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COMMISSION REGULATION (EC) No 952/2006

of 29 June 2006

laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system

(OJ L 178, 1.7.2006, p. 39)

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► <u>M1</u>	Commission Regulation (EC) No 551/2007 of 22 May 2007	L 131	7	23.5.2007
► <u>M2</u>	Commission Regulation (EC) No 707/2008 of 24 July 2008	L 197	4	25.7.2008
► <u>M3</u>	Commission Regulation (EC) No 826/2008 of 20 August 2008	L 223	3	21.8.2008
► <u>M4</u>	Commission Regulation (EC) No 1053/2009 of 5 November 2009	L 290	61	6.11.2009
► <u>M5</u>	Commission Implementing Regulation (EU) No 1369/2011 of 21 December 2011	L 341	38	22.12.2011

**COMMISSION REGULATION (EC) No 952/2006****of 29 June 2006****laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular Article 40 thereof,

Whereas:

- (1) The application of the quota system in the sugar sector requires a precise definition of an undertaking's production of sugar, isoglucose or inulin syrup. The possibility of allocating part of the production of one undertaking to another undertaking which has had sugar produced under contract should be limited to certain specific cases.
- (2) Under Article 17 of Regulation (EC) No 318/2006, Member States grant approval, on request, to undertakings producing sugar, isoglucose or inulin syrup or to undertakings that process these products into a product included in the list referred to in Article 13(2) of that Regulation. The content of the application for approval which sugar, isoglucose and inulin syrup producers and refiners must submit to the competent authorities of the Member States should be specified. The commitments that the undertakings must make in return for approval should be laid down, in particular the obligation to keep an up-to-date record of the quantities of raw materials entering the undertaking, being processed in it and leaving it in the form of an end product.
- (3) It is necessary to lay down Member States' obligations as regards checks on approved undertakings, and to define a sufficiently deterrent system of penalties.
- (4) Article 4 of Regulation (EC) No 318/2006 provides for an information system on sugar prices. Under Article 17 of that Regulation, approved undertakings are required to provide information on the quantities of white sugar sold and corresponding prices and conditions. The frequency and content of the information on prices that sugar manufacturers and refiners must draw up for transmission to the Commission should be laid down. To have an indication of the short-term outlook, it would be useful for undertakings to draw up and transmit the forecast average selling prices for the following three months also. Approved undertakings which use sugar for processing into one of the products listed in Article 13(2) of Regulation (EC)

⁽¹⁾ OJ L 58, 28.2.2006, p. 1.

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No 318/2006 must also draw up, for transmission to the Commission, the price of the sugar purchased, at the same intervals and in the same format as those laid down for sugar producers.

- (5) To ensure publication of price levels in accordance with Article 4 of Regulation (EC) No 318/2006 while guaranteeing the confidentiality of data, it should be laid down that the Commission must inform the Management Committee for Sugar twice a year of the average prices of white sugar sold on the Community market in the previous half-year, broken down into quota sugar and non-quota sugar.
- (6) A report on the operation of the system for recording and notifying market prices provided for in this Regulation is to be drawn up in order to propose improvements considered relevant and a computerised system for the transmission of price data. Pending these improvements, on a transitional basis for 2006 and 2007, the prices drawn up by the undertakings must be sent directly to the Commission for the purposes of informing the Management Committee for Sugar.
- (7) Where Article 14 or 19 of Regulation (EC) No 318/2006 applies, manufacturers are to carry forward part of their production to the following marketing year, to be counted against the production of that year. Consequently, for that marketing year, delivery contracts at the minimum price for beet need only be concluded by sugar manufacturers in respect of the quantity of sugar within their basic quota which they have not yet produced.
- (8) To ensure the proper working of the quota system the terms 'pre-sowing' and 'minimum price' as used in Article 6(5) of Regulation (EC) No 318/2006 must be defined. The specific agricultural and climatic conditions for growing beet in certain regions of Italy should be taken into account by fixing a different final date for sowing.
- (9) Under Article 5(3) of Regulation (EC) No 318/2006, the minimum price is adjusted by price increases or reductions to allow for deviations in the quality of the beet from the standard quality. The quality, and hence the value, of sugar beet largely depends on sugar content. The most appropriate method of establishing the value of beet of a quality differing from the standard quality is to establish a scale of price increases and reductions expressed as a percentage of the minimum price.
- (10) Article 8 of Regulation (EC) No 318/2006 provides for the allocation of additional sugar quotas. This allocation, which aims to facilitate the transition from the previous quota system to the present system, must be confined to undertakings which were allocated a quota in 2005/06. Moreover, the terms on which the allocation is possible from the 2006/07 marketing year onwards should be laid down.

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- (11) Article 9(2) of Regulation (EC) No 318/2006 provides for the allocation of supplementary isoglucose quotas. The Member States concerned allocate these quotas to undertakings, in proportion to the isoglucose quotas that have been allocated to them, in a manner which avoids any form of discrimination. The deadline for payment of the one-off amount provided for in Article 9(3) of that Regulation should be laid down.
- (12) Point 5 of Article 2 of Regulation (EC) No 318/2006 defines the production of quota sugar as the quantity of sugar production attributed to a specific marketing year under the quota of the undertaking concerned, and point 9 of Article 2 thereof defines quota beet as sugar beet processed into quota sugar. It is therefore necessary to lay down a rule on the allocation of sugar production to a specific marketing year, while leaving Member States a margin of flexibility for the specific cases of production of sugar from autumn beet and production of cane sugar.
- (13) To ensure the proper management of the quota system, determine the monthly consumption of sugar and draw up supply balances, provision should be made for communications between approved undertakings and the Member States, on the one hand, and the Member States and the Commission on the other, covering stocks, the level of production and areas sown.
- (14) Article 18(2) of Regulation (EC) No 318/2006 provides for intervention measures by buying in sugar. The implementation of Community intervention measures requires sugar to be taken over by the intervention agencies at a specified place. Accordingly, it should be laid down that only sugar held in an approved place of storage when the offer is made may be taken over.
- (15) To permit access to intervention in areas where it is particularly needed due to the scale of production, the maximum quantity fixed in Article 18(2) of Regulation (EC) No 318/2006 must initially be allocated between producer Member States on the basis of their sugar production quotas. It should be possible to adapt this allocation before each new marketing year, to take into account changes made in the allocation of quotas by Member States and, in the course of each marketing year, to reallocate any unused quantities.
- (16) As regards the conditions for granting or withdrawing approval of places of storage, account should be taken of the requirements for keeping sugar in good condition and easily accessible for removal, and the capacity for removal from storage.
- (17) Sugar with characteristics that will make it difficult to dispose of later and likely to deteriorate in storage should not be accepted for intervention. The minimum quality required should be laid down. It should also be laid down that a storage contract, which is a condition for the buying-in of sugar to intervention, must be concluded between the intervention agency and the seller.

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- (18) To facilitate the administration of the intervention arrangements, sugar should be offered in lots. A lot, in particular its quantity, should therefore be defined.
- (19) The intervention agency must have all the facts needed to determine whether the offer meets all the requirements. To that end, the party making the offer must supply it with all the necessary information.
- (20) Under Article 18(2) of Regulation (EC) No 318/2006, the buying-in price is adjusted if the quality of the sugar differs from the standard quality. Scales of price increases and reductions should therefore be laid down, taking account of the quality of the sugar offered and applicable to the buying-in price. These scales and the resulting price increases and reductions may be determined on the basis of the objective data generally used in commercial transactions.
- (21) Sugar held by intervention agencies must be sold without discrimination between Community buyers and on the most economic terms possible. In general, these objectives can be attained using the tendering system. To prevent sugar being disposed of when market conditions are unfavourable, invitations to tender should be subject to prior authorisation. It may be preferable in certain circumstances to make use of procedures other than tendering.
- (22) To ensure that all interested parties in the Community receive equal treatment, invitations to tender issued by the intervention agencies must conform to uniform rules. In this connection, it is necessary to ensure that the sugar is actually put to the intended use.
- (23) The criteria used to determine the grade of the white sugar and the yield of the raw sugar sold should be the same as those applied when sugar is bought in by intervention agencies. Equal treatment for all interested parties can be ensured only by introducing uniform and precisely defined provisions for adjusting the selling price or the export refund, as the case may be, and correcting export licences where the sugar is found to be of a quality other than that indicated in the invitation to tender.
- (24) In the interests of clarity, Commission Regulations (EC) No 1261/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards delivery contracts for beet and the price increases and reductions applicable to the price of beet ⁽¹⁾, (EC) No 1262/2001 of 27 June 2001 laying down detailed rules for implementing Council Regulation (EC) No 1260/2001 as regards the buying in and sale of sugar by intervention agencies ⁽²⁾ and (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector ⁽³⁾ should be repealed and replaced by a new Regulation.

