COMMISSION REGULATION (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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in the sugar sector [1], and in particular Articles 7(5) and 9(3) thereof,

Whereas:

(1) Article 7(1) of Regulation (EC) No 1260/2001 provides for intervention agencies to buy in certain sugars.

(2) The implementation of Community intervention measures requires sugar to be taken over by the intervention agencies at a specified place. Accordingly, only sugar held in an approved warehouse when the offer is made may be taken over. The intervention system is confined to sugar manufactured from beet or cane harvested within the Community and the price and sales guarantee is restricted to manufacturers who have been allocated a basic quota.

(3) Experience gained in the sugar sector has demonstrated the importance of free competition for the marketing of sugar. Free competition can be encouraged if independent traders participate in the marketing of sugar. The position of these undertakings in the sugar sector should therefore be strengthened. To that end, they should be allowed to offer Community sugar for intervention, so that they can effect their commercial transactions under normal conditions.

(4) The intervention agencies are responsible for the goods bought in. They must therefore take all the necessary steps to ensure that, when sugar is offered for intervention, it is stored in the conditions required for keeping sugar in good condition. To ensure that the intervention arrangements function smoothly, therefore, it must be possible for sellers to conclude storage contracts with intervention agencies.

(5) As regards the conditions for granting and withdrawing approval of warehouses, account should be taken of the requirements for keeping sugar in good condition and easily accessible for removal, the geographical location, and the capacity for removal from storage, and where appropriate bagging, guaranteed by applicants in respect of the sugar offered by them.

(6) In order to grant and withdraw approval in an intervention system extended to specialised sugar traders, objective criteria must be laid down for assessing that activity, in particular to define what constitutes a significant participation in the sugar trade. Member States should be allowed to impose further requirements if necessary and to withdraw approval if those requirements are not met. The Commission should be notified each time approval is granted, renewed or withdrawn.

(7) Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down the maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency [2], as amended by Regulation (Euratom) No 2218/89 [3], sets out the procedure to be followed in cases of radiological emergency to determine the levels of radioactive contamination which foodstuffs and feedingstuffs must comply with if they are to be offered for sale. Consequently, agricultural products in which such radioactive contamination levels are exceeded may not be bought in.

(8) Sugar with characteristics that will make it difficult to dispose of later and likely to deteriorate in storage should not be accepted for intervention.

(9) To facilitate the administration of the intervention arrangements, sugar should be offered in lots. A lot, in particular its quantity, should therefore be defined.

(10) 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.

(11) The intervention agency is entitled to make acceptance of the offer subject to the conclusion of a storage contract with the seller, should it consider this necessary. In the interests of uniformity, the principal terms which such contracts must contain, in particular their period of validity, should be laid down.

(12) Approved silos and warehouses must offer optimal conditions for storing sugar. It is generally accepted that in the correct conditions sugar can be stored for around 12 months without risk of deterioration. Where a storage contract is concluded with the seller, it is therefore justified for the latter to remain responsible for the quality of the sugar concerned for a period not normally exceeding 12 months, irrespective of when ownership passes.

[1] See page 1 of this Official Journal.

[2] OJ L 371, 30.12.1987, p. 11.
[3] OJ L 227, 22.7.1989, p. 1.

(13) Article 7(5) of Regulation (EC) No 1260/2001 provides that the detailed implementing rules to be adopted must include scales of price increases and reductions to be applied to the intervention prices to take account of the quality of the sugar offered. For determining such scales, sugar must be classified according to its quality. This classification and the resulting price increases and reductions can be determined on the basis of the objective data generally used in commercial transactions.

(14) To avoid any discrimination in the treatment of the parties concerned, and taking into account current administrative practices in the Member States, uniform conditions should be laid down for payment and collection of the goods, whether or not there is a storage contract, in particular as regards the time limits within which these operations are to be carried out.

