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## REGULATION (EEC) No 1280/71 OF THE COMMISSION

of 18 June 1971

laying down detailed rules for the buying-in of sugar 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 1009/67<sup>1</sup> of 18 December 1967 on the common organisation of the market in sugar, as last amended by Regulation (EEC) No 1060/71,<sup>2</sup> and in particular Article 9 (8) and 10 (3) thereof;

Whereas Council Regulation (EEC) No 447/68<sup>3</sup> of 9 April 1968 laying down general rules for intervention buying of sugar, as last amended by Regulation (EEC) No 2274/70,<sup>4</sup> apart from provisions of a general character, provides in particular for the possibility of an intervention agency making acceptance of an offer for intervention conditional on the conclusion of a storage contract between itself and the seller and for the possibility of authorising that agency to buy in sugar offered by an approved specialised trader in the sugar market; whereas detailed rules of application in this field adopted by Commission Regulation (EEC) No 782/68<sup>5</sup> of 26 June 1968 laying down detailed rules of application for the buying-in of sugar by intervention agencies, as last amended by Regulation (EEC) No 2101/69<sup>6</sup>; whereas Regulation (EEC) No 782/68 has already been amended on several occasions and whereas further amendments are now necessary, having regard in particular to the change in the standard quality as laid down by Council Regulation (EEC) No 1061/71 of 25 May 1971 fixing, for the 1971/72 marketing year, the prices for sugar, the standard qualities for white sugar and for beet and the coefficient referred to in Article 24 of Regulation No 1009/67/EEC<sup>7</sup>; whereas, in the interests of clarity, the

detailed rules for intervention buying should therefore be brought together in a new Regulation;

Whereas Regulation (EEC) No 447/68 lays down in particular that, for an offer to be valid, the sugar must be stored in an approved warehouse when the offer is made and that provision may be made for the intervention agency to buy in sugar offered by a specialised trader approved by the Member State on whose territory he is established;

Whereas, for determination of the conditions for granting and withdrawing approval of warehouses, account should be taken of geographical location and of the need for the sugar to be kept in good condition and easily accessible for collection; whereas, however, for special cases, provision for a relaxation of these conditions is justified;

Whereas the extension of the intervention system to specialised traders requires, for the granting and withdrawal of approval, the laying down of objective criteria for the assessment of that activity, in particular as regards a significant participation in the sugar trade; whereas Member States should be allowed to impose further conditions if necessary and to withdraw approval if the further conditions are not satisfied;

Whereas sugar of a nature likely to cause difficulties in its eventual disposal and to lead to deterioration during storage should not be accepted for intervention;

Whereas to facilitate the regular administration of intervention, sugar should be offered by lots and a lot should be defined, in particular by fixing maximum and minimum quantities per lot;

Whereas the intervention agency must have all the relevant information to determine whether the offer fulfils the necessary conditions; whereas, to that end, the offerer must supply it with all necessary information;

Whereas the intervention agency is entitled to make acceptance of the offer conditional upon the conclusion of a storage contract with the seller,

<sup>1</sup> OJ No 308, 18.12.1967, p. 1.

<sup>2</sup> OJ No L 115, 27.5.1971, p. 16.

<sup>3</sup> OJ No L 91, 12.4.1968, p. 5.

<sup>4</sup> OJ No L 246, 12.11.1970, p. 3.

<sup>5</sup> OJ No L 145, 27.6.1968, p. 6.

<sup>6</sup> OJ No L 268, 25.10.1969, p. 19.