⁽¹⁾ OJ L 178 30.6.2001, p. 46.

⁽²⁾ OJ L 178, 30.6.2001, p. 48. Regulation as last amended by Regulation (EC) No 218/2006 (OJ L 38, 9.2.2006, p. 19).

⁽³⁾ OJ L 50, 21.1.2002, p. 40. Regulation as last amended by Regulation (EC) No 493/2006 (OJ L 89, 28.3.2006, p. 11).

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- (25) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

CHAPTER I

INTRODUCTORY PROVISIONS**▼M2***Article 1*

This Regulation lays down detailed rules for the application of Regulation (EC) No 318/2006, as regards in particular the determination of production, approval of manufacturers and refiners, the price and quota system, the conditions for buying sugar into intervention and selling sugar from intervention and the private storage for the marketing year 2007/2008.

▼B*Article 2***Definitions**

For the purpose of this Regulation:

- (a) 'raw material' means beet, cane, chicory, cereals, sugar for refining or any other intermediate form of these products intended for processing into an end product;
- (b) 'end product' means sugar, inulin syrup or isoglucose;
- (c) 'manufacturer' means an undertaking producing end products, with the exception of refiners as defined in point 13 of Article 2 of Regulation (EC) No 318/2006;
- (d) 'place of storage' means a silo or warehouse.

CHAPTER II

ESTABLISHING PRODUCTION*Article 3***Sugar production**

1. For the purposes of Title II of Regulation (EC) No 318/2006, 'sugar production' means the total quantity, expressed as white sugar, of:

- (a) white sugar;
- (b) raw sugar;
- (c) invert sugar;
- (d) syrups belonging to one of the following categories, hereinafter called 'syrups':
 - (i) sucrose or invert sugar syrups which are at least 70 % pure and are produced from sugar beet,
 - (ii) sucrose or invert sugar syrups which are at least 75 % pure and are produced from sugar cane.

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2. Sugar production shall not include:

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- (a) quantities of white sugar produced from white sugar, raw sugar or syrups which were not produced in the undertaking which manufactured the white sugar;
- (b) quantities of white sugar produced from white sugar, raw sugar, syrups or sugar sweepings which were not produced during the marketing year in which the white sugar was manufactured;

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- (c) quantities of raw sugar produced from syrups which were not produced in the undertaking which manufactured the raw sugar;
- (d) quantities of raw sugar produced from syrups which were not produced during the marketing year in which the raw sugar was manufactured;

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- (e) quantities of white or raw sugar processed into white sugar during the marketing year in question by the undertaking which produced them;

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- (f) quantities of syrups processed into sugar or invert sugar during the marketing year in question by the undertaking which produced them;
- (g) quantities of sugar, invert sugar and syrups produced under inward-processing arrangements;
- (h) quantities of invert sugar produced from syrups which were not produced by the undertaking which manufactured the invert sugar;
- (i) quantities of invert sugar produced from syrups which were not produced during the marketing year in which the invert sugar was manufactured.

3. Sugar production shall be expressed in terms of white sugar in the following way:

- (a) in the case of white sugar, disregarding differences in quality;
- (b) in the case of raw sugar, on the basis of yield determined in accordance with point III of Annex I to Regulation (EC) No 318/2006;
- (c) in the case of invert sugar, by multiplying production of invert sugar by the coefficient 1;

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- (d) in the case of syrups on the basis of extractable sugar content determined in accordance with paragraphs 5 and 6;
- (e) in the case of syrups from invert sugar on the basis on sugar content as determined by the High Performance Liquid Chromatography method.

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4. Sugar sweepings from a previous sugar year shall be expressed as white sugar in proportion to the sucrose content.

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5. The percentage purity of syrups shall be calculated by dividing the total sugar content by the dry matter content and multiplying the result by 100. Dry matter content shall be determined by refractometry.

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6. The extractable sugar content shall be calculated by subtracting the difference between the dry matter content and the degree of polarisation of that syrup, multiplied by 1,70, from the degree of polarisation of the syrup in question.

However, the extractable sugar content can be established, for an entire marketing year, on the basis of the real yield in syrups.

▼B*Article 4***Isoglucose production**

1. For the purposes of Title II of Regulation (EC) No 318/2006, 'isoglucose production' means the total quantity of product obtained from glucose or its polymers with a content by weight in the dry state of at least 10 % fructose irrespective of its fructose content in excess of that limit. Isoglucose production shall be expressed as dry matter and recorded in accordance with paragraph 2.

2. Isoglucose production shall be recorded as soon as the isomerisation process has terminated and before any operation to separate the glucose and fructose constituents or to produce mixtures, by physical metering of the volume of the product as such and determination of the dry matter content by refractometry.

3. All undertakings shall be required to notify without delay any of their facilities which may be used for the isomerisation of glucose or its polymers.

Notification shall be made to the Member State on whose territory each facility is situated. The Member State may require the undertaking to furnish additional information in this respect.

*Article 5***Inulin syrup production**

1. For the purposes of Title II of Regulation (EC) No 318/2006, 'inulin syrup production' means the quantity of product obtained after the hydrolysis of inulin or oligofructoses with a content by weight in the dry state of at least 10 % fructose in free form or as sucrose, irrespective of its fructose content in excess of that limit, which is at least 70 % pure. Inulin syrup production shall be expressed as dry matter sugar/isoglucose equivalent.

'Purity' means the percentage of monosaccharides and disaccharides in the dry matter, as determined by the *International Commission for Uniform Methods of Sugar Analysis* method, hereinafter referred to as the 'ICUMSA method' (ICUMSA method GS7/8/4-24).

2. Inulin syrup production shall be recorded by means of the combination of the following operations:

- (a) physical metering of the volume of the product as such immediately after leaving the first evaporator after each hydrolysis and before any operation to separate the glucose and fructose constituents or to produce mixtures;
- (b) determination of the dry matter content by refractometry and measurement of the fructose content by weight in the dry state, on the basis of daily representative sampling;

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- (c) conversion of the fructose content to 80 % by weight in the dry state by multiplying the quantity determined in dry matter by the coefficient representing the ratio between the measured fructose content of that quantity of syrup and 80 %;
- (d) expression as sugar/isoglucose equivalent by applying the coefficient 1.9.

3. All undertakings shall be required to notify without delay any of their facilities which may be used for the hydrolysis of the inulin, and the annual quantities and the use of the products referred to in paragraph 1 but less than 70 % pure.

This information shall be submitted to the Member State on whose territory each facility is situated. That Member State may require undertakings to furnish additional information, in particular to ensure that the by-products referred to in the first subparagraph are not used as sweetening matter for human consumption on the Community market.

The Member State concerned shall send the Commission not later than 31 January each year a detailed report containing information on the previous year. The first report shall be sent not later than 31 January 2007.

*Article 6***Production of an undertaking**

1. For the purposes of Title II of Regulation (EC) No 318/2006, the 'sugar, isoglucose or inulin syrup production of an undertaking' means the sugar, isoglucose or inulin syrup, as defined in Article 3, 4 and 5 of this Regulation, actually manufactured by that undertaking.

2. For a given marketing year, the total sugar, isoglucose or inulin syrup production of an undertaking shall be the production referred to in paragraph 1:

— plus the quantity of sugar, isoglucose or inulin syrup carried over to that marketing year and minus the quantity of sugar, isoglucose or inulin syrup carried over to the following marketing year, in accordance with Articles 14 and 19 of Regulation (EC) No 318/2006 respectively,

— plus the quantity produced by processors under contract in accordance with paragraph 3 and minus the quantity produced by the undertaking on behalf of principals under contract in accordance with paragraph 3.

3. Where two undertakings make a signed application in writing to the Member State concerned, the quantity of sugar produced by an undertaking (hereinafter called the processor) under contract from materials supplied shall be treated as part of the production of the undertaking (hereinafter called the principal) which had the sugar produced under that contract provided that one of the following conditions is met:

(a) the total sugar production of the processor is less than its quota;

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(b) the total sugar production of the processor and of the principal is more than the sum of their quotas; or

(i) for the marketing year 2006/2007, the sum of the thresholds fixed for them in accordance with Article 3(2) of Commission Regulation (EC) No 493/2006 ⁽¹⁾;

⁽¹⁾ OJ L 89, 28.3.2006, p. 11.

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- (ii) for the marketing year 2007/2008, the sum of the thresholds fixed for them in accordance with Article 1(2) of Commission Regulation (EC) No 290/2007 ⁽¹⁾;
- (iii) from the marketing year 2008/2009, the sum of the thresholds fixed for them in accordance with Article 19(2) of Regulation (EC) No 318/2006 or where applicable with Article 19a(1) of that Regulation.

