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2017/0269 (NLE)

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

{SWD(2017) 348 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

On 9 February 2017, the Court of Justice delivered its judgment in case C-585/15, *Raffinerie Tirlemontoise SA v État belge* by which it declared invalid 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 and Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production levies in the sugar sector for the marketing year 2000/2001.

The levies for the marketing years in question were originally set by the Commission pursuant to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector. This regulation provided for a self-financing system of the sugar sector set by flexible production levies.

Under Council Regulation (EC) No 2038/1999, the common organisation of the markets in the sugar sector was based on the principle that producers should bear full financial responsibility for the losses incurred each marketing year from disposing of that part of Community production under quota which is surplus to the Community's internal consumption and on a differentiation of price guarantees for disposal, reflecting the production quota allocated to each undertaking.

The principle of financial responsibility was assured by producers being charged a basic production levy on all production of A and B sugar, limited to 2% of the intervention price for white sugar and a B levy charged on the production of B sugar up to a limit of 37,5% of that price. When those levies did not allow achieving the objective of self-financing of the sector, each marketing year Regulation (EC) No 2038/1999 provided for an additional levy to be charged to producers. Article 33 of Regulation (EC) No 2038/1999 provided for the elements to be taken into consideration for the calculation of the levies.

In its above mentioned judgement the Court did not put into question the production levy system and the principle by which the sugar producers had to bear the full financial responsibility for the losses incurred in each marketing year by disposing of that part of production under quota which is surplus to the Union's internal consumption and were accordingly liable to a levy on their production under quota, to be fixed by the Commission with a view to covering the losses incurred during the marketing years 1999/2000 and 2000/2001.

The Court has ruled, however, that the Commission has erred in calculating the annual levies set for the period in question pursuant to Council Regulation (EC) No 2038/1999. It found that the method used by the Commission in its Regulations (EC) No 2267/2000 and No 1993/2001, in order to fix the levies, was incorrect because it led to an over-estimation of the costs to be covered and to consequently over-charging sugar producers.

The judgement has left a legal void as to the exact amount of the levies for the marketing years 1999/2000 and 2000/2001. Therefore, to comply with the judgement, the levies set for these marketing years should be replaced by new ones, calculated according to the method validated by the Court, with retroactive effect.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Pursuant to Article 266 TFEU 'The institution whose act has been declared void shall be required to take the necessary measures to comply with the judgement of the Court of Justice of the European Union'. Therefore, following the annulment of Regulations (EC) No 2267/2000 and No 1993/2001, new levies for the period in question are to be fixed.

The framework of the common market organisation for the sugar sector has changed since 1999: Council Regulation (EC) No 2038/1999 was repealed and replaced by Council Regulation (EC) No 1260/2001, which was repealed and replaced by Council Regulation (EC) No 318/2006, and further repealed and replaced by Council Regulation (EC) No 1234/2007. Council Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007. Hence, Council Regulation (EC) No 2038/1999 can no longer serve as the legal basis for correcting the levies. The Commission is therefore not empowered to adopt the corrective legal act necessary to implement the judgement.

Pursuant to Article 43(3) TFEU, the Council, on a proposal from the Commission, shall adopt measures on fixing levies. In view of the nature of the proposed Regulation, Article 43(3) TFEU appears to be the appropriate legal basis to fix the corrected sugar levies for the marketing years in questions.

In its above mentioned judgement, the Court 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.

Therefore, the proposed Regulation will establish the sugar production levies for the marketing years 1999/2000 and 2000/2001, re-calculated on the basis of the methodology clarified by the Court. This will allow Member States to calculate the reimbursement due to sugar producers in respect of the excess levies that they have been charged over the same period. Member States should execute the reimbursement to sugar producers 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.

Moreover, the revision of the production levies for the marketing years 1999/2000 and 2000/2001 will impact on the amount that the sugar producers had to pay to beet growers in respect of the difference between the maximum amount of the A or B levy and the amount of these levies charged for the marketing years concerned .

Indeed, according to the common organisation of the markets in the sugar sector in force until 2006, the levies were paid by sugar manufacturers but the latter recovered 60% of these costs from beet growers, by paying a lower beet price. When the amounts of the levies were set below the maximum level for the A or B levies (i.e. 2% and 37,5% of the intervention price for white sugar respectively), Article 36 (2) of Regulation (EC) 2038/1999 provided that

sugar manufacturers have to pay beet sellers 60% of the difference between the maximum amount of the levy in question and the amount of the base levy or the B levy actually charged.

Therefore, this corrective legal act establishes the revised amounts that sugar producers should pay back to beet sellers. Only the difference between the old and the new amounts should be reimbursed to beet sellers.

The reimbursement of the sugar levies constitutes a correction of the sugar levies originally paid in the EU own resources. Member States have to establish the new sugar levies entitlements based on the new levies no later than 30 September 2018.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

The Commission has presented to the Member States a working document relating to the determination of the corrected sugar levies and the follow-up to the Court's judgement of 9 February 2017. This working document was presented and discussed at the Management Committee for the Common Organisation of Agricultural Markets on the 28th of September 2017.

