Commission Implementing Regulation (EU) No 367/2012 of 27 April 2012 laying down necessary measures as regards the release of additional quantities of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/2012

COMMISSION IMPLEMENTING REGULATION (EU) No 367/2012

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)[(1)] and in particular Article 64(2) and Article 186, in conjunction with Article 4 thereof,

Whereas:

(1) Prices on the world sugar markets based on the London futures market have stabilized since the beginning of the 2011/2012 marketing year at a historically rather high level. Prices at the London futures exchange moved in the range of 600 – 650 USD per tonne, or 460 – 500 EUR per tonne.

(2) At the same time the prices on the Union sugar markets, as indicated by the price monitoring system set up by Article 14 of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system[(2)], have continued to increase; moreover the price increase accelerated as from October 2011 when the average Union sugar price raised by over 10% within a month.

(3) In order to improve the supply situation on the Union sugar market, exceptional measures have been taken in November 2011 by Commission Implementing Regulation (EU) No 1239/2011 of 30 November 2011 opening a standing invitation to tender for the 2011/2012 marketing year for imports of sugar of CN code 1701 at a reduced customs duty[(3)] and by Commission Implementing Regulation (EU) No 1240/2011 of 30 November 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/2012[(4)]. Despite those measures the present upwards trend of the Union sugar prices has continued and the average price reached 701 EUR per tonne in February 2012, representing an increase of over 20 % between September 2011 and February 2012, or close to 40 % between February 2011 and February 2012.

(4) The continued upwards trend of the Union sugar prices indicates that the availability of supply on the Union sugar market has improved only moderately at this stage. This analysis was confirmed by a large majority of Member States in the Management Committee of 8 March 2012 who considered that there were still supply problems which could even become worse in the course of the marketing year. This could concern especially small and medium enterprises and customers with fixed quantities in long term contracts.

(5) On the other hand, good harvest in several parts of the Union led to the production of sugar in excess of the quota set out in Article 56 of Regulation (EC) No 1234/2007 of 5.3 million tonnes. Taking into account the estimated demand for industrial sugar in accordance with Article 62 of Regulation (EC) No 1234/2007, the 2011/2012 export commitments for out-of-quota sugar fixed by Commission Implementing Regulation (EU) No 372/2011 of 15 April 2011 fixing the quantitative limit for exports of out-of-quota sugar and isoglucose until the end of the 2011/2012 marketing year[(5)], as well as the quantities of out-of-quota sugar released on the Union market in accordance with Implementing Regulation (EU) No 1240/2011, substantial quantities of out-of-quota sugar will still be available. Part of this sugar could be made available immediately to the sugar market of the Union in order to partially satisfy the demand and therefore contribute to constrain the upwards trend of the Union sugar prices currently disturbing the market.

(6) Article 186 of Regulation (EC) No 1234/2007 empowers the Commission to take the necessary measures for the sector if prices on the Union markets of sugar increase to such an extent that the situation disrupts or threatens to disrupt the markets.

(7) Article 64(2) of Regulation (EC) No 1234/2007 empowers the Commission to fix the surplus levy on sugar and isoglucose produced in excess of the quota at a sufficiently high level in order to avoid the accumulation of surplus quantities. Article 3(1) of Commission Regulation (EC) No 967/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards sugar production in excess of the quota[(6)] has fixed that levy at EUR 500 per tonne.

(8) The Commission has estimated that the continuing low supply of sugar on the internal market, as clearly indicated by the observed considerable increase of the average price on the Union sugar markets in the 2011/2012 marketing year, may make necessary the release of additional quantities of out-of-quota sugar on the internal market. Increasing supply should improve the fluidity of the sugar market. In order to avoid any risk of accumulation of quantities, it is appropriate, toallow the release on the Union market of a limited quantity. Taking into account the estimated shortage and the alternative sources of supply, the limited quantity should be fixed at 250 000 tonnes. The reduced suplus levy for that limited quantity of sugar produced in excess of the quota should be fixed at a level per tonne representing the difference between the most recent publicly available average Union price and the world market price.

(9) As Regulation (EC) No 1234/2007 fixes quotas for both sugar and isoglucose, a similar measure should apply for an appropriate quantity of isoglucose produced in excess of the quota because the latter product is, to some extent, a commercial substitute for sugar.

(10) For that reason and with the view to increasing the supply, sugar and isoglucose producers should apply to the competent authorities of the Member States for certificates allowing them to sell certain quantities, produced above the quota limit, on the Union market with a reduced surplus levy.

(11) The validity of the certificates should be limited in time to encourage a fast improvement of the supply situation.

(12) Fixing upper limits of the quantities for which each producer can apply in one application period and restricting the certificates to products of the applicant's own production, should prevent speculative actions within the system created by this Regulation.

(13) With their application, sugar producers should commit themselves to pay the minimum price for sugar beet used to produce the quantity of sugar for which they apply. The minimum eligibility requirements for applications should be specified.

(14) The competent authorities of the Member States should notify the Commission of the applications received. In order to simplify and standardise those notifications, models should be made available.