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The total sugar production, as referred to in point (b) of the first subparagraph, of an undertaking shall be the production referred to in paragraph 1 plus the quantity carried forward from the previous marketing year and the quantity produced by processors under contract on behalf of that undertaking, and minus the quantity produced by the undertaking under contract on behalf of principals.

Instead of the quantities actually produced, as referred to in the second subparagraph, the competent authorities of the Member States may, where this total is larger, use estimated production calculated on the basis of the delivery contracts signed by the undertakings.

4. Where the factories of the principal and of the processor are situated in different Member States, the application referred to in paragraph 3 shall be made to the two Member States concerned. In that case, the Member States concerned shall act in concert as regards the response to be given, and shall take the necessary steps to verify that the conditions referred to in that paragraph are observed.

5. The quantity of sugar produced by a processor may be considered to be produced by the principal if, owing to a case of *force majeure* recognised by the Member State, the beet, cane or molasses have to be processed into sugar in an undertaking other than that of the principal.

CHAPTER III

APPROVAL OF MANUFACTURERS AND REFINERS

*Article 7***Application for approval**

1. Approval may be obtained by undertakings which apply for it and which operate as:
- (a) a sugar manufacturer,
 - (b) an isoglucose manufacturer,
 - (c) an inulin syrup manufacturer,
 - (d) a full-time refiner within the meaning of point 13 of Article 2 of Regulation (EC) No 318/2006.

The application referred to in the first subparagraph shall be lodged with the competent authority of the Member State or Member States in which the undertaking concerned operates.

An undertaking may apply for approval for one or more of the activities referred to in the first subparagraph.

⁽¹⁾ OJ L 78, 17.3.2007, p. 20.

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2. In its application for approval, the undertaking shall communicate its name and address, its sugar, isoglucose or inulin syrup production capacity and, where appropriate, the number of production sites in the Member State with the address and production capacity of each site.

3. An undertaking which applies for approval under point (d) of the first subparagraph of paragraph 1 shall supply proof that it meets the definition in point 13 of Article 2 of Regulation (EC) No 318/2006.

*Article 8***Commitments**

1. For the purposes of approval, the undertaking shall agree in writing to:

- (a) notify without delay to the competent authority of the Member State any amendment of the information provided for in Article 7(2);
- (b) keep records in accordance with Article 9 and the selling prices established in accordance with Article 13 available to the competent authority of the Member State;
- (c) communicate information to the Member State in accordance with Article 21;
- (d) provide at the request of the competent authority of the Member State any information or supporting document required for management and checking.

2. Approval shall take the form of an act by the competent authority accompanied by a document signed by the undertaking listing the commitments referred to in paragraph 1.

3. Approval shall be withdrawn if it is found that one of the conditions listed in paragraph 1 is no longer met. Approval may be withdrawn in the course of a marketing year. Withdrawal shall not have retroactive effect.

*Article 9***Records**

The competent authority of the Member State shall determine the records to be kept by all undertakings approved in accordance with Articles 7 and 8, at each of their production sites, and the frequency of such record-keeping, which must be at least monthly.

These records shall be kept by the undertaking for at least three years following the current year and comprise at least the following information:

1. the quantities of raw material received with, in the case of beet and cane, the sugar content as determined on delivery to the undertaking;
2. where appropriate, the end products or semi-finished products received;
3. the quantities of end products obtained, and the quantities of by-products;
4. the wastage during processing;
5. the quantities destroyed and the reasons for such destruction;
6. the quantities of end products dispatched.

▼B*Article 10***Checks**

1. Each marketing year, the competent authority of the Member State shall carry out checks on each approved manufacturer and refiner.

2. The checks shall aim to ensure the accuracy and completeness of the information in the records referred to in Article 9 and of the communications referred to in Article 21 by means, in particular, of an analysis of the consistency between the quantities of raw materials delivered and the quantities of end products obtained, and analysis of a reconciliation of the records with the commercial documents or other relevant documents.

The checks shall verify the accuracy of the measuring instruments and laboratory analyses used to determine deliveries of raw materials and their entry into production, the products obtained and stock movements.

Checks shall include verification of the accuracy and completeness of the data used to establish the average monthly selling prices of the undertaking referred to in Article 13(2).

For sugar manufacturers, checks shall also cover compliance with the obligation to pay the minimum price to beet growers.

At least once every two years, checks shall include physical checks on stocks.

3. Where it is provided by the competent authorities of the Member State that particular elements of the check may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of control.

4. Member States may require approved undertakings to use a certifying body for accounts, recognised in the Member State, to certify the price data referred to in Article 13.

5. Every on-the-spot check shall be the subject of an inspection report signed by the inspector giving the details of the checks carried out. Reports shall indicate in particular:

- (a) the date of the check, and the persons present;
- (b) the period checked and the quantities involved;
- (c) the checking techniques used including, where applicable, reference to sampling methods;
- (d) the results of the check and any corrective measures required;
- (e) an assessment of the seriousness, extent, permanence and duration of any faults and discrepancies found and all other elements to be taken into consideration for the purposes of applying penalties.

Each inspection report shall be archived and kept for at least three years following the year in which the check is carried out, in a way that ensures that it is readily useable by the Commission departments responsible for checks and inspections.

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6. The Member States shall assist one another to ensure effective controls, and to ensure the check on the authenticity of documents submitted and/or the accuracy of the data exchanged.

▼B*Article 11***Penalties**

1. If the competent authority of the Member State detects a discrepancy between the physical stock and the stock recorded in the records referred to in Article 9, or a lack of consistency between the quantities of raw materials and of end products obtained or between the relevant documents and the data or quantities declared or recorded, it shall determine or, where appropriate, estimate the actual production quantities and stocks for the current marketing year and, where necessary, for the previous marketing years.

Any quantity which has given rise to an incorrect declaration resulting in an unfair financial advantage shall be subject to a payment of EUR 500 per tonne of the quantity in question.

2. If the competent authority of the Member State finds that an undertaking has failed to fulfil its obligations under Article 8, and if there are no supporting documents to meet the control objectives referred to in Article 10(2), the competent authority shall impose a penalty of EUR 500 per tonne, applied to a flat-rate quantity of end product fixed by the Member State depending on the seriousness of the infringement.

3. Paragraphs 1 and 2 shall not apply where the discrepancies and inconsistencies detected are less than 5 % in weight of the quantity of end products declared or recorded and checked or where they are due to omissions or simple administrative errors, provided that corrective measures are taken to ensure that similar errors do not recur.

4. The penalties provided for in paragraphs 1 and 2 shall not be applicable in cases of *force majeure*.

*Article 12***Communications to the Commission**

1. Member States shall communicate the following information to the Commission:

- (a) a list of approved undertakings;
- (b) the quota allocated to each approved manufacturer.

This list shall be sent not later than 31 January each marketing year. For the 2006/07 marketing year, this list shall be sent for the first time not later than 31 July 2006.

In the event of withdrawal of approval, Member States shall inform the Commission thereof immediately.

2. Member States shall send the Commission not later than 31 March following the marketing year concerned an annual report comprising the number of checks carried out in accordance with Article 10 and, for each check carried out, the errors found and the action taken and penalties applied.

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CHAPTER IV

PRICES

*Article 13***Establishment of average prices**

1. Each month, undertakings approved in accordance with Articles 7 and 8 of this Regulation and processors approved in accordance with Article 17 of Regulation (EC) No 318/2006 shall establish, for quota white sugar and non-quota white sugar respectively:

- (a) for the previous month, the average selling price, or purchase price, and the corresponding quantity sold, or purchased;
- (b) for the current month and each of the following two months, the forecast average selling or purchase price and the corresponding quantity forecast in the framework of contracts or other transactions.

The price shall relate to bulk white sugar ex-factory and of a standard quality as defined in point II of Annex I to of Regulation (EC) No 318/2006.

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The distinction between quota sugar and non-quota sugar does not apply for refiners.

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2. To permit the checks provided for in Article 10, approved undertakings shall keep the data used to establish the prices and quantities referred to in paragraph 1 of this Article for at least three years following the year in which they were produced.

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3. The provisions laid down in paragraphs 1 and 2 shall not apply to processors whose purchase of sugar does not exceed 2 000 tonnes per calendar year.

▼ B*Article 14***Price information****▼ M5**

Each month, the Commission shall inform the Management Committee for the Common Organisation of Agricultural Markets of the average price for white sugar communicated during the month preceding the date of the information.

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The price shall be broken down by quota white sugar and non-quota white sugar.

The information shall be based on the weighted average of the prices established and communicated by the undertakings under Article 13(1) (a) and communicated in accordance with Article 15.

