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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION fixing the production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years, the coefficient required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years and the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy to be charged for the 2002/2003, 2003/2004 and 2005/2006 marketing years

COUNCIL REGULATION (EU) No.../2013

of

**fixing the production levies in the sugar sector
for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years,
the coefficient required for calculating the additional levy
for the 2001/2002 and 2004/2005 marketing years
and the amount to be paid by sugar manufacturers to beet sellers
in respect of the difference between the maximum levy and the levy to be charged
for the 2002/2003, 2003/2004 and 2005/2006 marketing years**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular
Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Regulation (EC) No 1260/2001¹, and in particular the first indent of Article 15(8), Article 16(5), and Article 18(5), empowered the Commission to adopt detailed rules on the basic production levy and the B levy to be collected from quota holders operating in the framework of the common organisation of markets in the sugar sector, the coefficient for the calculation of an additional levy, and the repayment or recovery of part of the levies from beet sellers.
- (2) The Commission established the production levies for the 2001/2002², 2002/2003³, 2003/2004⁴, 2004/2005⁵ and 2005/2006⁶ marketing years.
- (3) Article 18(2) of Regulation (EC) No 1260/2001 provided that when a basic production levy was lower than the maximum amount referred to in Article 15(3) or when the B levy referred to in that Article was lower than the maximum amount referred to in Article 15(4) of that Regulation, adjusted, where necessary, in accordance with Article 15(5), sugar manufacturers were to pay back beet sellers 60 % of the difference between the maximum amount of the levy concerned and the levy to be charged.

¹ Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ L 178, 30.6.2001, p. 1).

² Commission Regulation (EC) No 1837/2002 (OJ L 278, 16.10.2002, p. 13).

³ Commission Regulation (EC) No 1762/2003 (OJ L 254, 8.10.2003, p. 4).

⁴ Commission Regulation (EC) No 1775/2004 (OJ L 316, 15.10.2004, p. 64).

⁵ Commission Regulation (EC) No 1686/2005 (OJ L 271, 15.10.2005, p. 12).

⁶ Commission Regulation (EC) No 164/2007 (OJ L 51, 20.2.2007, p. 17).

- (4) In accordance with Article 9(1) of Commission Regulation (EC) No 314/2002¹, the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum basic production levy and the B levy and the chargeable levy, were set for the 2002/2003², 2003/2004³ and 2005/2006⁴ marketing years.
- (5) In the framework of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 318/2006⁵ repealed and replaced Regulation (EC) No 1260/2001 as of the 2006/2007 marketing year. Regulation (EC) No 318/2006, which was subsequently repealed and incorporated into Council Regulation (EC) No 1234/2007⁶, No 1234/2007⁶, replaced the variable sugar production levy system of self-financing the production quota regime by a new production charge aimed at contributing to the financing of the expenditure occurring in the sugar sector under the common market organisation for sugar.

¹ Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector (OJ L 50, 21.2.2002, p. 40).

² OJ L 254, 8.10.2003, p. 5.

³ OJ L 316, 15.10.2004, p. 65.

⁴ OJ L 51, 20.2.2007, p. 16.

⁵ Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector (OJ L 58, 20.2.2006, p. 1).

⁶ Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

- (6) On 8 May 2008, in joined cases C-5/06 and C-23/06 to C-36/06, the Court of Justice declared Commission Regulations (EC) No 1762/2003¹ and (EC) No 1775/2004² invalid. In its judgment, the Court held that all quantities of sugar in exported products, regardless of whether or not export refunds were actually paid, were to be taken into account for the purpose of calculating the estimated average loss per tonne of product.
- (7) The Court, in joined cases C-175/07 to C-184/07, and in cases C-466/06 and C-200/06, also declared Commission Regulation (EC) No 1686/2005³ invalid.
- (8) In order to comply with the Court's rulings, the Commission adopted Regulation (EC) No 1193/2009⁴.
- (9) On 29 September 2011, the General Court delivered its judgment in case T-4/06, in which it stated that there was no proper legal basis for a differentiated coefficient for the additional levy in the sugar sector and annulled Article 2 of Regulation (EC) No 1686/2005, as amended by Article 3 of Commission Regulation (EC) No 1193/2009.

