COMMISSION REGULATION (EEC) No 1998/78

of 18 August 1978

laying down detailed rules for the offsetting of 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 3330/74/EEC of 19 December 1974 on the common organization of the market in sugar (1), as last amended by Regulation (EEC) No 1396/78 (2), and in particular Article 8 (3) thereof,

Whereas Council Regulation (EEC) No 1358/77 of 20 June 1977 laying down general rules for offsetting storage costs for sugar (3), as amended by Regulation (EEC) No 1397/78 (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 specialized sugar trader who has been approved by the Member State on whose territory he is established ; whereas detailed rules were adopted in Commission Regulation (EEC) No 442/70 of 9 March 1970 laying down detailed rules for the application of the system of offsetting storage costs for sugar (5), as last amended by Regulation (EEC) No 1465/77 (6) ; whereas Regulation (EEC) No 442/70 has already been amended several times ; whereas new amendments are needed in particular with regard to the extension of the system provided for in Article 8 of Regulation (EEC) No 3330/74 to syrups obtained directly from sugar in the solid state ; whereas, therefore, in the interests of clarity a new Regulation should be introduced containing the detailed rules for the offsetting of storage costs ;

Whereas the granting of reimbursement to these trades makes it necessary to define the terms 'manufacturer of powdered, lump or candy sugar' and 'specialized 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 provision should be made for recognition by a Member State of the approval given by the other Member States subject to certain conditions ;

Whereas, in order to avoid abuse, approval must be withdrawn, where appropriate retroactively, when the conditions for granting that approval are not fulfilled ;

Whereas, pursuant to Regulation (EEC) No 1358/77, 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 reimbursement to facilitate such supervision ;

Whereas it should be clearly stated that no reimbursement of storage costs may be granted in respect of preferential sugar until the customs formalities on importation have been completed and the sugar stored in an approved warehouse ;

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, at the choice of the Member State concerned, of either the yield formula laid down in Council Regulation (EEC) No 431/68 of 9 April 1968 laying down the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar (7), or a fixed yield formula ;

Whereas inclusion in the system of offsetting storage costs of certain syrups within the meaning of the third indent of the first subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, which must later be processed under supervision into sugar in the solid state, necessitates such syrups being stored in specal containers ; whereas the reimbursements and the levies for these syrups should be calculated, at the choice of the Member State concerned, either according to the actual yield or according to the extractable sugar content ; whereas the extractable

(1) OJ No L 359, 31. 12. 1974, p. 1.
(2) OJ No L 170, 27. 6. 1978, p. 1.
(3) OJ No L 156, 25. 6. 1977, p. 4.
(4) OJ No L 170, 27. 6. 1978, p. 3.
(5) OJ No L 55, 10. 3. 1970, p. 10.
(6) OJ No L 162, 1. 7. 1977, p. 1.
(7) OJ No L 89, 10. 4. 1968, p. 3.

sugar content is determined according to the method fixed uniformly for the Community in Article 1 (5) of Commission Regulation (EEC) No 700/73 of 12 March 1973 laying down certain detailed rules for the application of the quota system for sugar (1), as amended by Regulation (EEC) No 1573/76 (2);

Whereas, in the case of syrups obtained by dissolving sugar in the solid state, including those directly obtained from raw sugar, provision should be made for the use of a formula for calculating the sucrose content;

Whereas it should be specified that the consequence of flavouring, colouring or certain mixing operations is that no reimbursement of storage costs will be granted in respect of the resulting product;

Whereas Article 3 (2) of Regulation (EEC) No 1358/77 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 the 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 reimbursement should accordingly be limited to less than one month; whereas in the case of sugar transported from one approved warehouse to another within the same Member State, a system should be provided for which is analogous *mutatis mutandis* to that applied to cane sugar from the French overseas departments;

Whereas, as regards the levies, it should be specified when these are incurred; whereas, since sugar of different origins may be stored on the same premises, strict rules on controls and accounting should be laid down; whereas detailed rules should also be provided for the quantities to be taken into consideration;

Whereas, to enable the Member State to carry out the relevant controls and to make up the individual accounts in good time, each person concerned should be obliged to communicate the necessary information to the Member State;

Whereas claimants should be able to collect reimbursements as soon as possible; whereas, therefore, rapid payment of reimbursements must be envisaged; whereas to avoid different treatment being accorded in the various Member States the dates on which reimbursement is to be effected must be fixed; whereas, for administrative and economic reasons, the same dates should be specified for the payment of the storage costs levy;