<sup>7</sup> OJ No L 115, 27.5.1971, p. 17.

should it consider this necessary; whereas, for the sake of uniformity, the essential terms of that contract, in particular those concerning the period of validity, should be established;

Whereas approved warehouses must offer the best conditions for storage of the sugar and whereas it is generally accepted that sugar may be stored, if the requisite conditions are fulfilled, for a period of some twelve months without risk of deterioration; whereas, therefore, in the case of a storage contract with the seller, within the meaning of Article 2 (2) of Regulation (EEC) No 447/68, the seller should, regardless of the moment of transfer of ownership, remain responsible for the quality of the sugar in question for a period not exceeding twelve months;

Whereas Regulation No 1009/67/EEC provides in Article 9 (8) that within the detailed rules of application should be included the adoption of scales of price increases and reductions, by reference to the quality of the sugar offered, applicable to the intervention prices; whereas, for the determination of those scales, sugar must therefore be classified according to its quality; whereas this classification and the price increases and reductions resulting therefrom may be determined on the basis of the objective data generally used in commercial transactions;

Whereas to avoid any discrimination in the treatment of the parties concerned and taking into account the administrative practices current in the Member States, uniform conditions should be laid down for payment and for collection of the goods, with or without storage contract, in particular as regards the maximum time limits within which these operations are to be effected;

Whereas it may be found necessary, for the sugar offered for intervention to be packed in bags, having regard to its subsequent destination; whereas the intervention agency should therefore be enabled to require certain forms of packing generally used in the trade, on condition that it bears the costs; whereas the costs relating to the packaging required should be fixed at a flat rate;

Whereas Commission Regulation (EEC) No 1265/69<sup>1</sup> of 1 July 1969 establishing methods for determining the quality of sugar bought in by intervention agencies was restricted to the technical aspects of those methods; whereas, moreover, since those methods cannot provide strictly accurate results, a margin of error must be allowed for; whereas, moreover, suitable arbitration procedures should be introduced for settling any disputes arising from the comparison of conflicting results of analyses;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Sugar;

HAS ADOPTED THIS REGULATION:

## TITLE I

### Approvals

#### Article 1

1. The approval provided for in Article 1 (2) of Regulation (EEC) No 447/68 shall be given only for a warehouse which:

- (a) meets the requirements for keeping sugar in good condition;
- (b) is able to guarantee a discharging capacity sufficient for the removal of the sugar;
- (c) is situated in a place which provides the transport facilities necessary for the removal of the sugar, and
- (d) is situated within the precincts of a sugar refinery or in a sugar-producing area.

2. On application by the party concerned, approval shall be given for any warehouse which, in the opinion of the intervention agency, satisfies the conditions set out in paragraph 1. Approval may however be restricted to warehouses which have already been used for sugar storage.

In special cases, approval may be given to a warehouse which does not satisfy the conditions set out in paragraph 1 (d).

The approval shall indicate the storage capacity and the discharging capacity provided for under the terms of that approval.

3. The approval shall be withdrawn if the conditions set out in paragraph 1 (a) or (c) are no longer satisfied.

The approval may be withdrawn if the discharging capacity provided for under the terms of the approval has not been made available to the intervention agency.

#### Article 2

1. For the purposes of the second subparagraph of Article 2 (1) of Regulation (EEC) No 447/68, a

<sup>1</sup> OJ No L 163, 4.7.1969, p. 1.

'specialised trader' in the sugar market, means a trader:

- (a) one of whose principal activities is wholesale sugar trading and who buys a minimum of 10 000 metric tons of Community sugar per marketing year;
- (b) who does not engage in the retail sale of sugar.

2. Subject to the provisions of paragraph 3, the approval provided for in the second subparagraph of Article 2 (1) of Regulation (EEC) No 447/68 shall be given by the Member State concerned to all applicants who satisfy or are considered capable of satisfying the conditions set out in paragraph 1 for the marketing year in question. The approval shall be valid only for a specified marketing year. It shall be renewed for the following marketing year if the applicant can still be considered a specialised trader for the marketing year in question. The person concerned shall be advised of the renewal.

The approval shall be withdrawn if the person concerned is no longer able to satisfy the conditions set out in paragraph 1.

3. A Member State may impose further conditions for the granting of approval.

The approval may be withdrawn if these conditions are not fulfilled.