(15) It may be necessary for the sugar offered for intervention to be delivered in bags, depending on its subsequent destination. The intervention agency should therefore be able to require certain forms of packing generally used in the trade, on condition that it bears the cost thereof, to be fixed at a flat rate.

(16) When an intervention agency requires certain forms of packing, the flat rate it pays relates to bags in perfect condition. Where a storage contract is concluded, therefore, the rate for the packing costs should be set according to the condition of the bags.

(17) Commission Regulation (EEC) No 1265/69 of 1 July 1969 establishing methods for determining the quality of sugar bought in by intervention agencies [1], as amended by Regulation (EEC) No 1280/71 [2], is confined to the technical aspects of those methods. Moreover, since those methods cannot provide strictly accurate results, a margin of error must be allowed for. In addition, suitable arbitration procedures should be introduced for settling any disputes arising from the comparison of conflicting analysis results.

(18) Intervention is designed to allow products to be withdrawn temporarily from a market suffering imbalance with a view to their resale as soon as the market situation has improved. Accordingly, products offered for intervention must be suitable for human or animal consumption, as the case may be.

(19) 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 is preferable in certain circumstances to make use of procedures other than tendering.

(20) In view of the changes to the rules governing intervention, new detailed rules should be laid down for the sale by tender of sugar by intervention agencies.

(21) 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.

(22) Certain special rules are needed to take account of the specific features of the sugar sector. In particular, so that the greatest possible number of potential tenderers can participate, it should be possible to fix a maximum quantity which each tenderer may offer to buy. Furthermore, in view of the frequent fluctuations in sugar prices and quotations, tenderers should not be bound by their tenders if the award is made after the date and time specified by them.

(23) For the purpose of determining storage costs, in particular, it is essential to specify when ownership of the sugar is transferred.

(24) 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, the denaturing premium 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.

(25) The detailed implementing rules laid down in this Regulation replace those in Commission Regulations (EEC) No 258/72 of 3 February 1972 laying down detailed rules concerning the sale by tender of sugar by intervention agencies [3], as amended by Regulation (EC) No 260/96 [4], and (EEC) No 2103/77 of 23 September 1977 laying down detailed rules for the buying in by intervention agencies of sugar manufactured from beet and cane harvested in the Community [5], as last amended by Regulation (EC) No 260/96 which must therefore be repealed.

[1] OJ L 163, 4.7.1969, p. 1.
[2] OJ L 133, 19.6.1971, p. 34.
[3] OJ L 31, 4.2.1972, p. 22.
[4] OJ L 34, 13.2.1996, p. 16.
[5] OJ L 246, 27.9.1977, p. 12.

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

HAS ADOPTED THIS REGULATION:

TITLE I

BUYING IN

CHAPTER I

General provisions

Article 1

1. The intervention agency shall buy in the sugar only if it is offered by:

(a) the beneficiary of a basic quota;

(b) a specialist sugar trader who is approved by the Member State on whose territory he is established.

2. The offer shall be made in writing to the intervention agency of the sugar-producing Member State on whose territory the sugar offered is located at the time of the offer.

3. Only sugar under quota which at the time of the offer is located in an approved store may be taken over.

Approval shall be given by the competent authority of the Member State in question.

CHAPTER II

Approvals

Article 2

1. Without prejudice to paragraph 2 of this Article, the approval provided for in Article 1(3) may be given only for silos and warehouses which:

(a) meet the requirements for keeping sugar in good condition;

(b) are situated in a place which provides the transport facilities necessary for removal of the sugar;

(c) are situated within the precincts of a sugar refinery or in a sugar-producing area.