Whereas for economic reasons the term 'approved warehouse of the manufacturer' should be extended to cover rented warehouses, provided these are approved by the Member State concerned and subject to prior consent by that Member State, save in cases where the processing contract under which the warehouse is rented has already been approved under Article 3 (2) (a) of Commission Regulation (EEC) No 700/73;

Whereas, under Article 5 of Regulation (EEC) No 1358/77, 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 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 (3), as last amended by Regulation (EEC) No 1181/72 (4);

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 (EEC) No 3330/74 produced within the limit of the maximum quota; whereas, however, in a case where the provisions of Article 30 of that Regulation 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, in the meantime, the manufacturers will have received 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 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. The approval referred to in Article 2 (1) of Regulation (EEC) No 1358/77 shall be granted by Member States to any manufacturer of powdered, lump or candy sugar, or any specialized sugar trader, within the meaning of this Regulation.

Such approval shall be granted by the Member State in which the person concerned is established or has his registered office.

(1) OJ No L 67, 14. 3. 1973, p. 12.
(2) OJ No L 172, 1. 7. 1976, p. 52.
(3) OJ No L 59, 10. 3. 1969, p. 1.
(4) OJ No L 130, 7. 6. 1972, p. 15.

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 those sugars which fall within heading No 17.01 or 17.02 of the Common Customs Tariff and which have different physical characteristics from the sugar used in the process, and,

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

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

— one of whose main activities consists of wholesale dealing in sugar and who purchases in each sugar marketing year not less than 10 000 tonnes of sugar made up of Community sugar or preferential sugar, or both, for resale in an unaltered state,

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

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

3. Approval shall be granted to any applicant who, whether or not he has in the past fulfilled the conditions set out in paragraph 2, is likely to fulfil them in the future.

An approval shall be valid from the beginning of the month following that in which it was granted.

4. Where, in respect of the preceding sugar marketing year, the conditions set out in paragraph 2 were not fulfilled, approval shall be withdrawn except where it is clear that the person concerned is likely to fulfil the conditions in respect of the current sugar marketing year.

5. Except in case of *force majeure,* the withdrawal of approval shall take effect from the beginning of the sugar marketing year in which :

— in the case of a manufacturer of powdered, lump or candy sugar the average of his stocks in approved warehouses recorded at the end of each month of that marketing year was less than 160 tonnes,

— in the case of a specialized sugar trader the average of his stocks in approved warehouses recorded at the end of each month of that marketing year was less than 400 tonnes.

In such cases the Member State concerned shall demand the repayment by the person concerned of the sums paid to him by way of reimbursements of storage costs during the period in question.

Article 2

1. Any person entitled to the reimbursement of storage costs in a given Member State shall be recognized as such in another Member State on request by him to the competent authorities in that other Member State.

2. In the case referred to in paragraph 1, entitlement to reimbursement of storage costs shall be limited to the months during which the quantity of sugar in respect of which reimbursement may be granted is not less than 150 tonnes per month.

Article 3

1. The approval referred to in Article 3 (1) of Regulation (EEC) No 1358/77 shall be granted by Member States only for warehouses to which the necessary supervision can be given and on condition that the owner of the sugar or syrups ensures that such supervision is always possible.

2. Where, by reason of *force majeure,* sugar or syrups have been transferred from an approved warehouse to a non-approved warehouse, the Member State concerned shall provisionally approve the latter warehouse.

Article 4

In respect of preferential sugar, entitlement to reimbursement of storage costs shall arise only after customs formalities on importation have been completed and the sugar has entered an approved warehouse.

Article 5

The basis for calculating the reimbursement and the levies shall be the net weight of the sugar.

Article 6

The amounts of the reimbursement and the levies for white sugar shall be applicable per 100 kilograms, irrespective of the quality of the sugar in question.

Article 7

In calculating the reimbursement and the levies applicable to raw sugar the latter shall be converted into white sugar equivalent according to one of the following methods at the choice of the Member State concerned :

(a) on the basis of its yield, as determined according to the provisions of Article 1 of Regulation (EEC) No 431/68, or

(b) for raw cane sugar by multiplying the quantity of raw sugar by 0·96, or

(c) for raw beet sugar by multiplying the quantity of raw sugar by 0·92.

The method chosen by the Member States concerned shall remain unchanged during a given sugar marketing year.

Article 8

1. The reimbursement and the levy applicable to the syrups obtained prior to the crystallizing stage, as referred to in the third indent of the first subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, 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 (5) of Regulation (EEC) No 700/73. Alternatively, Member States may determine this content according to the actual yield. The method chosen by the Member State concerned shall remain unchanged during a given sugar marketing year.

2. 'Syrups obtained prior to the crystallizing stage' means those syrups which fall within subheading 17.02 D II of the Common Customs Tariff and are subsequently processed into solid sugar under customs control, or under an administrative control providing equivalent safeguards, and which are stored in special containers separated from the sugar manufacturing plant.

