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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT Accompanying the document Proposal for a COUNCIL REGULATION fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year and fixing the production levies in the sugar sector for the 2000/2001 marketing year

Delegations will find attached document SWD(2017) 348 final.

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COMMISSION STAFF WORKING DOCUMENT
Accompanying the document

**Proposal for a
COUNCIL REGULATION**

fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the 1999/2000 marketing year and fixing the production levies in the sugar sector for the 2000/2001 marketing year

{COM(2017) 619 final}

1. REIMBURSEMENT OF THE PRINCIPAL AND INTEREST

By Judgement of 9 February 2017¹, the Court of Justice declared invalid Regulations (EC) No 2267/2000² and (EC) No 1993/2001³,

In this judgement the Court of Justice also ruled on the interpretation of Articles 33(1) and (2) of Council regulation (EC) No 2038/1999⁴ and clarified all the elements that have to be taken into consideration for the calculation of the 'average loss', within the meaning of Article 33 of Council Regulation (EC) No 2038/1999, which has to be used for estimating the 'overall loss' to be covered by the production levies.

In particular, the 'average loss' is to be calculated by dividing the actual total refunds paid by the total exported quantities of quota sugar, regardless whether they were exported with or without a refund. The application of the new method indicated by the Court leads to a substantial decrease of the 'average loss' and the 'overall loss' to be covered by the levies for the period in question.

Thus, following the reasoning applied by the Court in its Judgement of 27 September 2012 (*Jülich II* judgement)⁵, producers are entitled to reimbursement of the excess sums unduly paid in respect of the invalid production levies paid in the relevant marketing years. Such excess levies have accrued to the Union budget net of collection fees retained by Member States pursuant to Article 2(3) of Council Decisions 94/728/EC/Euratom⁶ and 2000/597/EC, Euratom⁷.

The proposed Council Regulation fixes sugar production levies for the marketing years 1999/2000 and 2000/2001, which will allow Member States to determine the amounts to be reimbursed to sugar producers. Only the difference between the old and the new levies, and not the entire amounts collected over the period concerned, is to be reimbursed to sugar producers.

It follows from the general principle of unjust enrichment that Member States should be able to recover the amounts actually reimbursed, net of collection costs, from the EU budget.

The Court clarified in the *Jülich II* judgement that individuals entitled to reimbursement of sums paid unduly in respect of production levies in the sugar sector determined on the basis of

¹ Case C-585/15, Raffinerie Tirlemontoise, ECLI:EU:C:2017:105.

² Commission Regulation (EC) No 2267/2000 of 12 October 2000 fixing the production levies and the coefficient for calculating the additional levy in the sugar sector for the marketing year 1999/2000 (OJ L 259, 13.10.2000, p. 29).

³ Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the marketing year 2000/2001 (OJ L 271, 12.10.2001, p. 15).

⁴ Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector (OJ L 252, 25.9.1999, p. 1).

⁵ Joined Cases C-113/10, C- 147/10 and C- 234/10, Zuckerfabrik Jülich and Others, ECLI:EU:C:2012:591.

⁶ Council Decision of 31 October 1994 on the system of the European Communities' own resources (94/728/EC, Euratom), (OJ L 293, 12/11/1994, p.9).

⁷ Council Decision of 29 September 2000 on the system of the European Communities' own resources (2000/597/EC, Euratom) (OJ L 253, 07/10/2000, p. 42).

the invalid regulations are also entitled to payment of the interest on such sums. It follows that reimbursements by Member States to economic operators of sums unduly paid under EU law shall therefore include the payment of interest, to the extent provided for by national law in similar situations.

Member States shall apply their national law for calculating the amount of interest.

2. REIMBURSEMENT OF BEET SELLERS

The proposed Council Regulation lays down in its Article 1(3) the revised amount that the sugar producers have to pay to beet growers in respect of the difference between the maximum amount of the B levy and the amount of the levy actually charged (also known as "complement" price) for the marketing year 2000/2001. It has to be underlined that only the difference between the old and the new "complement" prices should be used for the calculation of the reimbursement to beet sellers, including interest payable under the same conditions referred to in Section 1.

Before reimbursing sugar producers the excess levies paid over the period in question, Member States should put in place administrative procedures ensuring that the concerned producers repay, where relevant, the amounts due to the beet sellers. In the absence of such repayment, the reimbursement to sugar producers should be reduced proportionally.

3. ACCOUNTING PROCEDURE

The own resources regulatory framework does not include any provision that would allow for the payment of interest from the EU to the Member States. Therefore, when claiming back to the Commission expenditure incurred, Member States must inform the Commission about the amounts effectively paid as restitution to the concerned economic operators, distinguishing the principal from the interest components.

3.1. Principal amounts

The reimbursement of the sugar levies constitutes a correction in the EU own resources. This implies that Member States can deduct 80% of the excess amount effectively paid, by way of charging the own resources of the EU.

Based on Article 2(2) of Council Regulation (EU, Euratom) No 609/2014⁸ Member States have to establish the corrected sugar levies applicable in the relevant years by the date laid down in Article 2 of the proposed Council Regulation fixing the sugar levies.

As the proposed Council Regulation refers to a correction of the sugar levies originally paid, Member States have all the elements in their possession to establish the correct amounts to be reimbursed.

⁸ Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirement (OJ L 168, 7.6.2014, p.39).

They should execute the reimbursement to economic operators resulting from the application of the revised levies in accordance with the applicable national law including national limitation periods. They should ensure that economic operators that claimed reimbursement rightfully and in a timely manner are reimbursed.

Member States can recover, via a negative correction in the so-called A-statement, the amounts effectively paid as reimbursement of the excess levies unduly collected. It should be stressed that in the A-statement, Member States will have first to include the full amount (100%) reimbursed as correction. Subsequently, the amount net of collection costs (80%) shall be posted in the last column of the statement. This is the normal procedure to take into account the collection costs.

The establishment by the Member States for the own resources has to be done by a date fixed in Article 2 of the proposed Council Regulation, at the latest. Member States have to introduce the result of the establishment in the A-statements that they have to transmit to the Commission on the first working day after the 19th day of the second month following the month during which the entitlement was established, at the latest.

If the Council Regulation is adopted in 2017 or early 2018, the financial impact on the revenue part of the EU budget will be in 2018.

3.2. Interest

As indicated above, it follows from the general principle of unjust enrichment that individuals entitled to reimbursement of sums paid unduly as a result of the production levies in the sugar sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums to the extent provided for by national law in similar situations.

Interest effectively paid shall be declared, using the procedure for making monthly payments referred to in Article 18 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council⁹, under budget line 05 07 02 dedicated to the 'settlement of disputes'. In particular, this budget line 'is intended to accommodate, if necessary, appropriations to cover expenditure (positive or negative) for which the Commission may be made responsible by a decision of a Court of Justice, including the cost of settling claims for damages and interest'.

4. MONITORING OF REIMBURSEMENT PROCESS

For monitoring purposes, Member States should notify the Commission an overview of the amounts that are to be reimbursed to sugar manufacturers, distinguishing the principal and the interest amounts, before starting the reimbursement process, and in any case by the second month following the entry into force of the Regulation at the latest. This notification should

⁹ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

include a detailed explanation of the legal basis in the national law used to determine the interest payable and the rate applied, and the period considered for the calculation of the interest amount. In accordance with the principle of equivalence, the Commission wishes to emphasise that the interest rate used shall correspond to the one normally used for similar national reimbursements.

The Commission reserves the right to ask for additional justifications of the amounts declared as paid and to take any appropriate measure to protect the Union's financial interests.