2. Approval of silos and warehouses as referred to in paragraph 1 shall be given only for:

(a) a total quantity, in the case of silos for bulk storage equipped with bagging facilities, not exceeding 50 times the daily capacity for bagging, using bags as specified in Article 18(2), and removal that the applicant undertakes to place at the disposal of the intervention agency concerned for the removal of the sugar;

(b) a total quantity, in the case of warehouses for the storage of sugar in bags, not exceeding 50 times the daily removal capacity for sugar packed in bags as specified in Article 18(2) that the applicant undertakes to place at the disposal of the intervention agency concerned for the removal of the sugar;

(c) a total quantity, in the case of silos and warehouses for the bulk storage of raw sugar, not exceeding 50 times the daily removal capacity for bulk sugar that the applicant undertakes to place at the disposal of the intervention agency concerned for the removal of the sugar.

3. Approval shall be given at the request of the party concerned for any silo or warehouse which, in the opinion of the intervention agency, satisfies the conditions set out in paragraph 1. Approval may, however, be restricted to silos or warehouses which have already been used for sugar storage.

The approval shall indicate, in particular, the total quantity for which it is given, the daily removal capacity, and, where applicable, the bagging capacity as referred to in paragraph 2(a).

4. Approval shall be withdrawn when any of the conditions set out in paragraph 1 or 2 are no longer satisfied.

5. Approval shall be given or withdrawn by the intervention agency.

Article 3

1. A 'specialised sugar trader' within the meaning of Article 1(1)(b) is a person:

(a) who engages in wholesale sugar trading as one of their principal activities and who buys, or may be regarded as likely to buy, a minimum of 10 000 tonnes of Community sugar per marketing year; and

(b) who is not engaged in the retail sale of sugar.

2. Subject to paragraphs 3 to 6, the approval provided for in Article 1(1)(b) shall be given by the Member State concerned to all applicants who satisfy, or are considered capable of satisfying, the conditions laid down in paragraph 1 of this Article for the marketing year concerned.

3. Without prejudice to paragraph 5, approval shall be given for a specified marketing year.

It shall be renewed for the following marketing year if the applicant can continue to be regarded as a specialised trader for that year.

4. The Member States may impose additional requirements for the grant of approval.

Approval may be withdrawn if it is found that the person concerned no longer satisfies such additional requirements or is no longer capable of satisfying them.

5. Approval shall be withdrawn if it is found that the person concerned no longer satisfies, or is no longer capable of satisfying, any of the conditions laid down in paragraph 1.

Approval may be granted, renewed or withdrawn during the course of a marketing year, but without retroactive effect.

6. Approval granted, renewed or withdrawn under this Article shall be notified in writing to the person concerned after having been notified to the Commission by the Member State concerned.

CHAPTER III

Offers

Article 4

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.

However, sugar produced in the marketing year immediately preceding that of the offer may be offered:

— until the following 31 August, in Italy,

— until the following 30 September in the other European regions of the Community;

(b) it shall be in crystal form.

2. White sugar offered to intervention shall, in addition to meeting the conditions laid down in paragraph 1, be of sound and fair marketable quality, free-flowing, with a moisture content not exceeding 0,06 %.

3. Raw sugar offered to intervention shall, in addition to meeting the conditions laid down in paragraph 1, be of sound and fair marketable quality with a yield, calculated in accordance with point II of Annex I to Regulation (EC) No 1260/2001, of not less than 89 %.

In addition:

(a) raw cane sugar shall have a safety factor not exceeding 0,30;

(b) raw beet 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.

4. Sugar offered for intervention shall be deemed not to be of sound and fair marketable quality for the purposes of paragraphs 2 and 3 where it exceeds the maximum levels of radioactivity permitted under Regulation (Euratom) No 3954/87. The level of radioactive contamination of the product shall be monitored only if the situation so requires and during the period necessary. Where necessary, the duration and scope of checks shall be determined in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1260/2001.

Article 5

Only sugar which has not previously been bought in to intervention and which is owned by the party making the offer may be offered for intervention.

Article 6

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

For the purposes of this Regulation 'lot' means 500 tonnes of sugar of uniform quality and packing, all of which is stored in the same place. However, if a larger quantity is offered, the excess over 500 tonnes or a multiple thereof shall also constitute a lot.