(15) The Commission should ensure that certificates are granted only within the quantitative limits fixed in this Regulation. Therefore, if necessary, the Commission should be able to fix an allocation coefficient applicable to the applications received.

(16) Member States should immediately inform the applicants whether the quantity applied for was fully or partially granted.

(17) The reduced surplus levy should be paid after the application is admitted and before the certificate is issued.

(18) The competent authorities should notify the Commission of the quantities for which certificates with a reduction of the surplus levy have been issued. For this purpose, models should be made available by the Commission.

(19) Sugar quantities released on the Union market of quantities in excess of the certificates issued under this Regulation should be subject the surplus levy set out in Article 64(2) of Regulation (EC) No 1234/2007. It is therefore appropriate to provide that any applicant not fulfilling his commitment to release on the Union market the quantity covered by a certificate delivered to him, should also pay an amount of EUR 500 per tonne. This consistent approach is aimed at preventing abuse of the mechanism introduced by this Regulation.

(20) For the purpose of establishing average prices for quota and out-of-quota sugar on the Union market in accordance with Article 13(1) ofRegulation (EC) No 952/2006, sugar covered by a certificate issued pursuant to this Regulation should be considered as quota sugar.

(21) Article 2(1)(a) of Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources[7] lays down that contributions and other duties provided for within the framework of the common organisation of the markets in

the sugar sector are to constitute own resources. It is therefore necessary to set the date of establishment of the amounts in question within the meaning of Articles 2(2) and 6(3)(a) of 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[8].

(22) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Temporary reduction of the surplus levy

By way of derogation from Article 3(1) of Regulation (EC) No 967/2006, the amount of the surplus levy for an additional maximum quantity of 250 000 tonnes of sugar in white sugar equivalent and 13 000 tonnes of isoglucose in dry matter, produced in excess of the quota fixed in Annex VI to Regulation (EC) No 1234/2007 and released on the Union market in the marketing year 2011/2012, shall be fixed at EUR 211 per tonne. The reduced surplus levy shall be paid after the application, referred to in Article 2, is admitted and before the certificate, referred to in Article 6, is issued.

Article 2

Application for certificates

1 In order to benefit from the conditions specified in Article 1, sugar and isoglucose producers shall apply for a certificate.

2 Applicants may be only undertakings producing beet and cane sugar or isoglucose, which are approved in accordance with Article 57 of Regulation (EC) No 1234/2007 and have been allocated a production quota for the 2011/2012 marketing year, in accordance with Article 56 of that Regulation.

3 Each applicant may submit not more than one application for sugar and one for isoglucose per application period.

4 Applications for certificates shall be submitted by fax or electronic mail to the competent authority in the Member State in which the undertaking was approved. The competent authorities of the Member States may require that electronic applications be accompanied by an advance electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council[9].

5 To be admissible, the applications shall fulfil the following conditions:

a the applications shall indicate:

(i) the name, address and VAT number of the applicant; and

(ii) the quantities applied for, expressed in tonnes of white sugar equivalent and tonnes of isoglucose in dry matter, rounded to no decimal places;

b the quantities applied for in this application period, expressed in tonnes of white sugar equivalent and tonnes of isoglucose in dry matter, shall not exceed 50 000 tonnes in the case of sugar and 2 500 tonnes in the case of isoglucose;

c if the application concerns sugar, the applicant shall commit himself to pay the minimum beet price, set out in Article 49 of Regulation (EC) No 1234/2007, for the quantity of sugar covered by certificates issued in accordance with Article 6 of this Regulation;

d the application shall be written in the official language or one of the official languages of the Member State in which the application is lodged;

e the application shall indicate a reference to this Regulation and the expiry date for the submission of the applications for the application period in question, as set out in Article 3.

6 An application may not be withdrawn or amended after its submission, even if the quantity applied for is granted only partially.

Article 3

Submission of applications

1 The first period during which applications may be submitted shall end on 2 May 2012 at 12 noon, Brussels time.

2 The periods during which applications may be submitted for the second and subsequent application periods shall begin on the first working day following the end of the preceding period. They shall end at 12 noon, Brussels time, on 23 May 2012, 6 June 2012 and 20 June 2012.

3 The Commission may suspend the submission of applications for one or several application periods.

Article 4

Transmission of applications by the Member States

1 The competent authorities of the Member States shall decide on the admissibility of applications on the basis of the conditions set out in Article 2. Where the competent authorities decide that an application is inadmissible, they shall inform the applicant without delay.

2 The competent authority shall notify the Commission on Friday at the latest, by fax or electronic mail, of the admissible applications submitted during the preceding application period. That notification shall not contain the data referred to in Article 2(5)(a)(i). Member States that received no applications but have sugar or isoglucose quota allocated to them in marketing year 2011/2012, shall also send their nil returns notifications to the Commission within the same time limit.

3 The form and content of the notifications shall be defined on the basis of models made available by the Commission to the Member States.

Article 5

Exceeded limits

When the information notified by the competent authorities of the Member States pursuant to Article 4(2) indicates that the quantities applied for exceed the limits set out in Article 1, the Commission shall: