telex: 18508 IVV P; fax: 352 08 76).

   This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

ANNEX II

The only telex and fax numbers in Brussels to be used are:

DG VI (E-2) (for the attention of Mr Chiappone/Mr Van der Stappen)

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters),

— fax: (32 2) 295 92 52.

ANNEX III

Communication of refusal or acceptance of lots under the individual invitation to tender for the export of vinous alcohol opened by Regulation (EC) No 212/97

— Name of the successful tenderer:

— Date of award of contract:

— Date of refusal or acceptance of the lot by the successful tenderer:

Lot No	Quantity in hectolitres	Location of alcohol	Reason for refusal or acceptance to take over