Article 7

1. Offers made to an intervention agency shall indicate:

(a) the name and address of the party making the offer;

(b) the warehouse in which the sugar is stored at the time the offer is made;

(c) the removal capacity and, where applicable, the bagging 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.

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 4(1)(a).

Article 8

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.

3. Buying-in contracts shall specify the type of packing of the sugar to be bought in. If necessary, they may also include a clause to the effect that the intervention agency reserves the right to require one or more of the types of packing specified in Article 18(2) at the time of removal.

4. Buying-in contracts may be terminated only by mutual consent and before removal of the sugar.

CHAPTER IV

Storage contracts

Article 9

1. Without prejudice to Article 17(4), storage contracts to be concluded prior to buying in between parties making offers and the intervention agency shall be concluded for an indefinite period.

2. Storage contracts shall take effect from the date of the provisional payment referred to in Article 16(1) and shall expire at the end of the 10-day period during which removal of the quantity of sugar concerned is completed.

3. Storage contracts shall, in particular:

(a) provide for expiry of the contract under the conditions set out in this Regulation after at least 10 days' notice has been given;

(b) provide that, where the intervention agency determines that the party making the offer has not observed the undertaking referred to in Article 2(2), it may require the contract to be extended beyond the time limit set for removal, in which case paragraph 4 shall not apply;

(c) specify the amount of the storage costs to be borne by the intervention agency;

(d) require the seller to load the sugar on to a means of transport indicated by the intervention agency and to bear the cost of such loading.

4. The intervention agency shall bear the storage costs from the beginning of the 10-day period within which provisional payment for the sugar is made until the expiry of the storage contract.

5. Such storage costs for sugar stored in silos or warehouses of sugar undertakings may not exceed EUR 0,048 per 100 kilograms and per 10-day period.

However, the intervention agency may increase that by a percentage not exceeding 35 % where the sugar is stored in silos or warehouses rented by the party making the offer outside sugar undertakings and, in special circumstances, by a percentage not exceeding 50 %.

6. '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.

Article 10

1. The transfer of ownership of sugar covered by a storage contract shall take place at the same time as the provisional payment for the sugar concerned.

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 11

1. If it is established that a quantity of the sugar concerned does not conform to the quality requirements set out in Article 4, 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 approved for intervention purposes.

2. Where the sugar concerned is stored in one of the types of packing specified in Article 18(2) and it is found that the packing no longer conforms to those specifications, the intervention agency shall require the seller to replace the bags with packing to the required standard.

CHAPTER V

Buying-in price

Article 12

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;

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

Article 13

1. 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) in addition, the characteristics of Grade 1 sugar shall be such that 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 colour of the solution determined according to the method of the International Commission for Uniform Methods of Sugar Analysis, hereinafter referred to as the 'ICUMSA Method'.

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.

2. 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.

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

Article 14

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

(a) reduced by EUR 0,73 for Grade 3 sugar;

(b) reduced by EUR 1,31 for Grade 4 sugar.

Article 15

1. The intervention price applicable per 100 kilograms of raw sugar 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 %.

2. The amount of the increase or reduction, expressed in euro per 100 kilograms, 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 %.

3. The yield of raw sugar shall be calculated in accordance with point II of Annex I to Regulation (EC) No 1260/2001.

Article 16

1. Subject to paragraphs 2 and 3, within eight weeks of the date on which an offer is made, the intervention agency shall make provisional payment of an amount established on the basis of the information contained in the offer and of the buying-in price.

The amount of the provisional payment referred to in the first subparagraph for raw sugar shall be calculated on the basis of a flat-rate yield of 92 %.

2. The provisional payment shall be made on condition that the seller lodges a security equal to 5 % of the amount involved as a guarantee that the information in the offer is correct.