▼ M2*Article 14a***Additional information**

In addition to the prices collected at Community level in accordance with Article 14 of this Regulation, the Commission shall also inform the Management Committee for Sugar of prices and quantities for raw and white sugar imported from African, Caribbean and Pacific countries under the arrangements for products originating in certain states

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which are part of the African, Caribbean and Pacific (ACP) Group of States provided for in agreements establishing, or leading to the establishment of, Economic Partnership Agreements ⁽¹⁾ and from least developed countries as listed in Column D of Annex I to Council Regulation (EC) No 980/2005 ⁽²⁾ based on customs declarations and data available in the database of the Statistical Office of the European Communities.

▼ B*Article 15***Transitional provisions for the transmission of price data**▼ M1

Not later than 20 October 2006, 20 January 2007, 20 April 2007, 20 July 2007, 20 October 2007, 20 January 2008 and 20 April 2008, undertakings approved in accordance with Articles 7 and 8 of this Regulation and processors approved in accordance with Article 17(1) of Regulation (EC) No 318/2006 shall communicate to the Commission the prices established in accordance with Article 13(1) of this Regulation during the previous three months.

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The reception, processing and storage of the data by the Commission shall be carried out in such a way as to guarantee the confidentiality of data.

Other operators in the sugar sector, in particular buyers, may communicate to the Commission the average price for sugar established in accordance with the arrangements laid down in Article 13. Operators shall give their name, address and business name.

▼ M2*Article 15a***Final provisions for the transmission of price data**

Each undertaking subject to the obligation set out in Article 13 shall communicate before the 15th of each month the data established in accordance with Article 13(1) to the Member State which granted the approval. The first communication to the Member State shall be transmitted before 15 August 2008 and shall concern the data established in May and June 2008.

Each Member State shall communicate to the Commission before the end of each month the averages of prices collected at national level, as well as the total corresponding quantities and the standard deviations. The averages and standard deviations shall be weighted by the quantities communicated by undertakings under the previous paragraph.

The reception, processing and storage of the data by the Member States and the Commission shall be carried out in such a way as to guarantee the appropriate confidentiality of data.

Upon simple request to the Member State, the Commission may have access to individual data sent by approved operators in accordance with Article 13(1).

⁽¹⁾ OJ L 348, 31.12.2007, p. 1.

⁽²⁾ OJ L 169, 30.6.2005, p. 1.

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Other operators in the sugar sector, in particular buyers, may communicate to the Commission the average price for sugar established in accordance with Article 13. Operators shall give their name, business name and address.

▼B*Article 16***Delivery contracts**

1. For the purposes of Article 6(5) of Regulation (EC) No 318/2006, a contract concluded between a sugar manufacturer and a beet seller growing its own beet shall be regarded as a delivery contract.

2. Where a manufacturer carries forward, pursuant to Articles 14 or 19 of Regulation (EC) No 318/2006, part of its production to the following marketing year, the quota of that manufacturer shall be considered to be reduced in respect of that year by the quantity carried forward for the purposes of Article 6(5) of that Regulation.

3. Only contracts concluded prior to sowing and in any event:

— before 1 April in Italy, or

— before 1 May in the other Member States

shall be regarded as pre-sowing contracts.

▼M2*Article 16a***Purchase terms for beet**

Agreements within the trade and delivery contracts referred to in Article 50(1) of Regulation (EC) No 1234/2007 shall conform to purchase terms laid down in Annex II of this Regulation.

▼B*Article 17***Price increases and reductions**

1. For the purposes of applying the price increases and reductions provided for in Article 5(3) of Regulation (EC) No 318/2006, the minimum price for quota beet referred to in Article 5(1) of that Regulation shall, for each 0,1 % of sucrose content, be:

(a) increased by not less than:

(i) 0,9 % for contents exceeding 16 % but not exceeding 18 %,

(ii) 0,7 % for contents exceeding 18 % but not exceeding 19 %,

(iii) 0,5 % for contents exceeding 19 % but not exceeding 20 %;

(b) reduced by not more than:

(i) 0,9 % for contents below 16 % but not below 15,5 %,

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- (ii) 1 % for contents below 15,5 % but not below 14,5 %.

The price for beet with a sucrose content in excess of 20 % shall not be less than the minimum price adjusted in accordance with point (a)(iii).

2. Delivery contracts, and agreements within the trade as referred to in Article 6 of Regulation (EC) No 318/2006, may provide, compared to the increases and reductions referred to in paragraph 1 of this Article, for:

- (a) further increases for sucrose contents above 20 %;
- (b) further reductions for sucrose contents below 14,5 %.

These contracts and agreements may, in the case of beet with a sucrose content below 14,5 %, define beet suitable for processing into sugar if further reductions for sucrose contents below 14,5 % but above the minimum sucrose content specified in that definition are laid down in such contracts and agreements.

If the definition referred to in the second subparagraph is not included in the contracts and agreements, the Member State concerned may lay down that definition. In that case it shall, at the same time, fix the further reductions referred to in that subparagraph.

▼M1

CHAPTER V

QUOTAS AND PRODUCTION CHARGE

▼B*Article 18***Additional sugar quotas**

1. The additional sugar quotas referred to in Article 8 of Regulation (EC) No 318/2006 may only be allocated to sugar manufacturers who were holders of a quota in 2005/06.

2. In their application for additional sugar quotas, undertakings shall indicate whether they wish to obtain the quota from the 2006/07 or 2007/08 marketing year.

If it allocates the additional quota to an undertaking, the Member State shall indicate the marketing year from which the allocation takes effect. However, allocations after 1 January 2007 shall take effect from the 2007/08 marketing year.

▼M1

3. Member States shall communicate to the Commission the deadline for the payment of the one-off amount referred to in Article 8(4) of Regulation (EC) No 318/2006 within 10 working days of their decision on that deadline.

Member States shall notify to each sugar undertaking concerned the amount due at least one month before the deadline referred to in the first subparagraph and on 31 January 2008 at the latest.

▼B*Article 19***Additional isoglucose quota**

1. Italy, Lithuania and Sweden shall allocate the additional isoglucose quotas referred to in Article 9(2) of Regulation (EC) No 318/2006 to one or more of the 2006/07, 2007/08, 2008/09 and 2009/10 marketing years in a manner which avoids any form of discrimination between the operators concerned.

2. The payment of the one-off amount referred to in Article 9(3) of Regulation (EC) No 318/2006 shall be made by each undertaking concerned by a deadline to be determined by the Member State which may not be later than 31 December of the marketing year from which the additional isoglucose quota is allocated.

If the undertaking has not paid the one-off amount by the deadline referred to in the first subparagraph, the additional isoglucose quotas shall not be considered as allocated to the undertaking concerned.

▼M1

3. Member States shall communicate to the Commission the deadline referred to in paragraph 2 within 10 working days of their decision on that deadline.

Member States shall notify to each isoglucose undertaking concerned the amounts due at least one month before the deadline referred to in paragraph 2 and on 30 November of the marketing year from which the quota is allocated at the latest.

▼B*Article 20***Allocation of beet harvests**

The sugar extracted from beet sown in a particular marketing year shall be attributed to the following marketing year.

However, Spain, Italy and Portugal may, subject to a satisfactory control system, decide to attribute sugar extracted from beet sown in the autumn of a particular marketing year to the current marketing year.

Spain, Italy and Portugal shall inform the Commission of their decisions under this Article not later than 30 September 2006.

▼M1*Article 20a***Production charge**

From the marketing year 2007/08, Member States shall, on 31 January each year at the latest, notify to each approved sugar and isoglucose producer the production charge to be paid for the current marketing year.

▼B*Article 21***Communications on production and stocks****▼M2**

1. Each approved manufacturer or refiner shall notify to the competent authority of the Member State in which production or refining took place, before the 20th of each month, the total quantities, expressed as white sugar, of the sugars and syrups indicated in Article 3 (1)(a) to (d):

- (a) owned by him or covered by a warrant; and
- (b) stored in free circulation on Community territory at the end of the previous month.

Those quantities shall be broken down into:

- (a) sugar produced by that undertaking specifying the quantities of quota sugar and those in excess of the quota, carried forward or withdrawn in accordance with Articles 14 or 19 of Regulation (EC) No 318/2006. In addition, in the quantities of quota sugar at the end of the months of July, August and September, the quantity which comes from the production of sugar under the following marketing year shall be specified;
- (b) other sugar.

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2. Each Member State shall notify to the Commission, before the end of the second month following the month in question, the quantity of sugar stored at the end of each month by the undertakings indicated in paragraph 1, broken down by type of sugar in accordance with the second subparagraph thereof.

If storage is in a different Member State from the one notifying the Commission, the latter shall inform the Member State concerned of the quantities stored on their territory and their locations by the end of the following month.