## TITLE II

### Offers

#### Article 3

Sugar offered for intervention shall satisfy the following criteria:

1. it shall be in crystal form;
2. in the case of white sugar, it shall be of sound and fair marketable quality, free flowing, with a maximum moisture content of 0.06%;
3. in the case of raw sugar, it shall be of sound and fair marketable quality with a yield, calculated according to the provisions of Article 1 of Regulation (EEC) No 431/68,<sup>1</sup> of not less than 89%.

In addition,

- (a) raw cane sugar shall have a safety coefficient not exceeding 0.30;
- (b) raw beet sugar shall have:
  - a ph factor not less than 7.9;
  - an invert sugar content not exceeding 0.7%;
  - a temperature which does not entail any risk of deterioration;
  - a safety factor not exceeding 0.45 when the degree of polarisation is 97 or above; or
  - a moisture content not exceeding 1.4% when the degree of polarisation is below 97.

The safety factor shall be determined by dividing the percentage moisture content of the sugar in question by the difference between 100 and the degree of polarisation of that sugar.

#### Article 4

1. All sugar offered for intervention shall be in lots.

2. For the purposes of this Regulation 'lot' means a quantity of sugar of at least 300 metric tons and at most 1 000 metric tons of the same quality, having the same type of packing and stored in the same place.

#### Article 5

1. An offer made to the intervention agency shall indicate:

- (a) the name and address of the offerer;
- (b) the warehouse in which the sugar is stored at the time the offer is made;
- (c) the discharging capacity which is guaranteed for the removal of the sugar offered;
- (d) the net quantity of sugar offered;
- (e) the nature and quality of sugar offered;
- (f) the type of packing;
- (g) whether the offerer is prepared to conclude a storage contract for the sugar offered.

2. The intervention agency may demand further information.

<sup>1</sup> OJ No L 89, 10.4.1968, p. 3.

*Article 6*

1. The offer shall be valid for a period of three weeks from the date of its submission. It may however be withdrawn during that period with the consent of the intervention agency.
2. The intervention agency shall examine the offer. It shall accept the offer not later than the end of the period referred to in paragraph 1, indicating whether a storage contract is to be concluded.

The intervention agency shall however reject the offer:

- if examination shows that one of the requisite conditions has not been fulfilled; or
- if the offerer has not declared his readiness to conclude a storage contract and if the intervention agency considers such a contract necessary.

For the purposes of this Regulation 'storage contract' means the contract referred to in Article 2 (2) of Regulation (EEC) No 447/68.

3. The buying-in contract shall specify whether the sugar bought in is loose or packed. If necessary it may moreover reserve the right for the intervention agency to demand on removal one or more of the types of packaging set out in Article 17 (2).
4. The buying-in contract may be cancelled only by common consent and before removal of the sugar.

## TITLE III

## Storage contracts

*Article 7.*

1. The storage contract shall lay down in particular:
  - (a) the period for which the contract is concluded;
  - (b) the right of the intervention agency to cancel the contract subject to ten days' notice taking effect from the end of a ten day period;
  - (c) the amount of storage costs which are chargeable to the intervention agency;
  - (d) the obligation of the seller to load the sugar at his own expense onto a means of transport indicated by the intervention agency.

2. The period of validity for a storage contract shall not exceed:

- (a) for offers accepted between 1 October and the following 30 June:
 

the period between acceptance of the offer and the following 30 September;
- (b) for offers accepted between 1 July and the following 30 September:
 

the period between acceptance of the offer and the end of the fourth month following that in which the offer was accepted.

However, the contracting parties may agree upon a longer period of validity.

3. Notwithstanding paragraph 2,

- (a) for all regions of Italy and for the French Department of Réunion, there shall be substituted:
  - the date of 1 July, for 1 October;
  - the date of 31 March, for 30 June;
  - the date of 30 June, for 30 September;
  - the date of 1 April, for 1 July;
- (b) for the French Departments of Guadeloupe and Martinique there shall be substituted:
  - the date of 1 January, for 1 October;
  - the date of 30 September, for 30 June;
  - the date of 31 December, for 30 September;
  - the date of 1 October, for 1 July.

4. Storage costs shall be borne by the intervention agency for the period from the beginning of the ten-day period for the provisional payment for the sugar to the expiry date of the storage contract.