3. The intervention agency shall make final payment of the buying-in price as soon as the weight has been verified and the final results of the sample analyses referred to in Article 19 are known. Any packing costs shall be paid when the condition of the bags is ascertained on removal.

Any discrepancies between the weight as verified and the final results of the sample analyses, on the one hand, and the corresponding information in the offer, on the other, shall be taken into account when final payment of the buying-in price is made, in accordance with Articles 14 and 15, in particular.

4. Except in cases of *force majeure*, the security referred to in paragraph 2 shall be released only if:

(a) the weight as verified and the final results of the sample analyses do not require a reduction in the price of the sugar bought in;

(b) the seller refunds any amount of the provisional payment referred to in paragraph 1 in excess of that properly due, within three weeks of the date of receipt of the request for repayment.

The security shall be released immediately. It shall be forfeit if this Regulation has not been complied with.

CHAPTER VI

Removal

Article 17

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

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

3. When removed from the silo or warehouse, the sugar bought in shall be loaded by the seller onto a means of transport selected by the intervention agency.

4. Without prejudice to Article 34, sugar bought in shall be removed:

(a) in the case of offers accepted between 1 October and the following 31 March, not later than the following 30 September;

(b) in the case of offers accepted between 1 April and the following 30 September, not later than the end of the seventh month following that in which the offer was accepted.

5. However, the intervention agency may agree with the seller that removal as referred to in paragraph 4 will take place after the time limits referred to in that paragraph. In such cases, the intervention agency:

(a) shall conclude a storage contract with the seller covering the agreed period;

(b) shall, before the end of the said period and at its own expense, instruct the experts referred to in Article 19 to make the sample analyses referred to therein and ascertain the weight of the sugar;

(c) shall make final payment of the buying-in price in accordance with Article 16;

(d) may, at the seller's request, agree that the obligation to load the sugar bought in shall be discharged by payment of the costs relating thereto. These costs shall be determined on the basis of the rates in force on the date on which the corresponding maximum period referred to in paragraph 4 expires.

Article 18

1. Subject to paragraphs 2 to 4 of this Article, the seller shall deliver the sugar in bulk.

2. Intervention agencies may require the sugar to be delivered in one or more of the following types of packing:

(a) new jute bags with a net capacity of 50 kilograms lined with polythene of a minimum thickness of 0,04 mm and with a minimum combined weight of jute and polythene of 450 grams;

(b) new jute bags with a net capacity of 50 kilograms lined with polythene of a minimum thickness of 0,05 mm and with a minimum combined weight of jute and polythene of 420 grams.

Intervention agencies may accept sugar sold into intervention in new jute bags with a net capacity of 50 kilograms lined with polythene of a combined weight of jute and polythene of 400 grams. For acceptance, the intervention agency may specify a minimum thickness of polythene lining as well as a particular quality of jute bag.

3. Where an intervention agency requires or accepts one or more of the types of packing provided for in paragraph 2, it shall bear the cost of such packing. In addition, it shall inform the seller, in good time before removal, of the type or types of packing provided for in paragraph 2 which it requires or will accept.

The flat-rate amount to cover the cost of the packing referred to under (a) and (b) of the first subparagraph of paragraph 2 is fixed at EUR 1,70 per 100 kilograms of sugar.

The flat-rate amount to cover the cost of the packing referred to under the second subparagraph of paragraph 2 is fixed at EUR 1,57 per 100 kilograms of sugar.

4. The intervention agency may accept delivery of the sugar in a type of packing other than those specified in paragraph 2. In that case, the intervention agency shall not bear the costs relating thereto and sellers shall be required to deliver the sugar in bulk at their own expense at the time of removal unless an agreement concerning the packing has been reached between the seller and the party who is subsequently to buy the sugar from the intervention agency.

