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# REGULATION (EEC) No 442/70 OF THE COMMISSION

## of 9 March 1970

## laying down detailed rules for the application of the system of offsetting storage costs for sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 1009/67/EEC[1] of 18 December 1967 on the common organisation of the market in sugar, as last amended by Regulation (EEC) No 2485/69,[2] and in particular Article 8 (3) thereof;

Whereas Council Regulation (EEC) No 750/68[3] of 18 June 1968 laying down general rules for offsetting storage costs for sugar, as last amended by Regulation (EEC) No 1394/69,[4] provides for the reimbursement of storage costs not only to every sugar manufacturer to whom a basic quota has been allocated and to every sugar refiner, but also to every manufacturer of powdered, lump or candy sugar or specialised sugar trader who has been approved by the Member State on whose territory he is established;

Whereas the extension of reimbursement to include these trades makes it neccessary to define the concepts of a manufacturer of powdered, lump or candy sugar and a specialised sugar trader; whereas, for this purpose, it is necessary to lay down certain objective criteria to be used for assessment, in particular as regards substantial participation in storing;

Whereas, in order not to hinder possible development of these activities, any applicant likely to fulfil the required conditions in the future should be approved;

Whereas, in order to avoid abuse, approval must be withdrawn, where appropriate retroactively, when the conditions for granting that approval are not fulfilled and when it cannot be excepted that they will be fulfilled in the future;

Whereas each Member State has its own particular situation and should therefore be given additional discretion to impose further conditions and, on the basis of these, to withdraw its approval;

Whereas, pursuant to Regulation (EEC) No 750/68, reimbursements are granted only for quantities of white and raw sugar produced within the maximum quota and stored in a warehouse approved by the Member State on whose territory the warehouse is situated; whereas, therefore, it is necessary to limit approval in relation to the facilities for supervision by Member States and to compel those entitled to reimbursements to facilitate such supervision;

Whereas, inclusion in the system of offsetting storage costs of certain syrups within the meaning of Article 8 of Regulation No 1009/67/EEC, which must later be processed under supervision into sugar in the solid state, necessitates such syrups being stored in special reservoirs;

Whereas, in order not to favour manufacturers producing part of their sugar from syrup rather than those who produce it only from beet which has been stored sometimes for a period of up to one month, reimbursement should not be granted for such syrups for the month of production;

Whereas the reimbursements and the levies for syrups should be calculated according to the extractable sugar content in order to avoid reimbursement for the storing of the molasses contained in those syrups; whereas the extractable sugar content is determined according to the standard method fixed uniformly for the Community in Article 1 (4) of Commission Regulation (EEC) No 142/69[5] of 25 January 1969

[1] OJ No 308, 18.12.1967, p. 1.
[2] OJ No L 314, 15.12.1969, p. 6.
[3] OJ No L 137, 21.6.1968, p. 4.
[4] OJ No L 179, 21.7.1969, p. 3.
[5] OJ No L 20, 27.1.1969, p. 1.

laying down certain detailed rules for the application of the quota system for sugar;

Whereas it is not the object of the system of offsetting storage costs to offset the costs of packing the sugar; whereas, therefore, it is the net weight of quantities stored or disposed of that should be taken into account with regard to reimbursements and levies;

Whereas the method of calculating reimbursements and levies must not, in the case of raw sugar, give rise to distortion of competition between that sugar and white sugar; whereas, to this end, raw sugar should be expressed in terms of white sugar, taking account of the yield formula laid down in Council Regulation (EEC) No 431/68[1] of 9 April 1968 laying down the standard quality for raw sugar and fixing the Community frontier crossing point for calculating c.i.f. prices for sugar;

Whereas the second subparagraph of Article 3 (1) of Regulation (EEC) No 750/68 provides that, in special circumstances, special provisions may be adopted to deal with sugar in transit at the beginning of a month; whereas such special circumstances prevail in respect of raw sugar produced in French overseas departments, in that practically none of the production is consumed on the spot; whereas the long distance between these departments and Europe means that transport takes several weeks; whereas, therefore, it is unavoidable that such sugar, as a general rule, should be in transit on the first day of a calendar month; whereas, in view of the minimum time taken up in transport, reimbursement should be limited to less than one month;

Whereas, under Article 5 of Regulation (EEC) No 750/68, financing costs are to be taken into account for fixing the amount of reimbursement; whereas therefore it is appropriate not to grant the reimbursement of storage costs when the refund in respect of the sugar has been financed in advance pursuant to Council Regulation (EEC) No 441/69[2] of 4 March 1969 laying down further general rules on granting export refunds for products coming under a common price system, exported in the natural state or in the form of goods not listed in Annex II to the Treaty, as last amended by Regulation (EEC) No 1905/69[3];

