

COMMISSION REGULATION (EC) No 707/2008

of 24 July 2008

amending Regulation (EC) No 952/2006 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,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)⁽²⁾, in particular Article 50(1), in conjunction with Article 4 thereof,

Whereas:

(1) It may occur that white sugar produced by a given undertaking during a given marketing year is further processed into white sugar with specific requirements. Pursuant to Article 3 of Commission Regulation (EC) No 952/2006⁽³⁾, sugar production is expressed in the total quantity of white sugar produced by a given undertaking in a marketing year. In order to avoid double counting, it is necessary to exclude from that production white sugar resulting from further processing of white sugar.

(2) Article 3(3) of Regulation (EC) No 952/2006 provides for two methods to determine the sugar content of syrups depending on their status of intermediate or non-intermediate syrups. Considering that one of the methods is obsolete, it is appropriate to simplify by referring only to the other method based on the extractable sugar content. However in the specific case of syrups from invert sugar, it is necessary to refer to the

High Performance Liquid Chromatography method which is the only one possible from a technical point of view. Finally, to reflect technical progress, it is appropriate to mention only the refractometric method to determine the dry matter content. The modifications should apply from 1 October 2008 in order to ensure that legitimate expectations of sugar producers are respected.

(3) Article 6(3) of Regulation (EC) No 952/2006 defines the production of undertakings for the purposes of the common organisation of the markets in the sugar sector, in the particular case where one undertaking outsources production to another. That outsourced production is deemed to be the production of the principal under certain conditions, including the case where the total sugar production of the processor and the principal is more than the sum of their quotas. That condition was adapted in the light of the preventive withdrawal decided for the marketing year 2006/2007 so that it concerns the sum of the preventive withdrawal thresholds of the processor and the principal instead of the sum of the quotas. Commission Regulation (EC) No 290/2007 of 16 March 2007 establishing, for the 2007/2008 marketing year, the percentage provided for in Article 19 of Regulation (EC) No 318/2006⁽⁴⁾ introduced a preventive withdrawal threshold for the marketing year 2007/2008. Council Regulation (EC) No 1260/2007⁽⁵⁾, which has amended Regulation (EC) No 318/2006, includes a provision for the Commission to decide each year on a possible preventive withdrawal threshold. It is therefore necessary to modify the condition for the outsourcing set out in Article 6(3)(b) of Regulation (EC) No 952/2006 so that it concerns the sum of the preventive withdrawal thresholds of the processor and the principal instead of the sum of quotas.

(4) It is necessary to provide for mutual assistance between Member States to ensure effective controls.

(5) Preferential sugar imports from African, Caribbean and Pacific countries as well as from least developed countries into the Community will gradually increase as from 1 October 2009. It is expected that, by 2012, those imports will account for more than 25 % of Community's sugar consumption. The price information system should therefore include prices and quantities of imported raw and white sugar from those countries, currently available in the database of the Statistical Office of the European Communities

⁽¹⁾ OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Regulation (EC) No 1260/2007, (OJ L 283, 27.10.2007, p. 1).

⁽²⁾ OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008, (OJ L 149, 7.6.2008, p. 61).

⁽³⁾ OJ L 178, 1.7.2006, p. 39. Regulation as amended by Regulation (EC) No 551/2007, (OJ L 131, 23.5.2007, p. 7).

⁽⁴⁾ OJ L 78, 17.3.2007, p. 20. Regulation as amended by Regulation (EC) No 1263/2007 (OJ L 283, 27.10.2007, p. 15).

⁽⁵⁾ OJ L 283, 27.10.2007, p. 1.