Article 19

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

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

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

(a) where the difference between the results of the analyses arranged by the seller and the buyer is:

— for Grade 1 sugar, no more than one point for each of the characteristics referred to in Article 13(1)(d), or

— for Grade 2 sugar, not greater than two points for each of the characteristics defining that grade which are determined by points,

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

However, at the request of either of the contracting parties, an arbitral analysis shall be carried out by the laboratory referred to in paragraph 1. In that case, the arithmetic mean 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 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;

(b) where the difference observed is greater than that indicated in the first or second indent, as the case may be, of the first subparagraph of (a) above, an arbitral analysis shall be carried out by a laboratory approved by the competent authorities. In that case the second subparagraph of (a) above shall apply;

(c) for disputes concerning the upper limit for the colour type of Grade 3 sugar, polarisation, moisture content or invert sugar content, the same procedure shall be followed as in (a) and (b).

However, the differences referred to in (a) 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.

3. The costs of an arbitral analysis:

(a) under the second subparagraph of paragraph 2(a), shall be borne by the party requesting the analysis;

(b) under paragraph 2(b), shall be shared equally by the intervention agency and the seller.

4. If a dispute arises over the yield of the bought-in raw sugar following the application of paragraph 1, an arbitral analysis shall be carried out by the laboratory referred to in paragraph 1. 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.

The costs of an arbitral analysis shall be borne by the contracting party which contested the result of the analysis made under paragraph 1.

Article 20

1. Without prejudice to Article 17(5), at the time of removal the experts referred to in Article 19 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.

TITLE II

SALE

CHAPTER I

General provisions

Article 21

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 42(2) of Regulation (EC) No 1260/2001.

2. The sale of sugar under the conditions referred to in the first subparagraph of Article 9(1) of Regulation (EC) No 1260/2001 shall be by tendering procedure or by some other sales procedure.

The sale of sugar for the purposes referred to in the second subparagraph of Article 9(1) of Regulation (EC) No 1260/2001 shall be by tendering procedure.

3. 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. 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.

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.

CHAPTER II

Sale by tender

Article 22

1. The invitation to tender shall be issued by the intervention agency concerned for the quantities of sugar held by it.

2. The intervention agency shall draw up an invitation to tender, which shall be published in the *Official Journal of the European Communities*. The intervention agency may also publish the invitation to tender or have it published elsewhere.

3. Publication in the *Official Journal of the European Communities* shall take place at least 10 days before the period for submission of tenders expires.

4. 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:

in particular:

— the reference number,

— the quantity,

— the quality of the sugar concerned,

— the type of packaging,

— the location of the warehouse 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.

The invitation to tender may contain other information.

5. 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 23

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 2(a);

(b) the price indicated in the terms of the invitation to tender, in the case of paragraph 2(b) and (c).

Article 24

1. For the purposes of this chapter 'intended use' means:

(a) animal feed;

(b) export;

(c) other purposes, to be determined as required.

2. For the purposes of this chapter 'lot' means a quantity of sugar of uniform quality, packaged in the same way and stored in the same place.

Article 25

1. For the purposes of the tendering procedure, the following terms shall be determined:

(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 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, hereinafter called 'premium' and 'refund', respectively;

(c) the minimum quantity per tenderer or per lot;

(d) the maximum quantity per tenderer or per lot;

(e) the specific period of validity of the denaturing premium certificate or export licence, hereinafter called 'certificate' and 'licence' respectively.

Article 26

1. If the situation on the sugar market in the Community so requires, a standing invitation to tender may be issued. 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 27

1. Tenderers shall either deliver written tenders to the intervention agency against a receipt or address tenders to the intervention agency by registered letter, telex or telegram.

2. Tenders shall indicate:

(a) the procedure to which the tender relates;

(b) the name and address of the tenderer;

(c) the number of the lot;

(d) the quantity tendered for;

(e) per 100 kilograms, as appropriate, expressed in euro to three decimal places:
   — the price proposed, excluding internal charges,
   — the amount of the premium proposed, or
   — the amount of the refund proposed.