A number of Member States called the Commission to prepare a legal act correcting the levies, which should include the reimbursement by the Union budget of interest on reimbursements made or to be made to the sugar producers who paid excess levies in the relevant years, by the concerned Member States. Some delegations also suggested that interest should be calculated at a uniform rate at the European level.

4. BUDGETARY IMPLICATIONS

The revision of the sugar production levies for the marketing years 1999/2000 and 2000/2001 will result in a negative correction of EUR 116 318 466, to be charged to the own resources of the EU budget. Besides the said amount, Member States could claim from the Commission the reimbursement of the interest effectively paid by them, in accordance with their national law, in reimbursing the excess levies collected for the relevant years. The latter expenditure shall be separately charged to the EU budget by the concerned Member States upon presentation of the corresponding proofs of payment.

5. OTHER ELEMENTS

The Commission is issuing, in parallel, a Staff Working Document accompanying the present proposal for a Council Regulation, in order to clarify certain elements related to the reimbursement of the principal and interest, the reimbursement to the beet sellers, the accounting procedure and monitoring of the reimbursement process.

Proposal for a

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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

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) Article 33(8) and Article 34(5) of Council Regulation (EC) No 2038/1999¹ empowered the Commission to adopt detailed rules on the basic production levies and the coefficient for the calculation of the additional levy, to be collected from quota holders operating in the framework of the common organisation of markets in the sugar sector.
- (2) Commission Regulations (EC) No 2267/2000² and (EC) No 1993/2001³ established the production levies and the coefficient for calculating the additional levy in the sugar sector.
- (3) In the framework of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 1260/2001⁴ repealed and replaced Regulation (EC) No 2038/1999. Council Regulation (EC) No 318/2006⁵ repealed and replaced Regulation (EC) No 1260/2001. Regulation (EC) No 318/2006, which was subsequently repealed and incorporated into Council Regulation (EC) 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. This temporary production charge remained applicable until 30 September 2017

¹ 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).

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 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ L 178, 30.06.2001, p. 1).

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, 28.02.2006, 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).

under Regulation (EU) No 1308/2013 of the European Parliament and of the Council⁷ which has repealed and replaced Regulation (EC) No 1234/2007.

- (4) By Judgement of 9 February 2017⁸, the Court of Justice declared invalid Regulations (EC) No 2267/2000 and (EC) No 1993/2001. In its judgment, the Court held that Article 33(1) of Regulation No 2038/1999 must be interpreted as meaning that, for the purpose of calculating the average loss, it is necessary to divide the total amount of the actual expenditure for export refunds for products which come under that provision by the total amount of the quantities of those products which were exported, regardless of whether or not refunds have in fact been paid in respect of the latter.
- (5) Furthermore, the Court also stated that Article 33(2) of Regulation (EC) No 2038/1999 must be interpreted as meaning that, for the purpose of the overall calculation of the production levies, it is necessary to take into account the average loss calculated by dividing the total amount of the actual expenditure for export refunds for products which come under that provision by the total amount of the quantities exported, regardless of whether or not refunds have in fact been paid in respect of the latter.
- (6) It is therefore necessary to fix the production levies and the additional levies at the appropriate level, in order to comply with the Court's judgement.
- (7) In particular, the 'average loss' is to be calculated by dividing the actual total refunds paid by the total exported quantities for products which were eligible to refunds, regardless whether they were exported with or without a refund. The application of the 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.
- (8) The revision of the production levies for the 1999/2000 and 2000/2001 marketing years will impact on the amount that the sugar producers had to pay to beet growers in respect of the difference between the maximum amount of the A or B levy and the amount of these levies charged for the marketing years concerned.
- (9) Indeed, according to the rules establishing a common organisation of the markets in the sugar sector in force until 2006, the levies were paid by sugar manufacturers but the latter recovered 60% of these costs from beet growers, by paying a lower beet price. Article 36(2) of Regulation (EC) No 2038/1999 provided that when the amounts of the levies were set below the maximum level for the A or B levies (i.e. 2% and 37,5% of the intervention price for white sugar respectively), sugar manufacturers had to pay beet sellers 60% of the difference between the maximum amount of the levy in question and the amount of the base levy or the B levy actually charged.
- (10) Therefore, the revised amounts that sugar producers should pay back to beet sellers should be established. Only the difference between the old and the new amounts should be reimbursed to beet sellers.
- (11) For the 1999/2000 marketing year, the overall loss not covered by the levies, recalculated in accordance with the method indicated by the Court, amounts to EUR 66 941 664. The coefficient referred to in Article 34(2) of Regulation (EC) No

⁷ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

⁸ Case C-585/15, Raffinerie Tirlemontoise, ECLI:EU:C:2017:105.

2038/1999 should be set accordingly and should be applicable retroactively for that marketing year.