3. Each approved isoglucose or inulin syrup manufacturer shall notify to the competent authority of the Member State in which production took place, before 30 November, the quantities of isoglucose expressed as dry matter or, respectively, of inulin syrup expressed as white sugar equivalent owned by it and stored in free circulation on Community territory at the end of the previous marketing year, broken down into:

- (a) isoglucose or inulin syrup produced by that undertaking specifying the quantities under quota and in excess of the quota carried forward in accordance with Articles 14 or 19 of Regulation (EC) No 318/2006; and
- (b) other.

Member States shall notify to the Commission, before 31 December, the quantities of isoglucose and inulin syrup stored at the end of the previous marketing year, broken down as specified in the first subparagraph.

4. Before the 15th day of each month, each isoglucose-producing undertaking shall notify to the Member State on whose territory its production took place the quantities of isoglucose, expressed as dry matter, actually produced during the previous month.

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Member States shall establish the isoglucose production of each such undertaking in each month and notify it to the Commission before the end of the second month following.

The quantities produced under inward processing arrangements shall be notified separately.

*Article 22***Supply balances**

1. For each marketing year, Community supply balances for sugar, isoglucose and inulin syrup shall be drawn up. The balances shall be consolidated at the end of the following marketing year.

2. Member States shall establish provisional sugar and inulin syrup production figures for the current marketing year for each undertaking located on their territories and notify them to the Commission before 1 March. Sugar production shall be broken down by month.

For the French departments of Guadeloupe and Martinique and for Spain as regards cane sugar, the provisional production shall be established and notified by 1 July.

3. Member States shall notify to the Commission before 1 June the areas and production of, on the one hand, beet for production of sugar, bioethanol and other products respectively, and, on the other hand, chicory for production of inulin syrup, for the current marketing year and estimates of them for the following year.

4. Before 30 November, Member States shall establish and notify to the Commission actual production of sugar, isoglucose and inulin syrup in the previous marketing year by each undertaking located on their territory. Total sugar production shall be broken down by month.

5. Where it is necessary to amend actual sugar production on the basis of the information notified under paragraph 4, the resulting difference shall be taken into account in establishing actual production in the marketing year during which this difference came to light.

CHAPTER VI

PUBLIC STORAGE

SECTION 1

*Offers for intervention**Article 23***Offers**

1. Offers shall be made in writing to the intervention agency of the Member State on whose territory the sugar offered is located at the time of the offer.

2. Offers shall be eligible only if they are submitted by approved manufacturers in accordance with Articles 7 and 8 for sugar from their quota production for the current marketing year and, at the time of the offer, stored separately in a place of storage approved in accordance with Article 24.

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3. Each marketing year Member States may only accept into intervention the maximum quantity indicated for each of them in the ►**M2** Annex I ◀. If the offers exceed the maximum quantity, the competent authority of the Member State shall apply a single reduction coefficient to the offers, such that the total quantity accepted is equal to the quantity available.

4. Before the start of each marketing year, the Commission shall amend the quantities laid down in the ►**M2** Annex I ◀ to this Regulation on the basis of the adjustments referred to in Article 10 of Regulation (EC) No 318/2006 and within the limit of the total quantity laid down in Article 18(2) of that Regulation.

The quantities laid down in the ►**M2** Annex I ◀ to this Regulation shall be amended, where appropriate, in the last quarter of each marketing year, on the basis of unused quantities in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006 and within the limit of the total quantity laid down in Article 18(2) of that Regulation.

*Article 24***Approval of the place of storage**

1. Approval shall be granted at the manufacturer's request to the intervention agency, to all places of storage which:

- (a) are suitable for keeping sugar in good condition;
- (b) are situated in a place which provides the transport facilities necessary for removal of the sugar;
- (c) allow separate storage of the quantities offered for intervention.

Additional conditions may be imposed by the intervention agencies.

2. Approval of the place of storage shall be granted for storage in bulk or for storage of packaged sugar. It shall fix a quantitative storage limit not exceeding 50 times the daily removal capacity that the applicant undertakes to place at the disposal of the intervention agency. The approval shall indicate the total quantity for which it is given and the daily removal capacity.

3. The sugar must be stored such that it is easily identifiable and accessible. It must be placed on pallets when it is packaged, unless it is packaged in 'big bags'.

4. Approval shall be withdrawn by the intervention agency where it finds that one of the conditions referred to in paragraphs 1, 2 and 3 is no longer met. Approval may be withdrawn during the marketing year. Withdrawal shall not have retroactive effect.

*Article 25***Minimum sugar quality**

1. Sugar offered to intervention shall meet the following requirements:

- (a) it must have been produced within a quota during the marketing year in which the offer is made;
- (b) it must be in crystal form.

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2. White sugar offered to intervention shall be of sound and fair marketable quality, free-flowing, with a moisture content not exceeding 0,06 %.

3. Raw sugar offered to intervention shall be of sound and fair marketable quality with a yield, calculated in accordance with point III of Annex I to Regulation (EC) No 318/2006, of not less than 89 %.

In the case of raw cane sugar, the sugar shall have a safety factor not exceeding 0,30.

In the case of raw beet sugar, the sugar shall have:

- a pH value not less than 7,9 at the time the offer is accepted,
- an invert sugar content not exceeding 0,07 %,
- 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 concerned by the difference between 100 and the degree of polarisation of that sugar.

*Article 26***Lots**

All sugar offered for intervention shall be put up in lots.

For the purposes of this Section, 'lot' means at least 2 000 tonnes of sugar of uniform quality and packing, all of which is stored in the same place.

*Article 27***Content of the offer**

1. Offers made to an intervention agency shall indicate:
 - (a) the name and address of the party making the offer;
 - (b) the place of storage in which the sugar is stored at the time the offer is made;
 - (c) the removal capacity guaranteed for the removal of the sugar offered;
 - (d) the net quantity of sugar being offered;
 - (e) the nature and quality of the sugar offered, and the marketing year in which it was produced;
 - (f) the type of packing of the sugar.

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2. The intervention agency may require additional information.
3. Offers shall be accompanied by a statement from the parties making the offer certifying that the sugar concerned has not previously been bought in to intervention, that they own the sugar and that it conforms to the requirements laid down in Article 25(1)(a).

*Article 28***Examination of the offers**

1. Offers shall remain valid for three weeks from the date of submission. However, they may be withdrawn during that period with the consent of the intervention agency.
2. The intervention agency shall examine offers. It shall accept them not later than the end of the period referred to in paragraph 1. However, the intervention agency shall reject offers if examination shows that any of the requirements have not been met.

SECTION 2

Storage*Article 29***Storage contracts**

1. Storage contracts to be concluded before acceptance of the offer between parties making offers and the intervention agency shall be concluded for an indefinite period.

Storage contracts shall take effect five weeks after the date of acceptance of the offer and shall expire at the end of the ten-day period during which removal of the quantity of sugar concerned is completed.

For the purposes of this Article, '10-day period' means one of the following periods of a calendar month: from the first to the 10th, from the 11th to the 20th, or from the 21st to the end of the month.

2. Storage contracts shall, in particular:
 - (a) provide for expiry of the contract under the conditions set out in this Regulation after at least ten days' notice has been given;
 - (b) specify the amount of the storage costs to be borne by the intervention agency.
3. The intervention agency shall bear the storage costs from the beginning of the 10-day period within which the contract takes effect as referred to in paragraph 2 until the expiry of the contract.
4. Storage costs may not exceed EUR 0,48 per tonne and per 10-day period.
5. Storage contracts shall expire at the end of the removal referred to in Article 50.

*Article 30***Transfer of ownership**

1. The transfer of ownership of sugar covered by a storage contract shall take place when the sugar in question is paid for.

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2. Up to the time of removal, the seller shall remain responsible for the quality of the sugar referred to in paragraph 1 and for the packing in which the sugar has been accepted by the intervention agency.

*Article 31***Quality and packing standards**

1. If it is established that a quantity of the sugar concerned does not conform to the quality requirements set out in Article 25, the seller shall immediately replace that quantity with an equal quantity of sugar of the required quality, stored either in the same place of storage or in another place of storage approved in accordance with Article 24.

2. Where the sugar concerned is stored and it is found that the packing no longer conforms to the specifications, the intervention agency shall require the seller to replace it with packing to the required standard.

SECTION 3

Conditions for intervention buying-in*Article 32***Intervention price for and quality of white sugar**

1. The intervention price for white sugar shall be:

— EUR 505,52 per tonne in the 2006/07 marketing year,

— EUR 433,20 per tonne in the 2007/08 marketing year,

— EUR 323,52 per tonne in the 2008/09 and 2009/10 marketing years.

2. White sugar shall be classified into four grades as follows:

(a) Grade 1: sugar which is superior in quality to the standard quality;

(b) Grade 2: sugar of the standard quality as defined in point II of Annex I to Regulation (EC) No 318/2006;

(c) Grades 3 and 4: sugar which is inferior in quality to the standard quality.