The storage costs shall be fixed at a flat rate of 0.017 units of account per 100 kilogrammes per ten-day period. The intervention agency may however increase or decrease this amount by a maximum of 35%.

5. For the purpose of this Article, a 'ten-day period' means, for each calendar month, one of the periods from 1 to 10, from 11 to 20 and from 21 to the end of the month.

*Article 8*

1. Transfer of the ownership of sugar which is the subject of a storage contract shall take place at the same time as the provisional payment for the sugar in question.

2. The seller shall remain responsible up to the time of removal for the quality of the sugar referred to in paragraph 1.

#### Article 9

If during the storage contract it is established that the sugar does not fulfil the minimum quality requirements set out in Article 3, the seller shall forthwith replace the quantity of sugar in question with an equal quantity of sugar which does fulfil those requirements.

### TITLE IV

#### Buying-in prices

#### Article 10

1. White sugar shall be classified into four grades.
2. White sugar of the standard quality shall be Grade 2 sugar.
3. Grade 1 sugars shall be of superior quality to standard quality, those of Grades 3 and 4 shall be of inferior quality to the standard quality.

#### Article 11

1. Grade 1 sugars shall have the following characteristics:
  - (a) sound and fair marketable quality, dry, in homogeneously granulated crystals, free-flowing;
  - (b) maximum moisture content of 0.06%;
  - (c) maximum invert sugar content of 0.04%;
  - (d) in addition, Grade 1 sugars shall have such characteristics that the number of points determined in accordance with paragraph 2 shall not exceed a total of 8, nor,
    - 6 for the ash content;
    - 4 for the colour type determined according to the method of the Brunswick Institute for Agricultural Technology, hereinafter called the 'Brunswick Method';
    - 3 for the colour of the solution determined according to the method of the International Commission for Uniform Methods of Sugar Analysis, hereinafter called the 'ICUMSA Method'.

2. One point shall correspond to:

- (a) 0.0018% ash content determined according to the ICUMSA Method at 28° Brix;
- (b) 0.5 units of colour type, determined according to the Brunswick Method;
- (c) 7.5 units of the solution colour determined according to the ICUMSA Method.

3. Grade 3 sugars shall have the following characteristics:

- (a) sound, genuine and marketable quality, dry, in homogeneously granulated crystals, flowing freely;
- (b) minimum polarisation: 99.7% S;
- (c) maximum moisture content: 0.06%;
- (d) maximum invert sugar content: 0.04%;
- (e) colour type: maximum No 6 determined according to the Brunswick Method.

4. Grade 4 shall include sugars not included in Grades 1 to 3.

#### Article 12

During the 1971/72 and 1972/73 marketing years, sugar which is the subject of a storage contract and is located in a warehouse for which the seller is not responsible may still be classified, at the time of removal, by the intervention agency in Grades 1 to 4, as appropriate, where moisture content exceeds 0.06% but does not exceed 0.08%.

#### Article 13

The intervention price applicable per 100 kilogrammes of white sugar shall be:

1. increased by 0.60 units of account for Grade 1 sugar;
2. reduced by 0.50 units of account for Grade 3 sugar;
3. reduced by 0.90 units of account for Grade 4 sugar.

#### Article 14

1. The intervention price applicable per 100 kilogrammes of raw sugar shall be adjusted by:

- (a) an increase, where the yield of the sugar concerned is more than 92%;
- (b) a reduction, where the yield of the sugar concerned is less than 92%.

2. The amount of the increase or reduction, expressed in units of account per 100 kilogrammes, shall be equal to the difference between the yield of the raw sugar concerned and 92%, multiplied by 0.02 for each 0.1%.

3. The yield of raw sugar shall be calculated in accordance with the provisions of Article 1 of Regulation (EEC) No 431/68.

#### Article 15

1. Where no storage contract is concluded, payment for the sugar bought in shall take place within eight weeks from the date of submission of the offer.

