Council Regulation (EU) 2018/264 of 19 February 2018 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

COUNCIL REGULATION (EU) 2018/264

of 19 February 2018

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) Articles 33(8) and 34(5) of Council Regulation (EC) No 2038/1999[(1)] 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 2267/2000[(2)] and (EC) No 1993/2001[(3)] 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of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 1260/2001[(4)] repealed and replaced Regulation (EC) No 2038/1999. Council Regulation (EC) No 318/2006[(5)] repealed and replaced Regulation (EC) No 1260/2001. Regulation (EC) No 318/2006, which was subsequently repealed and incorporated into Council Regulation (EC) No 1234/2007[(6)], replaced the variable sugar production levy system of self-financing the production quota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. Pursuant to Regulation (EU) No 1308/2013 of the European Parliament and of the Council[(7)], which repealed and replaced Regulation (EC) No 1234/2007, this temporary production charge remained applicable until 30 September 2017.

(4) In its Judgment of 9 February 2017 in Case C-585/15, *Raffinerie Tirlemontoise*[(8)], the Court of Justice declared invalid Regulations (EC) No 2267/2000 and (EC) No 1993/2001. In that judgment, the Court held that Article 33(1) of Regulation (EC) 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

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2018/264. (See end of Document for details)*

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) In order to comply with the Court's judgement, the production levies and the additional levies should therefore be fixed at the appropriate level.

(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 in the ‘average loss’ and the ‘overall loss’ to be covered by the levies for the 1999/2000 and 2000/2001 marketing years.

(8) The revision of the production levies for the 1999/2000 and 2000/2001 marketing years will affect the amount payable by the sugar producers to the 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) 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 % or 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) The revised amounts that sugar producers should pay back to beet sellers should therefore be established. Only the difference between the old amounts 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 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, recalculated 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) of Council Regulation (EU, Euratom) No 609/2014[9]. However, this deadline should not apply where Member States are required under national law to reimburse the operators concerned after that date.

(14) The difference between the sums that were unduly paid in respect of the production levies in the sugar sector determined by Regulations (EC) No 2267/2000 and (EC) No 1993/2001 and the levies that are laid down by this Regulation should be reimbursed.

(15) It follows from the Court's judgment that the corrected levies should apply from the same dates as the levies which were declared invalid. The calculation of the production levies and the additional levies set out by this Regulation should therefore 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 amounts 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

1 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, 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.

2 The difference between the levies fixed by Regulations (EC) No 2267/2000 and (EC) No 1993/2001 and the levies provided for in Article 1 of this Regulation shall be reimbursed to those economic operators that paid levies in respect of the 1999/2000 and 2000/2001 marketing years, on duly justified application of the latter.

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 shall apply from:

— 13 October 2000, as regards the 1999/2000 marketing year;

— 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.