- (6) The transmission of sugar prices for the price recording system takes place within a transitional system with quarterly transmissions from approved operators to the Commission. A final and computerised system of transmission has been elaborated. This system will enable a monthly transfer of prices from approved operators to the Member State followed by a transfer of the national price averages from Member States to the Commission. Provisions for the final system should replace the provisions for the transitional system.
- (7) As from 1 October 2008, Regulation (EC) No 1234/2007 will replace Regulation (EC) No 318/2006. Rather than transferring Annex II to Regulation (EC) No 318/2006 concerning the purchase terms for beet to the Single CMO Regulation, Article 50 of Regulation (EC) No 1234/2007 provides that the Commission lays down those rules in implementing rules. The rules currently contained in Annex II to Regulation (EC) No 318/2006 should therefore be added to Regulation (EC) No 952/2006.
- (8) The Community stock at the end of each marketing year is important for the assessment of the sugar market situation in view of possible market management decisions, notably the withdrawal. In certain factories, the processing of sugar for the new marketing year starts in the summer and the new production increases the monthly end-stocks of sugar manufacturers. In order to know the accurate Community stock at the end of the marketing year, it is necessary that approved sugar manufacturers and Member States communicate for the months of July, August and September the part of their end-stocks which results from the production of the following marketing year.
- (9) Article 18(1) of Regulation (EC) No 318/2006 provides that an aid for the private storage of white sugar may be granted to sugar manufacturers who are allocated a quota, on the basis of the market price trend reflected by the recorded market prices. In order to implement the aid scheme quickly and when required, detailed rules for the application of the private storage scheme in the marketing year 2007/2008 should be added to Regulation (EC) No 952/2006.
- (10) The aid for the private storage of white sugar should be determined by a tendering procedure in order to make the most efficient possible use of the resources available and to increase transparency and competition among manufacturers.
- (11) The mandatory storage period is limited to 31 October 2008. Therefore tenders should not be lodged after 31 July 2008 to avoid an aid for a storage period shorter than three months which is considered insufficient to have an effect on the market prices.
- (12) A tendering procedure should be provided when average Community prices for white sugar are below the reference price and are likely to remain at that level. It is appropriate to determine a threshold for market price below which a private storage aid is considered to become necessary. The threshold for the average Community price should be set at 85 % of the reference price.
- (13) The restructuring process of the sugar industry in the Community has created regional differentiation with surplus regions (either due to local production or to imports) and deficit regions. The surplus regions are expected to be subject to downward pressure on prices at producers' level due to the excess of the local supply over the local demand. By contrast, the deficit regions are expected to enjoy firmer prices at producers' level due to the scarcity of the local supply compared to local demand. The average Community price will not fully reflect the price drop in certain Member States. It is therefore necessary to provide for an opening of the tendering procedure limited to the Member States where the national average prices fall below 80 % of the reference price.
- (14) It is necessary to specify the requirements for the white sugar eligible to private storage aid.
- (15) Tenders should contain all the information necessary to assess them, and communications between Member States and the Commission should be provided for.
- (16) On the basis of the tenders received, a maximum aid may be fixed. However situations may arise in which none of the tenders received may be accepted.
- (17) The information needed to establish the contract of storage should be specified as well as the starting and ending dates of the contractual storage period and the contracting obligations of the sugar manufacturer.
- (18) A security should ensure that the quantities offered and possibly accepted are stored pursuant to the conditions set out in the present Regulation. Therefore, provisions should be adopted for the release and the forfeiting of the security lodged in accordance with Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽¹⁾.

⁽¹⁾ OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 1913/2006 (OJ L 365, 21.12.2006, p. 52).

- (19) In the light of the evolution of the market situation for the ongoing marketing year and of the forecasts for the following marketing year, the Commission may give the possibility to the contracting parties to dispose of the sugar under contracts before the end of the contractual storage period.
- (20) In order to ensure that the scheme is properly administered, it is necessary to indicate the conditions in which an advance payment may be granted, the adjustment of the aid in cases where the contractual quantity is not entirely respected, the checks of compliance with entitlement to the aid, the possible sanctions and the information to be notified to the Commission by the Member States.
- (21) The allocation of the maximum quantity of 600 000 tonnes for intervention buying fixed in Article 18(2) of Regulation (EC) No 318/2006 should be adapted for the marketing year 2007/2008 to take into account changes in quotas per Member State as well as the accession of Bulgaria and Romania.
- (22) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for sugar and the Management Committee for the Common Organisation of Agricultural Markets,
- (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;'
- (ii) point (e) is replaced by the following:
- '(e) quantities of white or raw sugar processed into white sugar during the marketing year in question by the undertaking which produced them;'
- (b) in paragraph 3, points (d) and (e) are replaced by the following:
- '(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;'
- (c) paragraph 5 is replaced by the following:

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 952/2006 is amended as follows:

1. Article 1 is replaced by the following:

'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;'

2. Article 3 is amended as follows:

- (a) paragraph 2 is amended as follows:

- (i) points (a) and (b) are replaced by the following:

'(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;

'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;'

- (d) the following paragraphs are added:

'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;'

3. in Article 6(3), point (b) is replaced by the following:

'(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 (*);

(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 (**);

(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.

