Council Regulation (EU) No 1360/2013 of 2 December 2013 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

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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 1260/2001[(1)], 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 2001/2002[(2)], 2002/2003[(3)], 2003/2004[(4)], 2004/2005[(5)] and 2005/2006[(6)] 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.

(4) In accordance with Article 9(1) of Commission Regulation (EC) No 314/2002[(7)], 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 2002/2003[(8)], 2003/2004[(9)] and 2005/2006[(10)] marketing years.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1360/2013. (See end of Document for details)*

(5) In the framework of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 318/2006[(11)] 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 1234/2007[(12)], 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.

(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 1762/2003[(13)] and (EC) No 1775/2004[(14)] 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 1686/2005[(15)] invalid.

(8) In order to comply with the Court's rulings, the Commission adopted Regulation (EC) No 1193/2009[(16)].

(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 Regulation (EC) No 1193/2009.

(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 1440/2002[17] 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.

(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.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1360/2013. (See end of Document for details)*

(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 1296/2005[18] 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 1150/2000[19]. 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:

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,