¹ Commission Regulation (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/2003 marketing year (OJ L 254, 8.10.2003, p. 4).

² Commission Regulation (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/2004 marketing year (OJ L 316, 15.10.2004, p. 64).

³ Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/2005 marketing year (OJ L 271, 15.10.2005, p. 12).

⁴ Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 (OJ L 321, 8.12.2009, p. 1).

- (10) On 27 September 2012, in joined cases C-113/10, C-147/10 and C-234/10, the Court declared Regulation (EC) No 1193/2009 invalid, stating that, for the purpose of calculating the estimated average loss per tonne of product, Article 15(1)(d) of Regulation (EC) No 1260/2001 was to be interpreted as meaning that the total refund amount includes the total amount of export refunds effectively paid .
- (11) Consequently, levies in the sugar sector should be fixed at the appropriate level. For exports defined in accordance with Article 6(5) of Commission Regulation (EC) No 314/2002, the 'average loss', within the meaning of Article 15(1)(d) of Regulation (EC) No 1260/2001, should be calculated by dividing the refunds effectively paid by the exported quantities, regardless of whether or not a refund has been paid. The 'exportable surplus', within the meaning of Article 15(1)(c) of Regulation (EC) No 1260/2001, should also be calculated by using all exports, regardless of whether or not a refund has been paid.
- (12) Considering that the method used to calculate the levies for the 2001/2002 marketing year was the same as that invalidated by the Court, the production levies and the coefficient for the additional levy for the 2001/2002 marketing year should also be corrected accordingly.
- (13) It follows from the Court's judgement that the corrected levies should apply from the same dates as the levies which were declared invalid.

- (14) As a result of the fixing of the sugar levies in accordance with the method referred to in recital 11, the amount to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum levy and the levy chargeable for the 2002/2003, 2003/2004 and 2005/2006 marketing years should also be newly set, and should be applicable retroactively.
- (15) For the 2001/2002 marketing year, the uncovered overall loss calculated following the method referred to in recital 11 amounts to EUR 14 123 937. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should be set accordingly and should be applicable retroactively for that marketing year.
- (16) For the 2002/2003 marketing year, the application of the method referred to in recital 11 results in 2 % for the basic production levy and 16,371 % for the B levy, which should be applicable retroactively for that marketing year. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.

- (17) For the 2002/2003 marketing year, Commission Regulation (EC) No 1440/2002¹ set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. However, the B levy applicable for that marketing year, revised according to the method referred to in recital 11 is 16,371 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (18) For the 2003/2004 marketing year, the application of the method referred to in recital 11 results in 2 % for the basic production levy and 17,259 % for the B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.

¹ Commission Regulation (EC) No 1440/2002 of 7 August 2002 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2002/03 marketing year (OJ L 212, 8.8.2002, p. 3).

- (19) For the 2003/2004 marketing year, Regulation (EC) No 1440/2002 set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. However, the B levy applicable for that marketing year, revised according to the method referred to in recital 11, is 17,259 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (20) For the 2004/2005 marketing year, the application of the method referred to in recital 11 does not change the basic production levy and the B levy. For that marketing year, the uncovered overall loss calculated following the method referred to in recital 11 amounts to EUR 57 648 788. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should therefore be set. It follows from the Court's judgement referred to in recital 9 that the coefficient should be uniform for the Member States of the Union as constituted on 30 April 2004 and the Member States of the Union as constituted on 1 May 2004.
- (21) For the 2005/2006 marketing year, the application of the method referred to in recital 11 results in an amount of 1,2335 % for the basic production levy without the need for a B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.