If however, at the end of this period, the contracting parties have not received the final results of the analyses of the samples referred to in Article 18, a provisional payment shall be made forthwith equal to 95% of the value established on the basis of the quantity of sugar taken over and of the buying-in price in question, increased where appropriate by the costs of packing.

2. Where a storage contract has been concluded, the intervention agency shall, within eight weeks from the date of submission of the offer, make a provisional payment of an amount established on the basis of the information appearing in the offer and of the buying-in price in question, increased where appropriate by the costs of packing.

This payment shall be subject to the lodging by the seller of a deposit equal to 5% of the amount involved, as a guarantee of the correctness of the information in the offer.

3. The intervention agency shall pay the balance of the payment as soon as the final results of the weight checking and analyses of the samples are known.

Where the results of the weight checking and the final results of the analyses of the samples differ from the information given in the offer, this shall be taken into account in settlement of the balance, in accordance particularly with the provisions of Articles 13 and 14.

4. Except in cases of *force majeure*, the deposit referred to in paragraph 2 shall be released only in so far as:

- (a) the final results of the weight checking and of the analyses do not lead to a reduction in the price of the sugar bought in;
- (b) the seller refunds, within a period of three weeks from the day of receipt of the request for

payment, any amount received which was not due at the time of the provisional payment referred to in paragraph 2.

The deposit shall be released forthwith.

#### TITLE V

#### Removal

#### Article 16

1. Unless otherwise agreed between the intervention agency and the seller, the sugar shall remain until removed in the warehouse in which it was stored at the time of the offer.

2. Removal shall take place in the presence of the seller or of his representative.

3. For its removal from the warehouse, the sugar bought in shall be loaded by the seller onto a means of transport selected by the intervention agency.

4. Where the sugar bought in is not the subject of a storage contract, its collection shall take place within a maximum period of seven weeks from the day the offer was submitted.

5. Where the sugar bought in is the subject of a storage contract, its removal shall take place no later than the day on which that contract expires. By agreement with the storer, however, the intervention agency may provide that removal shall take place after the date on which that contract expires.

In that case, the intervention agency:

- at its own expense and before the expiry of the storage contract, shall arrange for the experts referred to in Article 18 to collect samples as set out in the same Article and to check weights;
- shall settle the balance of the payment in accordance with the provisions of Article 15 (3);
- on application by the seller, may agree that the obligation to load the sugar bought in shall be discharged by the payment of the costs relating thereto. These costs shall be determined on the basis of the rates in force on the date of expiry of the storage contract.

#### Article 17

1. Subject to the application of the provisions of paragraphs 2 to 4, the sugar bought in shall be made available in bulk by the seller.

2. The intervention agency may require the sugar bought in to be made available in one or more of the following types of packing:

- (a) new jute bags of a minimum weight of 700 grammes, with a content of 100 kilogrammes net;
- (b) bags with a content of 50 kilogrammes net:
  - (aa) new jute bags of a minimum weight of 450 grammes lined inside with polyethylene of a minimum thickness of 0.04 mm;
  - (bb) bags made of 4 'Kraft' paper bags weighing at least 70 grammes per square metre for each bag, with an intervening lining of polyethylene of a minimum thickness of 0.04 mm;
  - (cc) bags consisting of 5 'Kraft' paper bags bitumen lined or otherwise,
    - each sack weighing at least 65 grammes per square metre, and
    - of a total weight of at least 335 grammes per square metre for the five bags together.

3. Where the intervention agency requires one or more of the types of packing provided for in paragraph 2, it shall bear the costs relating to such packing. The intervention agency shall, moreover, inform the seller in good time before removal, of the type or types of packing required.

These costs are fixed at a flat rate per 100 kilogrammes as follows:

- (a) 0.60 unit of account for the type of packing described in paragraph 2 (a);
- (b) 0.80 unit of account for the type of packing described in paragraph 2 (b) and (aa);
- (c) 0.43 unit of account for the type of packing described in paragraph 2 (b) and (bb);
- (d) 0.40 unit of account for the type of packing described in paragraph 2 (b) and (cc).