(*) OJ L 89, 28.3.2006, p. 11.

(**) OJ L 78, 17.3.2007, p. 20.

4. in Article 10, the following paragraph is added:

‘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.’;

5. after Article 14, the following Article 14a is inserted:

‘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 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 (*) and from least developed countries as listed in Column D of Annex I to Council Regulation (EC) No 980/2005 (**) based on customs declarations and data available in the database of the Statistical Office of the European Communities.

(*) OJ L 348, 31.12.2007, p. 1.

(**) OJ L 169, 30.6.2005, p. 1.’;

6. after Article 15, the following Article 15a is inserted:

‘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).

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.’;

7. after Article 16, the following Article 16a is inserted:

‘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.’;

8. in Article 21, paragraph 1 is replaced by the following:

‘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.;

9. Article 23 is amended as follows:

(a) in paragraph 3, 'Annex' is replaced by 'Annex I';

(b) in the first and second subparagraphs of paragraph 4, 'Annex' is replaced by 'Annex I';

10. after Article 57, the following Chapter VIa is inserted:

'CHAPTER VIa

PRIVATE STORAGE FOR THE MARKETING YEAR 2007/2008

Article 57a

Tendering procedure

In order to determine the aid to be granted for carrying out contracts for the private storage of white sugar, the Commission may, in accordance with the procedure laid down in Article 39(2) of Regulation (EC) No 318/2006, open a tendering procedure for a limited period by Commission Regulation, hereinafter referred to as "Regulation opening a tendering procedure".

Article 57b

Opening of the tendering procedure

1. The Regulation opening a tendering procedure may be adopted until 31 July 2008.

2. The opening of the tendering procedure may be decided for the sugar stored or to be stored where the following conditions are met:

(a) the average Community price for white sugar recorded within the price reporting system is below 85 % of the reference price; and

(b) the recorded average prices for white sugar are likely to remain at or below that level on the basis of the market situation, account being taken of expected effects of market management mechanism and notably the withdrawal.

3. The opening of the tendering procedure may be limited to sugar stored or to be stored by sugar manufacturers approved in a Member State where the following conditions are met:

(a) the average Community price for white sugar recorded within the price reporting system is below the reference price; and

(b) in the Member State concerned, the average price for white sugar recorded within the price reporting system is below 80 % of the reference price.

4. The Regulation opening the tendering procedure shall contain the following information:

(a) the period covered by the tender (tendering period) and the different sub-periods when the tenders can be lodged;

(b) the opening and closing time between which tenders may be lodged;

(c) in the case where paragraph 3 applies, the Member States where sugar is stored or will be stored;

(d) the global quantity, possibly per Member State if paragraph 3 applies, covered by the tendering procedure, if applicable;

(e) the storage period in compliance with Article 57j;

(f) the minimum quantity each tender must provide for;

(g) the amount of the security per unit;

(h) the competent authority of Member States to which tenders are to be sent.

5. Invitations to tender for a limited period may be closed before the end of the tendering period in accordance with the procedure laid down in Article 39(2) of Regulation (EC) No 318/2006.

Article 57c

Sugar requirements

Sugar for which a tender is presented shall be:

- (a) white sugar in crystal form in bulk and/or in big bags (800 kg or more) and/or in 50 kg bags;
- (b) produced within a quota during the marketing year in which the tender is made with the exclusion of white sugar withdrawn, carried forward or stored in public intervention;
- (c) of sound and fair marketable quality, free-flowing, with a moisture content not exceeding 0,06 %.