3. Grade 1 sugar shall have the following characteristics:

(a) sound and fair marketable quality, dry, in homogeneously granulated, free-flowing crystals;

(b) maximum moisture content: 0,06 %;

(c) maximum invert sugar content: 0,04 %;

(d) the number of points shall not exceed a total of eight, or:

— six for the ash content,

— four for the colour type determined according to the method of the Brunswick Institute for Agricultural Technology and the Sugar Industry, hereinafter referred to as the 'Brunswick Method',

— three for the solution colour determined according to the ICUMSA Method.

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One point shall correspond to:

- (a) 0,0018 % ash content determined according to the ICUMSA Method at 28° Brix;
- (b) 0,5 unit of colour type determined according to the Brunswick Method;
- (c) 7,5 units of solution colour determined according to the ICUMSA Method.

4. Grade 3 sugar shall have the following characteristics:

- (a) sound and fair marketable quality, dry, in homogeneously-granulated, free-flowing crystals;
- (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.

5. Grade 4 sugar shall include sugar not included in Grades 1, 2 and 3.

6. The intervention price fixed in paragraph 1 shall be reduced by:

- (a) EUR 7,30 per tonne for Grade 3 sugar;
- (b) EUR 13,10 per tonne for Grade 4 sugar.

Article 33

Intervention price for raw sugar

1. The intervention price for raw sugar shall be:

- EUR 397,44 per tonne in the 2006/07 marketing year,
- EUR 359,04 per tonne in the 2007/08 marketing year,
- EUR 268,16 per tonne in the 2008/09 and 2009/10 marketing years.

2. The intervention price fixed in paragraph 1 shall be:

- (a) increased where the yield of the sugar is more than 92 %;
- (b) reduced where the yield of the sugar is less than 92 %.

3. The amount of the increase or reduction, expressed in euro per tonne, shall be equal to the difference between the intervention price for raw sugar and the same price multiplied by a coefficient. The coefficient shall be obtained by dividing the yield of the raw sugar concerned by 92 %.

4. The yield of raw sugar shall be calculated in accordance with point III of Annex I to Regulation (EC) No 318/2006.

Article 34

Payment period

The intervention agency shall make payment no earlier than 120 days from the day on which the offer is accepted, provided the checks to verify the weight and quality of the offered lots have been conducted in accordance with Section 4.



SECTION 4

*Checks**Article 35***Sample for checking quality**

Within the time limit referred to in Article 34, four representative 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. One sample shall be given to 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 concerned.

*Article 36***Disputes over quality**

1. Where there is a difference between the results of the analyses arranged by the seller and the buyer in accordance with Article 35, the arithmetic mean of the two results shall be conclusive for establishing the grade of the sugar concerned if the difference is:

- for Grade 1 sugar, no more than one point for each of the characteristics referred to in Article 32(3)(d),
- for Grade 2 sugar, not greater than two points for each of the characteristics defining that grade which are determined by points.

However, at the request of either of the contracting parties, an arbitral analysis may be carried out by the laboratory referred to in the first paragraph of Article 35. In that case, the arithmetic mean of the result of the arbitral analysis and of the results of the seller's and the buyer's analyses, whichever is closer to the result of the arbitral analysis, shall be adopted.

This mean shall be conclusive for establishing the grade of the sugar concerned. 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 concerned.

2. Where the difference observed between the results of the analyses arranged by the seller and the buyer in accordance with Article 35 is greater than that indicated in the first or second indent of the first subparagraph of paragraph 1 of this Article, as the case may be, an arbitral analysis shall be carried out by a laboratory approved by the competent authorities. In this case, the procedure provided for in the second subparagraph of paragraph 1 of this Article shall apply.

3. For disputes concerning the upper limit for the colour type of Grade 3 sugar, polarisation, moisture content or invert sugar content, the procedure laid down in paragraphs 1 and 2 shall apply.

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However, the differences referred to in paragraph 1 shall be replaced by:

- 1,0 unit of colour type for Grade 3 sugar,
- 0,2°S for polarisation,
- 0,02 % for moisture content,
- 0,01 % for invert sugar content.

4. In the event of a dispute between the contracting parties over the yield of the raw sugar bought in following the application of Article 35, an arbitral analysis shall be carried out by the laboratory referred to in the first subparagraph of that Article. In that case, the arithmetic mean of the result of the arbitral analysis and the results of either the seller's or the buyer's analysis, whichever is closer to the result of the arbitral analysis, shall be adopted.

This mean shall be conclusive for establishing the yield of the raw sugar concerned. 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 yield of the raw sugar concerned.

5. The costs of an arbitral analysis as referred to in the second subparagraph of paragraph 1 shall be borne by the contracting party requesting the analysis.

The costs of an arbitral analysis as referred to in paragraph 2 shall be shared equally by the intervention agency and the seller.

The costs of an arbitral analysis as referred to in paragraph 3 shall be borne by the contracting party which contested the result of the analysis made under Article 35.

Article 37

Checks on the places of storage

The competent authority responsible for control shall carry out unannounced checks on the places of storage in accordance with Article 4 of Commission Regulation (EC) No 2148/96 ⁽¹⁾.

Article 38

Checks on weight and related costs

1. The experts referred to in Article 35 shall check the weight of the sugar sold.

The seller shall take all steps necessary to allow the experts to check the weight and to take samples.

2. The costs of checking the weight shall be borne by the seller.

3. The cost of the experts who check the weight and do the sampling shall be borne by the intervention agency.

4. The quantity can be established on the basis of the stock accounts, which must meet professional specifications and the intervention agency's requirements, provided that:

- (a) the stock records show the weight recorded on weighing and the physical quality characteristics at the time of weighing. The weighing may not have been carried out more than 10 months previously;

⁽¹⁾ OJ L 288, 9.11.1996, p. 6.

▼B

- (b) the storekeeper declares that the lot offered corresponds in all respects to the details contained in the stock records;
- (c) the quality characteristics established at the time of weighing are the same as those of the representative samples.

SECTION 5

Intervention sales*Article 39***Sales**

1. Intervention agencies may sell sugar only after a decision to this effect has been taken in accordance with the procedure referred to in Article 39(2) of Regulation (EC) No 318/2006.
2. The sale of sugar under the conditions referred to in Article 18(3) of Regulation (EC) No 318/2006 shall be by tendering procedure or by another sales procedure.
3. The terms of the tendering procedure, including the intended use of the sugar to be disposed of, shall be determined when the decision is taken to issue an invitation to tender.

For the purposes of this Section, 'intended use' means:

- (a) animal feed;
- (b) export;
- (c) other purposes, to be determined as required.

The purpose of the tendering procedure shall be to determine the selling price, the amount of the denaturing premium or the amount of the export refund, as the case may be.

4. The terms of the tendering procedure must guarantee equal access and treatment for all interested parties irrespective of where in the Community they are established.

*Article 40***Notice of invitation to tender**

1. The invitation to tender shall be issued by the intervention agency concerned for the quantities of sugar held by it.
2. Each intervention agency concerned shall draw up an invitation to tender, which it shall publish at least eight days before the beginning of the period for the submission of tenders.

The intervention agency shall send the invitation to tender, and any amendments thereof, to the Commission prior to publication.

3. The invitation shall indicate in particular:
 - (a) the name and address of the intervention agency issuing the invitation to tender;
 - (b) the terms of the tendering procedure;
 - (c) the time limit for submission of tenders;
 - (d) the lots of sugar put up for tender, and for each lot:
 - the reference number,
 - the quantity,
 - the quality of the sugar concerned,

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- the type of packaging,
- the location of the place in which the sugar is stored,
- the delivery stage,
- any facilities at the warehouse for loading onto a means of transport by inland waterway, sea or rail.

For the purposes of this Section, ‘lot’ means a quantity of sugar of uniform quality, packaged in the same way and stored in the same place. The minimum bid for each partial invitation to tender shall be 250 tonnes.

4. The intervention agency shall make such arrangements as it considers necessary to enable interested parties who so request to examine the sugar offered for sale.

*Article 41***Tender**

1. Award to successful tenderers shall be equivalent to the conclusion of a sales contract for the quantity of sugar awarded. Award shall be made, as the case may be, on the basis of the following factors contained in the tender:

- (a) the price to be paid by the successful tenderer;
- (b) the amount of the denaturing premium;
- (c) the amount of the export refund.

2. The price to be paid by the successful tenderer shall be:

- (a) the price indicated in the tender, in the case of paragraph 1(a);
- (b) the price indicated in the terms of the invitation to tender, in the case of paragraph 1(b) and (c).