4. The intervention agency may accept delivery of the sugar in a type of packing other than those set out in paragraph 2. In that case, the intervention agency shall not bear the costs relating thereto.

#### Article 18

1. At the time of removal, four samples shall be taken for analysis either by experts approved by the competent authorities of the Member State concerned or by experts agreed upon by the intervention agency and the seller. There shall be one sample for each of the contracting parties. The other two samples shall be kept by the expert or by a laboratory approved by the competent authorities.

Each sample shall be analysed twice and the mean of the results shall be taken as the result of the analysis of the sample in question.

2. In the event of a dispute between the contracting parties over the grade of the bought-in sugar the following rules shall apply:

- (a) where the difference between the results of the analyses arranged by the seller and the buyer is:
  - for Grade 1 sugar, not greater than 1 point for each of the characteristics referred to in Article 11 (1) (d), or
  - for Grade 2 sugar, not greater than 2 points for each of the characteristics used for the definition of that grade, in so far as it concerns characteristics that are determined by points,

the arithmetic mean of the two results shall be conclusive for establishing the grade of the sugar in question.

However, at the request of one of the contracting parties, an arbitral analysis shall be carried out by the laboratory referred to in paragraph 1. In that case, the arithmetic mean shall be taken of the results of the arbitral analysis and the results of the seller's or buyer's analysis, whichever is closer to the result of the arbitral analysis. This mean shall be conclusive for establishing the grade of the sugar in question. If the result of the arbitral analysis lies midway between the results of the analyses arranged by the seller and the buyer, the arbitral analysis alone shall be conclusive for establishing the grade of the sugar in question;

- (b) where the difference observed is greater than that indicated under the first or second indent of (a) above as the case may be an arbitral analysis shall be carried out by a laboratory approved by the competent authorities. In that case the provisions of the second subparagraph of (a) shall be followed;
- (c) for disputes over the maximum limit for the colour type of sugar in Grade 3, polarisation, moisture content or invert sugar content, the same procedure shall be followed as in (a) and (b). However, the differences set out in (a) shall be replaced by:

- 1.0 units of colour type for Grade 3 sugar;
- 0.2° S for polarisation;
- 0.02% for moisture content;
- 0.01% for invert sugar content.

3. The costs of an arbitral analysis:

- (a) under 2 (a) second subparagraph, shall be borne by the contracting party requesting the analysis;
- (b) under 2 (b), shall be shared equally by the intervention agency and the seller.

#### *Article 19*

- 1. Without prejudice to the provisions of Article 16 (5), the experts referred to in Article 18 shall, at the time of removal, check the weight of the sugar sold.
- 2. The costs of checking the weight shall be borne by the seller.

#### *Article 20*

- 1. The seller shall take the necessary measures to permit the experts referred to in Article 18 to check the weight and to take samples.
- 2. The costs of the experts who check the weight and take samples shall be borne by the intervention agency.

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

Done at Brussels, 18 June 1971.

## TITLE VI

### Final provisions

#### *Article 21*

- 1. Regulation (EEC) No 782/68 is hereby repealed. It shall, however, continue to apply to operations connected with offers of sugar for intervention which were accepted during the period of validity of that Regulation.
- 2. The following amendments shall be made:
  - (a) in Article 1 of Regulation (EEC) No 1265/69, the words 'Regulation (EEC) No 1280/71' shall be substituted for the words 'Regulation (EEC) No 782/68';
  - (b) in Article 13 of Regulation (EEC) No 1987/69, the words 'Article 18 of Regulation (EEC) No 1280/71' shall be substituted for the words 'Article 15 of Regulation (EEC) No 782/68';
  - (c) in Article 14 (1) and (3) of the Regulation referred to in (b), the words 'Article 18 of Regulation (EEC) No 1280/71' shall be substituted for the words 'Article 15 of Regulation (EEC) No 782/68'.

#### *Article 22*

This Regulation shall enter into force on 1 July 1971.

*For the Commission*

*The President*

Franco M. MALFATTI