Article 57d

Submission of tenders

1. Tenders shall be lodged by approved sugar manufacturers referred to in point (a) of Article 7(1), established and registered for VAT purposes in the Community.

2. Each tender shall be lodged to the competent authority of the Member State where the storage of the sugar will take place. Where the opening of the tendering procedure is limited to one or several Member States in accordance with Article 57b(3), tenders shall only be lodged in those Member States.

3. Tenders may be lodged by electronic means, using the method made available to the operators by the Member State concerned. The competent authorities of the Member States may require that electronic tenders be accompanied by an advance electronic signature within the meaning of Article 2, point (2) of Directive 1999/93/EC of the European Parliament and of the Council (*). In all other cases, the competent authorities shall require an electronic signature offering equivalent assurances with regard to the functionalities attributed to a signature by applying the same rules and conditions as those defined in the Commission's provisions on electronic and digitised documents, set out by Commission Decision No 2004/563/EC, Euratom (**), and in its implementing rules.

4. A tender shall be valid if the following conditions are met:

- (a) it indicates a reference to the Regulation opening the tendering procedure and the expiry date for the sub-period of submission of the tenders;
- (b) it indicates the identification data of the tenderer: name, address and the VAT registration number;
- (c) it indicates the quantity covered by the tender;
- (d) it indicates the amount of aid offered per day and per tonne in euros and cents;
- (e) the tenderer has lodged a security before the end of the submission sub-period, in accordance with the provisions of Title III of Regulation (EEC) No 2220/85, and has provided proof thereof within the same period;
- (f) it does not include any conditions introduced by the tenderer other than those mentioned in this Regulation and in the Regulation opening the tendering procedure;
- (g) it is presented in the official language, or one of the official languages of the Member State in which the tender is lodged.

5. Tenders shall not be withdrawn or amended after their submission.

6. The approved sugar manufacturer who lodges a tender is deemed to be aware of the provisions applicable under the tendering procedure and to have accepted them.

Article 57e

Examination of tenders

1. The competent authorities of the Member States shall examine tenders based on the elements mentioned in Article 57d(4). They shall decide on the validity of tenders.

2. Persons authorised to receive and examine the tenders shall be under an obligation not to disclose any particulars relating thereto to any unauthorised person.

3. In the case of an invalid tender, the competent authorities of the Member States shall inform the tenderer thereof.

Article 57f

Notification of the tenders to the Commission

1. All valid tenders shall be notified to the Commission by the competent authorities of the Member States.

2. The notifications shall not contain the data referred to in Article 57d(4)(b).

3. The notifications shall be made by electronic means, using the method indicated to the Member States by the Commission, within a specific period fixed by the Commission Regulation opening the tendering procedure.

The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States.

4. Nil returns shall be notified to the Commission by the Member States within the deadline referred to in paragraph 3.

Article 57g

Decision on the basis of the tenders

1. On the basis of the tenders notified in accordance with Article 57f(3), the Commission shall decide in accordance with the procedure laid down in Article 39(2) of Regulation (EC) No 318/2006:

- (a) not to fix a maximum amount of the aid; or
- (b) to fix a maximum amount of the aid.

2. In the case of tenders submitted at the level of the maximum aid, if Article 57b(4)(d) is applicable, a coefficient applicable to awarding the quantities tendered shall be fixed by the Commission.

By way of derogation from Article 57d(5), the tenderer to which such a coefficient applies may decide to withdraw its tender.

3. The Decision on the private storage aid shall be published in the *Official Journal of the European Union*.

Article 57h

Individual decisions on tenders

1. Where a maximum amount of the aid has been fixed in accordance with Article 57g(1)(b), the competent authorities of the Member States shall accept tenders notified in accordance with Article 57f which are equal to or lower than the maximum amount without prejudice to Article 57g(2). All other tenders shall be rejected.

2. Where no maximum amount has been fixed, all tenders shall be rejected.

3. The competent authorities of the Member States shall adopt decisions referred to in paragraphs 1 and 2 after the publication of Commission's Decision on aid referred to in Article 57g(1) and notify to tenderers of the outcome of their participation within a deadline of three working days after the publication.