*Article 42***Terms of the tendering procedure**

1. For the purposes of the tendering procedure, the following terms of the tendering procedure shall be determined when the decision is taken to issue an invitation to tender:

- (a) the total quantity or quantities put up for tender;
- (b) the intended use;
- (c) the time limit for submission of tenders;
- (d) the price to be paid by the successful tenderer if the sugar is intended for animal feed or for export.

2. Additional terms may be determined in the decision is taken to issue an invitation to tender, in particular:

- (a) the minimum price for sugar put up for sale for a purpose other than animal feed or export;
- (b) the maximum amount of the denaturing premium or the export refund;
- (c) the minimum quantity per tenderer or per lot;

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- (d) the maximum quantity per tenderer or per lot;
- (e) the specific period of validity of the denaturing premium certificate or export licence.

*Article 43***Standing invitation to tender**

1. If the situation on the sugar market in the Community so requires, a standing invitation to tender may be issued for the sale of sugar.

During the period of validity of the standing invitation to tender, partial invitations to tender shall be issued.

2. The standing invitation to tender shall be published only for the purpose of issuing it. The invitation as published may be amended or replaced during the period of validity of the standing invitation to tender. It shall be amended or replaced if the terms of the tendering procedure are changed during its period of validity.

*Article 44***Submission of the tender**

1. The tenders submitted shall be sent to the intervention agency in electronic form.

2. Tenders shall state:

- (a) the reference of the invitation to tender;
- (b) the name and address of the tenderer;
- (c) the number of the lot;
- (d) the quantity tendered for;
- (e) per tonne, as appropriate, expressed in euro to two decimal places:
 - the price proposed, excluding internal charges,
 - the proposed amount of the denaturing premium, or
 - the proposed amount of the export refund.

The intervention agency may require additional information.

3. A tender concerning several lots shall be deemed to contain as many tenders as the lots it concerns.

4. Tenders shall not be valid unless:

- (a) proof is supplied before expiry of the time limit for submission of tenders that the tendering security of EUR 200 per tonne of sugar has been lodged;
- (b) they include a declaration by the tenderer undertaking, for any quantity of sugar awarded for either a denaturing premium or an export refund:
 - to apply for a denaturing premium certificate and to lodge the security required in that connection, where the tendering procedure relates to sugar intended for animal feed,
 - to apply for an export licence and to lodge the security required in that connection, where the tendering procedure relates to sugar intended for export.

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5. A tender may stipulate that it is to be treated as submitted only if the award:

- (a) relates to all or a specified part of the quantity indicated in the tender;
- (b) is made not later than a time and date specified by the tenderer.

6. Tenders not submitted in accordance with paragraphs 1, 2, 3, 4 and 5, or containing terms other than those indicated in the invitation to tender, shall not be taken into consideration.

7. Once submitted, a tender may not be withdrawn.

*Article 45***Examination of tenders**

1. Tenders shall be examined in private session by the intervention agency. Persons present at the examination shall be sworn to secrecy.

2. The Commission shall be informed without delay of the tenders submitted.

*Article 46***Fixing amounts**

Where the terms of the tendering procedure do not specify either a minimum price or a maximum amount for the denaturing premium or the export refund, these shall be fixed in accordance with Article 39(2) of Regulation (EC) No 318/2006 after the tenders have been examined, in the light of market conditions and potential outlets. However, a decision may be taken to make no award.

*Article 47***Award of the tender**

1. Except where a decision is taken to make no award under a tendering procedure or a partial tendering procedure, and without prejudice to paragraphs 2 and 3 of this Article, the award shall be made to any tenderer whose tender is not less than the minimum price or more than the maximum amount of the denaturing premium or the export refund.

2. For any one lot, the award shall be made to the tenderer who proposes either the highest price or the lowest amount of the denaturing premium or the export refund.

If the lot is not completely accounted for by that tender, the remainder shall be awarded to other tenderers depending on the amount of their tender, starting with either the next highest price or the next lowest denaturing premium or export refund.

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3. If several tenderers propose either the same price or the same amount for the denaturing premium or the export refund for one lot or part of a lot, the intervention agency shall award the quantity concerned by one of the following means:

- (a) in proportion to the quantities indicated in the tenders in question;
- (b) by dividing that quantity between the tenderers in agreement with them;
- (c) by the drawing of lots.

*Article 48***Rights and obligations arising from awards**

1. If the sugar is intended for animal feed, awards shall:
 - (a) confer the right to the issue of a certificate for the quantity for which the denaturing premium is awarded, showing in particular the denaturing premium specified in the tender;
 - (b) entail the obligation to apply for such a certificate for that quantity to the intervention agency to which the tender was submitted.
2. If the sugar is intended for export, awards shall:
 - (a) confer the right to the issue of an export licence for the quantity for which the export refund is awarded, showing in particular the export refund and, in the case of white sugar, the grade specified in the invitation to tender;
 - (b) entail the obligation to apply for such a licence for that quantity and, in the case of white sugar, that grade, to the intervention agency to which the tender was submitted.
3. Rights shall be exercised and obligations fulfilled within 18 days following expiry of the time limit for submission of tenders.
4. Rights and obligations arising from awards shall not be transferable.

*Article 49***Statement of award**

1. The intervention agency shall immediately send statements of award to the successful tenderers and notify all tenderers of the outcome of their participation in the tendering procedure.
2. Statements of award shall indicate at least:
 - (a) the procedure to which the tender relates;
 - (b) the number of the lot and the quantity awarded;
 - (c) the price, the amount of the denaturing premium or the amount of the export refund, as the case may be, accepted for the quantity awarded.

▼B*Article 50***Removal of the sugar purchased**

1. Except in cases of *force majeure*, the sugar purchased shall be removed from storage not later than four weeks following the date on which the statement of award referred to in Article 49 is received. Instead of removing the sugar from storage, the successful tenderer may agree with the intervention agency to conclude a storage contract within that time with the warehouse of the sugar concerned.

However, the intervention agency may if necessary allow a longer period for removing particular lots from storage where there are technical difficulties regarding removal from storage.

2. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

*Article 51***Removal order**

1. The successful tenderer may not remove the purchased sugar from storage or conclude a storage contract under Article 50(1) until a removal order is issued for the quantity awarded.

However, removal orders may be issued for parts of that quantity.

Removal orders shall be issued by the intervention agency concerned at the request of the interested party.

2. The intervention agency shall not issue a removal order unless it is proved that the successful tenderer has either lodged a security to guarantee payment of the price for the sugar awarded within the time laid down, or provided a negotiable instrument.

The security or negotiable instrument shall correspond to the price to be paid by the successful tenderer for the quantity of sugar for which a removal order has been requested.

*Article 52***Payment**

1. The payment for the sugar awarded must be made to the intervention agency's account not later than the 30th day following the issue of a removal order.

2. Except in cases of *force majeure*, the security referred to in Article 51(2) shall be released only for the quantity for which the successful tenderer has paid the purchase price to the account of the intervention agency within the time limit referred to in paragraph 1 of this Article. The security shall be released immediately.

3. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

▼B*Article 53***Transfer of ownership**

1. Ownership of sugar awarded under a tendering procedure shall be transferred when the sugar is removed from storage.
2. However, the intervention agency and the successful tenderer may agree to ownership being transferred at another stage. Where the intervention agency and the successful tenderer have reached an agreement under Article 50(1), they may determine jointly at what stage the transfer of ownership is to take place.
3. Agreement on the transfer of ownership shall be valid only if it is concluded in writing.

*Article 54***Determining the grade or yield**

Articles 35 and 36 shall apply for the purposes of determining the grade or yield of the sugar concerned when it is removed from storage.

However, the contracting parties may agree, after the award has been made, that the grade or yield determined when the sugar was bought in by the intervention agency shall apply to the sugar sold under the tendering procedure.

*Article 55***Adjustment of the price of sugar**

1. Where application of Articles 35 and 36 establishes that white sugar is of a grade lower than that indicated in the invitation to tender, the price for that sugar intended for the uses referred to in points (b) and (c) of the second subparagraph of Article 39(3) shall be adjusted in accordance with Article 32(6).
2. If it is found that white sugar intended for export is of a grade other than that indicated in the invitation to tender, the grade shown in the export licence shall be corrected.
3. Where application of Articles 35 and 36 establishes that the yield of raw sugar is other than that indicated in the invitation to tender:
 - (a) the price of the sugar shall be adjusted in accordance with Article 33;
 - (b) the amount of the denaturing premium or export refund shall be adjusted by multiplying it by a coefficient equal to the yield established divided by the yield indicated in the invitation to tender.