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 be valid only if:

(a) proof is supplied before expiry of the time limit for submission of tenders that the tendering security has been lodged;

(b) they include a declaration by the tenderer undertaking, for any quantity of sugar awarded for either a premium or a refund:
   — to apply for a certificate and lodge the security required in that connection, where the tendering procedure relates to sugar intended for animal feed,
   — to apply for a licence and lodge the security required in that connection, where the tendering procedure relates to sugar intended for export.

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 this Article, or containing terms other than those indicated in the invitation to tender, shall not be taken into consideration.

7. Once a tender has been submitted it may not be withdrawn.

Article 28

1. The tendering security per 100 kilograms of white or raw sugar shall be:

(a) EUR 0,73 for the intended uses referred to in Article 24(1)(a) and (c);

(b) EUR 1,46 for the intended use referred to in Article 24(1)(b).

2. Tenderers may lodge the security either in cash or in the form of a guarantee given by an institution meeting criteria laid down by the Member State in which the tender was submitted.

The Member States shall notify the Commission of the types of institution authorised to give such a guarantee and the criteria referred to in the first subparagraph. The Commission shall in turn inform the other Member States.

Article 29

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 30

Where the terms of the tendering procedure do not specify either a minimum price or a maximum amount for the premium or the refund, these shall be fixed in accordance with Article 42(2) of Regulation (EC) No 1260/2001 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 31

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 premium or the 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 premium or the 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 premium or refund.

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

(a) either in proportion to the quantities indicated in the tenders in question;

(b) or by dividing that quantity between the tenderers in agreement with them;

(c) or by drawing lots.

Article 32

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 premium is awarded, showing in particular the 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.

If the sugar is intended for export, awards shall:

(a) confer the right to the issue of a licence for the quantity for which the refund is awarded, showing in particular the 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.

2. Rights shall be exercised and obligations fulfilled within 18 days following expiry of the time limit for submission of tenders.

3. Rights and obligations arising from awards shall not be transferable.

Article 33

1. The intervention agency shall immediately notify all tenderers of the outcome of their participation in the tendering procedure. It shall also send statements of award to the successful tenderers.

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 premium or the amount of the refund, as the case may be, accepted for the quantity referred to under (b).

Article 34

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 referred to in Article 33 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 warehouser of the sugar concerned.

However, where there are technical difficulties regarding removal from storage, the intervention agency may if necessary allow a longer period for removing particular lots 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 35

1. The successful tenderer may not remove the purchased sugar from storage or conclude a storage contract under Article 34(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 36

1. The price for the sugar awarded must be paid 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 35(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. 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 37

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 34(1), they may determine at what stage the transfer of ownership is to take place.

Agreement on the transfer of ownership shall be valid only if it is concluded in writing.

Article 38

1. Article 19 shall apply for the purposes of determining the grade or yield of the sugar concerned when it is removed from storage.

2. 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 39

1. Where application of Article 19 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 Article 24(1)(b) and (c) shall be adjusted by applying Article 14.

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 licence shall be corrected.

3. Where application of Article 19 establishes that the yield of raw sugar is other than that indicated in the invitation to tender:

(a) the price for that sugar shall be adjusted by applying Article 15;

(b) the amount of the premium or 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 40

1. Except in cases of *force majeure*, the tendering security shall be released only for the quantity for which:

(a) the successful tenderer:
- after fulfilling the requirements, has applied for either a certificate or a licence,
- has lodged the security or provided the negotiable instrument referred to in Article 35(2),
- has removed the sugar from storage within the time limit laid down, or

(b) 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.

TITLE III

FINAL PROVISIONS

Article 41

Regulations (EEC) No 258/72 and (EEC) No 2103/77 are hereby repealed.

Article 42

This Regulation shall enter into force on 1 July 2001.

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

Done at Brussels, 27 June 2001.

For the Commission
Franz FISCHLER
Member of the Commission