4. The rights and obligations of the successful tenderer shall not be transferable.

Article 57i

Information related to the place of storage

Within five working days after the reception of the notification from the Member State, the successful tenderer shall send to the competent authority of the Member State:

- (a) the address of the storage place or places and for each storage place the precise location of the silos or lots with the corresponding quantities;
- (b) one of the following:
 - (i) a confirmation that the quantities covered by the tender are already in the storage place in compliance with the conditions referred to in Article 57k(c); or
 - (ii) the date of entry into store of each of the lots which are not yet in place and the necessary time framework for placing the contractual quantity in compliance with the conditions referred to in Article 57k(c). The successful tenderer shall indicate for each lot entering the place of storage, the quantity and the precise location.

Article 57j

Specification of the contracts and storage period

1. After the complete transmission of information referred in to Article 57i, the competent authority of the Member State shall notify the successful tenderer that all the necessary information has been provided and that from that moment on a contract is deemed to have been concluded.

2. The contract shall include the provisions of the present Chapter, of the Regulation opening the tendering procedure, of the tender and of the information mentioned in Article 57i.

3. The date of conclusion of the contract shall be that on which the competent authority of the Member State notifies to the contracting party in accordance with paragraph 1.

4. For the sugar which was already placed into storage, the contractual storage period shall start on the day following the date of conclusion of the contract. In the case of sugar which is not yet stored, the contractual storage period shall start on the day following that on which the entire contractual quantity has been placed into storage.

5. The last day of the contractual storage period shall be 31 October 2008, subject to Article 57m.

Article 57k

Obligations on the contracting party

Contracts shall impose at least the following obligations on the contracting party:

- (a) to place and keep the contractual quantity in storage during the contractual storage period, at his own risk and expense, in conditions ensuring the maintenance of the sugar requirements referred to in Article 57c, without substituting the stored products or transferring them to another storage place; however, in exceptional cases and on duly motivated request, the competent authority may authorise a relocation of the stored products;
- (b) to retain the weighing-in documents established at the time of entry into the storage place;
- (c) to make the products stored easily and individually identifiable. Each unit individually stored shall be marked so that the contract number, the product and the weight are shown;
- (d) to allow the competent authority to check at any time that all the obligations laid down in the contract are being observed.

Article 57l

Securities

1. The security lodged in accordance with Article 57d(4)(e) within the meaning of Article 20(2) of Regulation (EEC) No 2220/85 shall ensure in particular:

- (a) not to withdraw a tender;
- (b) transmit the information referred to in Article 57i for the conclusion of the contract;

(c) to keep in storage the contractual quantity for the storage period under the conditions referred to in Article 57k.

2. Securities shall be released immediately where tenders are invalid, are not successful or are withdrawn in accordance with Article 57g(2).

3. Securities shall be released in respect of quantities for which the obligations have been fulfilled in accordance with 57o(2).

Article 57m

Shortening the term of contracts

On the basis of developments on the sugar market, the Commission, may, in accordance with the procedure laid down in Article 39(2) of Regulation (EC) No 318/2006, allow the contracting party to dispose of the sugar under contract before the end of the contractual storage period.

Article 57n

Advance payment

After 60 days of storage, a single advance payment of the aid may be made, at the contracting party's request, provided that he lodges a security equal to the advance payment plus 10 %. In this case, the security referred to in Article 57l shall be released.

The advance payment shall not exceed the amount of aid corresponding to a storage period of three months. The security referred to in the first subparagraph shall be released as soon as the balance of the aid has been paid.

Article 57o

Payment of aid

1. The aid, or where an advance has been granted under Article 57n, the balance of the aid shall be paid on the basis of an application for payment and only when the obligations of the contract have been met. Payment of the aid, or the balance of the aid, shall be made following the final check and within 120 days following the day when an application for the payment of aid has been lodged.

2. The requirements relating to the contractual quantity shall be regarded as being met only where the quantity is verified as specified in Article 57p(5). However Member States may decide that the requirements relating to the contractual quantity are regarded as being met on the basis of a margin of tolerance which shall not exceed 1 % of the contractual quantity.

If the quantity actually stored during the contractual storage period is less than the contractual quantity, account being taken of the possible margin of tolerance, but not less than 80 % of the contractual quantity, the aid for the quantity actually stored shall be reduced by half.