*Article 56***Release of the security**

1. Except in cases of *force majeure*, the tendering security shall be released only for the quantity for which:
 - (a) either the successful tenderer has:
 - applied, after fulfilling the requirements, for either a denaturing premium certificate or an export licence,

▼B

- lodged the security or provided the negotiable instrument referred to in Article 51(2),
 - has removed the sugar from storage within the time limit laid down,
- (b) or no award is made.
2. The security shall be released immediately.
 3. In cases of *force majeure*, the intervention agency shall determine the measures necessary in view of the circumstances invoked by the successful tenderer.

*Article 57***Notifications of quantities**

Member States shall notify to the Commission, as soon as they know them, the quantities of white sugar and of raw sugar:

- offered but not yet accepted by the intervention agency;
- accepted by the intervention agency;
- sold by the intervention agency.

▼M3**▼B**

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS*Article 58***Communications**

The communications to the Commission referred to in Articles 12, 21, 22 and 57 of this Regulation shall be transmitted electronically using forms made available to the Member States by the Commission.

*Article 59***Repeals**

Regulations (EC) No 1261/2001, (EC) No 1262/2001 and (EC) No 314/2002 are hereby repealed.

However, Regulations (EC) No 1261/2001 and (EC) No 314/2002 shall continue to apply to production in the 2005/06 marketing year and Regulation (EC) No 1262/2001 shall continue to apply to sugar accepted into intervention before 10 February 2006.

*Article 60***Entry into force**

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

It shall apply from 1 July 2006.

Articles 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 shall apply only until 30 September 2010.

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

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ANNEX I

Quantities by Member State referred to in Article 23(3) for the marketing year 2007/08

<i>(tonnes)</i>	
Member State	Quantities
Belgium	31 615
Bulgaria	170
Czech Republic	13 346
Denmark	16 213
Germany	130 985
Greece	5 687
Spain	31 790
France (metropolitan)	130 447
France (overseas departments)	17 208
Italy	27 012
Lithuania	4 013
Hungary	10 699
Netherlands	33 376
Austria	14 541
Poland	63 513
Portugal (mainland)	537
Portugal (Azores)	357
Romania	3 912
Slovakia	5 278
Finland	3 225
Sweden	12 306
United Kingdom	43 769

▼ M2*ANNEX II***Purchase terms for beets, referred to in Article 16a**

POINT I

For the purposes of this Annex 'Contracting Parties' means:

- (a) sugar undertakings (hereinafter referred to as manufacturers), and
- (b) beet sellers (hereinafter referred to as sellers).

POINT II

1. Delivery contracts shall be made in writing for a specified quantity of quota beet.
2. Delivery contracts shall specify whether an additional quantity of beet may be supplied, and under what terms.

POINT III

1. Delivery contracts shall indicate the purchase prices for the quantities of beet referred to in point (a) and, if appropriate, point (b), of Article 50(3) of Regulation (EC) No 1234/2007. In the case of the quantities referred to in the point a) of Article 50(3), those prices may not be lower than the minimum price for quota beet referred to in Article 49(1).
2. Delivery contracts shall lay down a fixed sugar content for beet. They shall include a conversion scale showing the different sugar contents and factors for converting the quantities of beet supplied into quantities corresponding to the sugar content shown in the delivery contract.

The scale shall be based on the yields corresponding to the different sugar contents.

3. Where a seller has signed a delivery contract with a manufacturer for the delivery of beet as referred to in point (a) of Article 50(3), all deliveries by that seller, converted in accordance with paragraph 2 of this Point, shall be considered to be deliveries within the meaning of point (a) of Article 50(3), up to the quantity of beet specified in the delivery contract.
4. Manufacturers producing a quantity of sugar lower than their quota beet for which they have signed pre-sowing delivery contracts under point (a) of Article 50(3), shall distribute the quantity of beet corresponding to any additional production up to the amount of their quota among the sellers with whom they have signed pre-sowing delivery contracts within the meaning of point (a) of Article 50(3).

Agreements within the trade may derogate from this provision.

POINT IV

1. Delivery contracts shall contain provisions concerning the staggering and normal duration of beet deliveries.
2. Provisions referred to in paragraph 1 shall be those applicable during the previous marketing year, taking account of the level of actual production; agreements within the trade may derogate therefrom.

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POINT V

1. Delivery contracts shall provide for beet collection places.
2. Where sellers and manufacturers have already signed a delivery contract for the previous marketing year, the collection places agreed upon by them for deliveries during that marketing year shall remain in operation. Agreements within the trade may derogate from this provision.
3. Delivery contracts shall provide that loading and transport costs from the collection places are to be borne by the manufacturer subject to special agreements based on local rules or usages in operation before the previous marketing year.
4. However, in Denmark, Greece, Spain, Ireland, Portugal, Finland and the United Kingdom, where beet is delivered free-at-factory, delivery contracts shall require manufacturers to contribute to loading and transport costs and shall stipulate the percentage or amounts.

POINT VI

1. Delivery contracts shall provide for reception points for beet.
2. Where sellers and manufacturers have already signed a delivery contract for the previous marketing year, the reception points agreed upon by them for deliveries during that marketing year shall remain in operation. Agreements within the trade may derogate from this provision.

POINT VII

1. Delivery contracts shall provide for the sugar content to be determined using the polarimetric method. A sample of the beet shall be drawn at the time of reception.
2. Agreements within the trade may provide for samples to be drawn at another stage. In such cases, the delivery contract shall provide for a correction to compensate for any drop in the sugar content between the reception and the drawing of the sample.

POINT VIII

Delivery contracts shall provide for gross weight, tare and sugar content to be determined using one of the following procedures:

- (a) jointly, by the manufacturer and the beet growers' trade organisation, if an agreement within the trade so provides;
- (b) by the manufacturer, under the supervision of the beet growers' trade organisation;
- (c) by the manufacturer, under the supervision of an expert recognised by the Member State concerned, provided the seller defrays the costs thereof.

POINT IX

1. Delivery contracts shall require manufacturers to do one or more of the following for the whole quantity of beet delivered:
 - (a) to return the fresh pulp from the tonnage of beet delivered free of charge to the seller, ex-factory;
 - (b) to return part of that pulp, pressed, dried or dried and molassed, free of charge to the seller, ex-factory;

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- (c) to return the pulp, pressed or dried, to the seller, ex-factory; in this case, the manufacturer may require the seller to pay the pressing or drying costs;
- (d) to pay the seller compensation which takes account of the possibilities of selling the pulp concerned.

When parts of the whole quantity of beet delivered are subject to different treatment, the delivery contract shall impose more than one of the obligations provided for in the first subparagraph.

2. Agreements within the trade may provide for pulp to be delivered at a stage other than that referred to in paragraph 1(a), (b) and (c).

POINT X

1. Delivery contracts shall fix the time limits for any advance payments and for payment of the purchase price for beet.
2. The time limits referred to in paragraph 1 shall be those valid during the previous marketing year. Agreements within the trade may derogate from this provision.

POINT XI

Where delivery contracts lay down rules covering matters which are dealt with in this Annex, or where they contain provisions governing other matters, their provisions and effects shall not conflict with this Annex.

POINT XII

1. Agreements within the trade as described in Annex III, Part II, point 11 to Regulation (EC) No 1234/2007 shall contain arbitration clauses.
2. Where agreements within the trade at Community, regional or local level lay down rules covering matters which are dealt with in this Regulation, or where they contain provisions governing other matters, their provisions and effects shall not conflict with this Annex.
3. Agreements referred to in paragraph 2 lay down, in particular:
 - (a) rules on the distribution to sellers of quantities of beet which the manufacturer decides to buy prior to sowing, for the manufacture of sugar within the limits of the quota;
 - (b) rules on distribution as referred to in Point III(4);
 - (c) the conversion scale referred to in Point III(2);
 - (d) rules on the choice and supply of seeds of the varieties of beet to be produced;
 - (e) the minimum sugar content of beet to be delivered;
 - (f) a requirement for consultation between the manufacturer and the sellers' representatives before the starting date of beet deliveries is fixed;
 - (g) the payment of premiums to sellers for early or late deliveries;
 - (h) details of:
 - (i) the part of the pulp referred to in Point IX(1)(b),
 - (ii) the costs referred to in Point IX(1)(c),
 - (iii) the compensation referred to in Point IX(1)(d);

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- (i) the removal of pulp by the seller;
- (j) without prejudice to Article 49(1) of Regulation (EC) No 1234/2007, rules on how any difference between the reference price and the actual selling price of the sugar is to be allocated between the manufacturer and sellers.

POINT XIII

Where there is no set agreement within the trade as to how the quantities of beet intended for the manufacture of sugar within the quota limits which the manufacturer offers to buy before sowing should be allocated among the sellers, the Member State concerned may itself lay down rules for such allocation.

Those rules may also grant to traditional sellers of beet to cooperatives delivery rights other than those which they would enjoy if they belonged to such cooperatives.