- (22) For the 2005/2006 marketing year, Commission Regulation (EC) No 1296/2005¹ set the maximum amount of the B levy at 37,5 % of the intervention price for white sugar. While the basic production levy applicable for that marketing year, revised in accordance with the method referred to in recital 11, is 1,2335 % of the intervention price for white sugar, there is no need for any B levy to be fixed. Due to these differences, it is necessary to fix the amounts per tonne of beet of standard quality payable by sugar manufacturers to beet sellers for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (23) For reasons of legal certainty and to ensure uniform treatment of the operators concerned in different Member States, it is necessary to set a common date upon which the levies fixed by this Regulation should be established, within the meaning of the second subparagraph of Article 2(2) of Council Regulation (EC, Euratom) No 1150/2000². However, this deadline should not apply where Member States are required, under national law, to reimburse the operators concerned after that date,

HAS ADOPTED THIS REGULATION:

¹ Commission Regulation (EC) No 1296/2005 of 5 August 2005 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2005/06 marketing year (OJ L 205, 6.8.2005, p. 20).

² Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/ (EC, Euratom) on the system of the Communities' own resources (OJ L 130, 31.5.2000, p. 1).

Article 1

1. The production levies in the sugar sector for the 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006 marketing years shall be those set out in point 1 of the Annex.
2. The coefficients required for calculating the additional levy for the 2001/2002 and 2004/2005 marketing years shall be those set out in point 2 of the Annex.
3. The amounts payable by sugar manufacturers to beet sellers in respect of the A or B levies for the 2002/2003, 2003/2004 and 2005/2006 marketing years shall be those set out in point 3 of the Annex.

Article 2

The date of establishment, as referred to in the second subparagraph of Article 2(2) of Regulation (EC, Euratom) No 1150/2000, of the levies fixed by this Regulation shall be no later than 30 September 2014, except where Member States are prevented from respecting that deadline due to the application of national law on the recovery by economic operators of sums paid but not due.

Article 3

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

Article 1(1) shall apply from:

- 16 October 2002 for the 2001/2002 marketing year,
- 8 October 2003 for the 2002/2003 marketing year,
- 15 October 2004 for the 2003/2004 marketing year,
- 18 October 2005 for the 2004/2005 marketing year, and
- 23 February 2007 for the 2005/2006 marketing year.

Article 1(2) shall apply from:

- 16 October 2002 for the 2001/2002 marketing year, and
- 18 October 2005 for the 2004/2005 marketing year.

Article 1(3) shall apply from:

- 8 October 2003 for the 2002/2003 marketing year,
- 15 October 2004 for the 2003/2004 marketing year, and
- 23 February 2007 for the 2005/2006 marketing year.

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

Done at,

For the Council

The President

ANNEX

(1) Production levies in the sugar sector referred to in Article 1(1)

	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
(a) EUR per tonne of white sugar as the basic production levy on A sugar and B sugar	12,638	12,638	12,638	12,638	7,794
(b) EUR per tonne of white sugar as the B levy on B sugar	236,963	103,447	109,061	236,963	-
(c) EUR per tonne of dry matter as the basic production levy on A isoglucose and B isoglucose	5,330	5,330	5,330	5,330	3,394
(d) EUR per tonne of dry matter as the B levy on B isoglucose	99,424	46,017	48,261	99,424	-
(e) EUR per tonne of dry matter equivalent sugar/isoglucose as the basic production levy on A inulin syrup and B inulin syrup	12,638	12,638	12,638	12,638	7,794
(f) EUR per tonne of dry matter equivalent sugar/isoglucose as the B levy on B inulin syrup.	236,963	103,447	109,061	236,963	-

(2) Coefficients required for calculating the additional levy referred to in Article 1(2)

2001/2002 marketing year: 0,01839

2004/2005 marketing year: 0,07294

(3) Amounts to be paid by sugar manufacturers to beet sellers in respect of the A or B levies referred to in Article 1(3)

	2002/2003	2003/2004	2005/2006
Complement price for A beet*			0,378
Complement price for B beet*	10,414	9,976	18,258

* Complement price in respect of A or B levy per tonne of beet of the standard quality (EUR).