If the quantity actually stored during the contractual storage period is less than 80 % of the contracted quantity, no aid shall be paid.

Article 57p

Check

1. Within 30 days of the date of conclusion of the contract, the competent authority in the Member State shall carry out an initial check and in particular:

- (a) identify the silos or lots of storage;
- (b) verify the weight of the stored products on the basis of the weighing-in documents and the stocks and financial accounts and where possible with a physical check by sample weighting. The sample concerned shall be representative and shall correspond to at least 5 % of the total quantity;
- (c) take a sample representative of the contractual quantity which shall be analysed as quickly as possible to ensure that the sugar corresponds to the requirements referred to in Article 57c.

2. If the analysis confirms that the sugar does not correspond to the requirements referred to in Article 57c, the entire quantity covered by the contract shall be rejected and the security referred to in Article 57d(4)(e) shall be forfeit.

3. Where the Member State can offer duly justified reasons, the time limit laid down in the first subparagraph of paragraph 1 may be extended by 15 days.

4. The authority charged with carrying out the checks shall:

- (a) either seal the products by contract, storage lot or a smaller quantity at the time of the initial check;
- (b) or make an unannounced check to ensure that the contractual quantity is present in the storage place. The check shall be based on stocks and financial accounts and where possible with a physical check by sample weighting. The sample concerned shall be representative and shall correspond to at least 5 % of the total quantity.

5. During the final month of the storage period, the authority charged with the checking shall undertake a final check to ensure that the contractual quantity is present in the storage place by means of an unannounced check in compliance with paragraph 4(b).

6. In the case of significant irregularities affecting at least 5 % of the quantities of products covered by a single contract subject to the check, the verification shall be extended to a larger sample to be determined by the authority responsible for the checks.

Article 57q

Reports on checks

A report shall be drawn up on the checks carried out pursuant to Article 57p, specifying:

- (a) the date and time of commencement of the check;
- (b) its duration;
- (c) the operations carried out providing, in particular, the details of and references to the documents and products examined;
- (d) the findings and conclusions.

The report shall be signed by the inspector responsible and countersigned by the contracting party or, as the case may be, the person responsible for the storage, and shall be included in the payment file.

Article 57r

Sanctions

1. Where it is found that a document presented by a tenderer for the attribution of the rights deriving from this Chapter provides for incorrect information and where the incorrect information concerned is decisive for the attribution of that right, the competent authorities of the Member State shall exclude the tenderer from participating in the tendering procedure for granting aid for the private storage of sugar, for a period of one year from the date when a final administrative decision establishing the irregularity has been made.

2. Paragraph 1 shall not apply if the applicant proves, to the satisfaction of the competent authorities, that the situation referred to in paragraph 1 is not due to his gross negligence or that it is due to *force majeure* or to obvious error.

3. Member States shall inform the Commission of the cases of application of paragraph 1. The Commission shall keep the information available to the other Member States.

Article 57s

Communication to the Commission

Member States shall notify the Commission of the quantities of sugar for which tenders have been accepted in accordance with Article 57h(1) and:

- (a) in respect which no contract has subsequently been concluded; or
- (b) in respect of which contracts have subsequently been concluded but which had to be cancelled due to non-compliance with contractual obligations;
- (c) which are released from contractual obligations following a Commission Decision in accordance with Article 57m.

The notifications referred to in the first subparagraph shall specify the sub-period of the tendering procedure concerned and shall take place at the earliest opportunity and not later than the 10th day of the month following the month concerned.

The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States.

(*) OJ L 13, 19.1.2000, p. 12.

(**) OJ L 251, 27.7.2004, p. 9.

11. The Annex becomes Annex I and is replaced by the text in Annex I to this Regulation.

12. The text in Annex II to this Regulation is added as Annex II.

Article 2

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

Points 2(b) to (d) and points 7 and 12 of Article 1 shall apply as from 1 October 2008.

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

Done at Brussels, 24 July 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

ANNEX I

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

(tonnes)

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

ANNEX II

‘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.

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;
 - (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);
 - (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.'