3. The reimbursement for syrups obtained by dissolving crystallized sugar, referred to in the fourth indent of the first subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74 and in the fourth indent of the second subparagraph of that Article, shall be calculated on the basis of their sucrose content. For this purpose the sucrose content, including where appropriate other sugars expressed as sucrose, shall be the total sugar content determined by the application of the Lane and Eynon method (copper reduction method) to the solution inverted according to Clerget-Herzfeld. The total sugar content thus determined shall be expressed as sucrose by multiplying by 0·95.

4. The reimbursement and the levy applicable to the syrups obtained directly from preferential raw sugar, as referred to in the fifth indent of the second subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, shall be calculated according to the method prescribed in paragraph 3.

Article 9

When :

— sugar or syrup is flavoured or coloured,
— syrup is mixed with a product not referred to in Article 8 of Regulation (EEC) No 3330/74,
— sugar is mixed with a product not referred to in the said Article in such a way that the mixture no longer conforms to the definition, as laid down in Article 1 of the said Regulation, of white sugar or raw sugar,

the resulting product shall cease to be eligible for reimbursement.

Article 10

1. Reimbursement of storage costs shall be granted for cane sugar originating in the French overseas departments which is in sea transit at 00.00 hours on the first day of a month and which, on arrival, is stored in an approved warehouse.

Reimbursement shall be granted only to those entitled thereto as listed in Article 2 (1) of Regulation (EEC) No 1358/77 who were the owners of the sugar at the time of the storage referred to in the preceding subparagraph.

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

Article 11

1. Reimbursement of storage costs shall be granted in respect of raw or white sugar which at 00.00 hours on the first day of a month is within a Member State in transit from an approved warehouse, other than transit as referred to in Article 10, and which, on arrival, is stored in another approved warehouse in the same Member State.

2. For purposes of calculating the quantity of sugar qualifying for the reimbursement of storage costs, as referred to in Article 4 (2) of Regulation (EEC) No 1358/77, the sugar referred to in paragraph 1 shall be considered as still stored in the departure warehouse at 24.00 hours on the last day of a month and as already stored in the arrival warehouse at 00.00 hours on the first day of the following month.

Article 12

1. The levy shall be incurred in respect of products as referred to in (a) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74 at the moment of disposal.

For purposes of calculating the amount of the levy, in so far as it has not already been incurred, 'disposal' shall mean :

(a) exit of the sugar from the factory in which it was produced, except in so far as the sugar enters an approved warehouse of the manufacturer thereof situated in the same Member State ;

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

(c) transfer of property rights to the sugar 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) the addition to the sugar or syrups of flavouring or colouring matter, or the mixing of the sugar or the syprus with products other than those referred to in Article 8 of Regulation (EEC) No 3330/74 in such a way that, pursuant to Article 9, the mixture is no longer eligible for the reimbursement of storage costs ;

(f) denaturing of the sugar ;

(g) in the case of the syrups referred to in Article 8 (2), exit from the manufacturer's containers following transfer of ownership ;

(h) the placing of the sugar or the syrups under one of the arrangements referred to in Articles 2 and 3 of Regulation (EEC) No 441/69.

2. In respect of the preferential sugar referred to in (b) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, the levy shall be incurred on the day of importation. The day of importation shall be the day on which customs formalities on importation are completed.

3. In respect of the preferential sugar referred to under (c) of the third subparagraph of Article 8 (1) of Regulation (EEC) No 3330/74, the levy shall be incurred, in so far as it has not already been incurred, at the end of the month during which the sugar is refined.

In respect of preferential sugar imported for refining but subsequently sold in an unaltered state, the levy shall be incurred at the time at which customs formalities on importation were completed.

4. The sale of white or raw sugar to an intervention agency shall not be considered as disposal within the meaning of paragraph 1. In this case the levy shall be incurred by the intervention agency at the time it resells the sugar.

Article 13

1. Every person entitled to reimbursement shall communicate to the Member State concerned, at the latest on the 15th day of each month, the following particulars :

(a) the total quantities, expressed as net weight, of sugar and syrup eligible for reimbursement held in his store at 24.00 hours on the last day of the month preceding that of such communication ;

(b) the quantities referred to in Articles 10 and 11 ;

(c) a breakdown, as between the various warehouses in which his sugar and syrups are stored and between Community sugar and preferential sugar, of the quantities referred to in (a) and (b).

2. If the stock at the end of a month differs from the initial stock in the following month, particulars of the latter shall be communicated separately.