- (12) For the 2000/2001 marketing year, the overall loss not covered by the levies, calculated in accordance with the method indicated by the Court, amounts to EUR 49 376 802.
- (13) For reasons of legal certainty and to ensure uniform treatment of the economic operators concerned in different Member States, it is necessary to set a date by which the levies fixed by this Regulation should be established, as referred to in the second and third subparagraph of Article 2(2) Council Regulation (EU, Euratom) No 609/2014⁹.
- (14) Economic Operators were charged excess levies for the marketing years 1999/2000 and 2000/2001. Member States 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.
- (15) The calculation of the production levies and the additional levies set out by this Regulation should apply as from the entry into force of Regulations (EC) No 2267/2000 and (EC) No 1993/2001,

HAS ADOPTED THIS REGULATION:

Article 1

1. The production levies in the sugar sector for the 1999/2000 and 2000/2001 marketing years shall be those set out in point (1) of the Annex.
2. The coefficient required for calculating the additional levy for the production levy for the 1999/2000 marketing year shall be that set out in point (2) of the Annex.
3. The amount payable by sugar manufacturers to beet sellers in respect of the A and B levies for the 2000/2001 marketing year shall be those set out in point 3 of the Annex.

Article 2

The date of establishment, as referred to in the second and third subparagraph of Article 2(2) of Regulation (EU, Euratom) No 609/2014, of the levies fixed by this Regulation shall be no later than 30 September 2018.

Article 3

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

However, Article 1 shall apply from:

- 13 October 2000 as regards the 1999/2000 marketing year;

⁹ 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 requirements (OJ L 168, 7.6.2014, p.39).

– 12 October 2001 as regards the 2000/2001 marketing year.

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

Done at Brussels,

For the Council
The President

FINANCIAL STATEMENT

FINANCIAL STATEMENT		FS/17/4938476 6.2.2017.1 DATE: 06.09.2017	
1.	BUDGET HEADING: See budgetary forecast below. Chapter 1 1 - Article 1 1 0 (Production levies related to the marketing year 2005/2006 and previous years): 05 07 02 (Settlements of disputes)	APPROPRIATIONS: B2017; DB 2018 p.m.; p.m. EUR 29 million EUR 22,3 million	
2.	TITLE: 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"		
3.	LEGAL BASIS: Article 43(3) of the Treaty on the Functioning of the European Union		
4.	AIMS: This regulation aims to establish retroactively the sugar production levies for the marketing years from 1999/2000 and 2000/2001 re-calculated on the basis of the methodology clarified by the Court.		
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD	FINANCIAL YEAR 2018 (EUR million)
			FINANCIAL YEAR 2019 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	102,2	102,2
			n.a.
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) – See comments - NATIONAL	-93,1	-93,1
			n.a.
5.2	METHOD OF CALCULATION: See observations		
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?		n.a.
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?		No
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?		No
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?		See observation
OBSERVATIONS: On 9 February 2017, the Court of Justice delivered its judgment in case C-585/15, Raffinerie Tirlemontoise SA v État belge by which it declared invalid 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 and Commission Regulation (EC) No 1993/2001 of 11 October 2001 fixing the production			

levies in the sugar sector for the marketing year 2000/2001.

This judgement followed the reasoning applied by the Court in the Judgement of 27 September 2012 (*Jülich II* judgement)¹, in which the correct method that should have been used to calculate the sugar levies was clarified. As a result 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 the collection costs which have accrued to the national budgets pursuant to Article 2(3) of Council Decision 2014/335 /(EU, EURATOM) on the system of the European Communities' own resources.

The corrective legal act retroactively establishes the sugar production levies for the marketing years 1999/2000 and 2000/2001 re-calculated on the basis of the methodology clarified by the Court in the above mentioned *Jülich II* case. Following the judgement and according to the principle of unjust enrichment, the reimbursement of the difference between the old and re-calculated levies to operators has to include compensatory interests, based on the national rules.

The total amount to be reimbursed to Member States is the following:

Own resources - principal

EUR 66,9 million for marketing year 1999/2000 and EUR 49,4 million for marketing year 2000/2001; in total EUR 116,3 million * 80% = **EUR 93,1 million** of levies after collection fees.

Compensatory interest

The compensatory interest claimed is not included in the amounts under own resources. The interest rates will be determined by national law and hence the final amount cannot be definitely determined at present. However, based on information available on national interest rates from the *Jülich* case and assuming an average of 5% interest costs per year, the principal amount due for 1999/2000 would be increased by 90% interest (18*5%) and the principal amount due for 2000/2001 would be increased by 85% (17*5%).

This brings the total estimated interest costs to $(66,9*90\%) + (49,4*85\%) =$ **EUR 102,2 million.**

The amount for compensatory interest will be paid under the budget line 05 07 02 – Settlement of disputes. Payments are expected to take place in the 2018 budget year.

¹ Joined Cases C-113/10, C- 147/10 and C- 234/10, Zuckerfabrik Jülich and Others, ECLI:EU:C:2012:591.