Whereas claimants should be able to collect reimbursements as soon as possible; whereas, therefore, rapid payment of reimbursements should be envisaged; whereas in view of administrative practices in force in Member States, a maximum time limit of three months should be taken as a basis;

Whereas the reimbursement of storage costs applies only to the quantities of white sugar, of raw sugar and of syrups within the meaning of Article 8 of Regulation No 1009/67/EEC produced within the limit of the maximum quota; whereas, however, in a case where the provisions of Article 30 of Regulation No 1009/67/EEC are not applicable it is only known towards the end of the sugar marketing season whether any quantities of sugar have been produced in excess of the maximum quota; whereas, for that reason, the manufacturers have been able, meanwhile, to benefit from a reimbursement to which they were not entitled; whereas, therefore, measures should be taken for the repayment of such reimbursement for the quantities in question;

Whereas Article 8 of Regulation (EEC) No 750/68 lays down that the levy shall be due on a date within the period between the date on which the sugar in question is disposed of and the end of the month following that of disposal; whereas the concept 'disposal' should be more clearly defined;

Whereas a manufacturer may be required to pay the levy while at the same time being entitled to collect the reimbursement; whereas consequently manufacturers should have the right to set off levies and reimbursements;

Whereas, to enable Member States to exercise effective supervision every claimant must communicate the necessary information to the Member State;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Approval as referred to in Article 2 (1) of Regulation (EEC) No 750/68 shall be granted by Member States to any manufacturer of powdered, lump or candy sugar or any specialised sugar trader within the meaning of this Regulation.

2. For the purposes of this Regulation:

(a) 'a manufacturer of powdered, lump or candy sugar' means a person:

— who is engaged in making from sugar in the unaltered state only sugars falling within heading No 17.01 or 17.02 of the Common

[1] OJ No L 89, 10.4.1968, p. 3.
[2] OJ No L 59, 10.3.1969, p. 1.
[3] OJ No L 247, 1.10.1969, p. 1.

Customs Tariff which have different physical characteristics from the sugar used in the process; and

— whose stocks during a marketing year, recorded at the end of each month in approved warehouses, are on average not less than 200 metric tons;

(b) 'a specialised sugar trader' means a person:

— one of whose main activities consists of wholesale dealing in sugar and who purchases a minimum quantity of 10 000 metric tons of Community sugar in each marketing year;

— who does not carry on a retail business in sugar; and

— whose stocks during a marketing year, recorded at the end of each month in approved warehouses, are on average not less than 500 metric tons.

Member States may impose additional conditions for granting the approval.

3. Approval shall be granted to any applicant who is likely to fulfil in the future the conditions set out in paragraph 2.

4. From the end of the marketing year 1970/71 onwards, except in cases of *force majeure,* approval shall be withdrawn with retroactive effect for the last marketing year;

(a) from manufacturers of powdered, lump or candy sugar whose stocks, recorded at the end of each month in approved warehouses, are on average less than 160 metric tons for such last marketing year;

(b) from specialised sugar traders whose stocks recorded at the end of each month in approved warehouses, are on average less than 400 metric tons, for such last marketing year.

Except where the conditions referred to in paragraph 3 are fulfilled, approval shall be withdrawn when, for the last sugar season, the conditions referred to in the first subparagraph of paragraph 2 have not been fulfilled. Approval may be withdrawn whenever the conditions set out in the second subparagraph of paragraph 2 are not fulfilled.

*Article 2*

Approval as referred to in Article 3 (1) of Regulation (EEC) No 750/68 shall only be granted by Member States to warehouses where the necessary supervision can be carried out and on condition that the owner of the sugar or syrup ensures that such supervision is always possible.

*Article 3*

The reimbursement and the levy shall be fixed per 100 kg of white sugar. They shall be uniform for each unit of weight whatever the quality of the white sugar in question.

*Article 4*

1. To calculate the reimbursement for raw cane sugar, this sugar shall be converted into white sugar by multiplying the quantity of raw sugar by the coefficient 0·98.

To calculate the reimbursement for raw beet sugar, this sugar shall be converted into white sugar according to one of the following methods at the choice of the Member State concerned:

(a) by multiplying the quantity of raw sugar by the coefficient 0·92; or

(b) on the basis of its yield ascertained according to the provisions of Article 1 of Regulation (EEC) No 431/68.