3. Each manufacturer shall communicate, together with the particulars referred to in paragraph 1, particulars of the quantities disposed of during the month preceding that of such communication and produced within his maximum quota.

4. Each importer of preferential sugar disposed of in an unaltered state shall communicate, together with the particulars referred to in paragraph 1, particulars of the quantities of sugar as referred to in Article 12 (2) imported during the month preceding that of such communication.

5. Each refiner of preferential sugar shall communicate, together with the particulars referred to in paragraph 1, particulars of the quantities of sugar as referred to in Article 12 (3) refined during the month preceding that of such communication.

6. Member States may require additional information to be communicated to them and may extend the time limit referred to in paragraph 1 by a maximum of five days.

Article 14

1. Any person entitled to reimbursement who stores at the same time and in the same warehouse sugar eligible for reimbursement together with sugar not so eligible shall provide proof that the former is in fact eligible for reimbursement. The same shall apply *mutatis mutandis* as regards the levy.

In such cases the Member State concerned shall place the sugar in question under customs control or under an administrative control offering equivalent safeguards.

2. Where a manufacturer or a refiner stores at the same time and in the same warehouse both Community sugar and preferential sugar without the possibility of distinguishing between them, then any exit of these sugars shall be regarded as constituted in the same proportions as those of the initial stock.

For purposes of the previous subparagraph, each quantity of Community sugar or of preferential sugar entering the said warehouse during a given month shall be added to the initial quantity of Community sugar or of preferential sugar, as the case may be, in store at the beginning of that month in that warehouse. The ratio between the two initial quantities, as modified by the quantities of each type of sugar entering the warehouse during the month in question, shall be applied to all sugar leaving the warehouse during that month.

Where a manufacturer or a refiner uses several warehouses for the storage referred to in the first subparagraph, the Member States concerned may regard such warehouse as a single warehouse for the purposes of this paragraph.

3. Where a quantity of sugar produced outside the maximum quota is replaced, for the purpose of export, by an equivalent quantity produced within such quota, then, for purposes of the reimbursement, the first quantity shall be regarded as having been produced within the maximum quota as from the day on which the customs formalities on exportation are completed.

Article 15

1. For a given month, and at the latest by the 20th day of the second following month, Member States shall establish in respect of each person entitled to the reimbursement or liable to the levy :

(a) the total amount of the reimbursements to which he is entitled,

and

(b) the total amount of levy incurred.

2. The amounts referred to in paragraph 1 shall be paid between the first and the 20th day of the third month following that in repsect of which entitlement to the reimbursement arose or the levy was incurred.

Article 16

1. Where discrepancies are found between the actual stocks and the stocks recorded for purposes of the reimbursement of storage costs, the amount of the reimbursement shall be adjusted accordingly. In the case of a shortfall such adjustment shall be retrospective, with effect from the preceding 1 November.

In the case of a surplus, the adjustment shall be :

— effective from the month in which the surplus is discovered as regards surpluses discovered between 1 October and 31 January,

— retrospective with effect from the previous 1 February as regards surpluses discovered between 1 February and 30 September.

The dates specified in the preceding subparagraphs shall be deferred by three months in respect of the French departments of Guadeloupe and Martinique.

If, however, it is possible to establish the precise date when the discrepancy in question first arose, then that shall be the date by reference to which the adjustment is made.

2. For purposes of Article 12 (1) the expression 'approved warehouse of the manufacturer' shall also cover a warehouse rented from another manufacturer in which is stored sugar produced by the latter under a contract as referred to in Article 3 (2) of Regulation (EEC) No 700/73. If the rented warehouse is in another Member State, the Member States concerned shall reach agreement on the measures to be taken. Reimbursement shall be made by and the levy paid to the Member State in which the principal is established.

3. Where a manufacturer of a Member State finds it necessary to rent in the same Member State a warehouse owned by another manufacturer, or by a proprietor of industrial storage premises for renting, such a warehouse may, subject to prior consent by the Member State concerned, be treated as the first manufacturer's warehouse for purposes of Article 12 (1).

Article 17

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

Article 18

Where a Member State decides that the provisions of Article 30 of Regulation (EEC) No 3330/74 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 19

Member States shall take all measures necessary for the application of this Regulation and shall in particular establish all the necessary control measures.

Article 20

Regulation (EEC) No 442/70 is hereby repealed.

Article 21

This Regulation shall enter into force on 1 September 1978.

However, its provisions concerning the levies, and the reimbursement of storage costs, in respect of syrups obtained directly from sugar in the solid state, shall apply with effect from 1 July 1978.

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

Done at Brussels, 18 August 1978.

For the Commission

Finn GUNDELACH

Vice-President