2. To calculate the contribution for raw sugar, this sugar shall be converted into white sugar on the basis of its yield ascertained according to the provisions of Article 1 of Regulation (EEC) No 431/68.

3. To calculate the reimbursement and the levy, the net weight of the quantity of sugar shall be taken as a basis.

*Article 5*

1. Reimbursement of storage costs shall be granted in respect of cane sugar from the French overseas departments which is in transit at 0.00 hours on the first day of a calendar month and which, on arrival, is stored in an approved warehouse. Reimbursement shall be granted only to claimants coming within Article 2 (1) of Regulation (EEC) No 750/68 who were the owners of the sugar at the time of storage as referred to in the preceding paragraph.

2. However, for the sugar referred to in paragraph 1, reimbursement shall be limited to a period equal to three quarters of one month.

*Article 6*

1. The reimbursement and the levy for syrups within the meaning of Article 8 of Regulation No 1009/67/EEC shall be calculated on the basis of their extractable sugar content.

The extractable sugar content shall be determined according to the provisions of Article 1 (4) of Regulation (EEC) No 142/69.

2. For reimbursement for syrup, the quantity to be taken into consideration for one month shall equal the arithmetical average of the quantities held in store at the beginning and at the end of the month in question, the latter quantity having the quantity produced during the month in question deducted from it. If the quantity produced during the month in question is greater than the amount held in store at the end of that month, the latter quantity shall be considered as being equal to zero.

3. For the purposes of Article 8 of Regulation No 1009/67/EEC, 'certain syrups produced prior to the crystallising stage' means syrups falling within heading No 17.02 of the Common Customs Tariff which are later processed into sugar in the solid state under customs control or an administrative control providing equivalent security and which are stored in special reservoirs separated from the sugar manufacturing plant.

*Article 7*

Reimbursement shall not be granted for products subject to one of the systems referred to in Articles 2 and 3 of Regulation (EEC) No 441/69.

*Article 8*

Where a Member State decides that the provisions of Article 30 of Regulation No 1009/67/EEC shall not apply to its territory, it shall demand repayment of any reimbursement made for the quantities of sugar which, by reason of its decision, are found to have been produced in excess of the maximum quota.

*Article 9*

1. Reimbursement of storage costs shall be made at the latest at the end of the third month following that for which the reimbursement is due.

2. For calculating sums relating to the levy and as long as the latter is not already due, 'disposal', for the purposes of Article 8 of Regulation (EEC) No 750/68, means:

(a) exit of the sugar from the factory in which it was made, where the sugar does not enter an approved warehouse of the manufacturer of the sugar;

(b) exit from the approved warehouse of the sugar manufacturer; however, transfer of the sugar from one approved warehouse to another approved warehouse of the same manufacturer shall not be considered as disposal;

(c) transfer of property rights to the sugar to another claimant for reimbursement of storage costs without exit of the sugar from the approved warehouse of the manufacturer;

(d) processing by the manufacturer of the sugar and syrups into products other than those falling within heading No 17.01 of the Common Customs Tariff;

(e) denaturing of the sugar;

(f) exit, as a result of transfer of ownership, of syrups from the reservoirs of the manufacturer referred to in Article 6;

(g) the moment at which the sugar or syrups become subject to one of the systems referred to in Article 2 or 3 of Regulation (EEC) No 441/69.

3. Each manufacturer may set off his reimbursements against his levies.

*Article 10*

1. All claimants for reimbursement shall communicate at the latest on the fifteenth day of each month to the Member State in question:

(a) the total of the net quantities of sugar and syrup qualifying for the reimbursement held in his store at midnight on the last day of the month preceding that of the communication;

(b) a breakdown of the quantities referred to in (a) among the various warehouses in which his sugar and syrups are stored.

2. Each manufacturer shall communicate, together with the information referred to in paragraph 1, and broken down according to the provisions of Article 9 (2), the quantities disposed of during the month preceding that of the communication and produced within his maximum quota.

3. Member States may require additional information to be communicated to them.

*Article 11*

Commission Regulation (EEC) No 774/68[1] of 24 June 1968 establishing detailed rules of application for offsetting storage costs for sugar, as last amended by Regulation (EEC) No 2565/69,[2] is hereby repealed.

*Article 12*

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

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

Done at Brussels, 9 March 1970.

*For the Commission*

*The President*

**Jean REY**

[1] OJ No L 142, 25.6.1968, p. 6.
[2] OJ No L 321, 23.12.1969, p. 17.