Commission Regulation (EC) No 1264/2007 of 26 October 2007 amending Regulation (EC) No 968/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community

COMMISSION REGULATION (EC) No 1264/2007

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community[(1)], and in particular Article 12 thereof,

Whereas:

(1) Following the amendments to Regulation (EC) No 320/2006 by Council Regulation (EC) No 1261/2007[(2)], it is necessary to adapt Commission Regulation (EC) No 968/2006[(3)] accordingly and to clarify certain terms used in it.

(2) Article 3(6) of Regulation (EC) No 320/2006 fixes the percentage of the restructuring aid to be paid to growers and machinery contractors at 10 %. Therefore, decisions no longer need to be taken in view of the fixing of the level of the percentage as it had previously been the case and the competent authorities of the Member States also need less time to determine the percentage of the aid to be given to growers on the one hand and to machinery contractors on the other. The period for the consultation between undertakings and growers provided for in Article 2(4) and in Article 6(1) of Regulation (EC) No 968/2006 can therefore be shortened.

(3) The second subparagraph of Article 3(6) of Regulation (EC) No 320/2006 provides for the fixing, by the Member States, of the reference period for deliveries by growers of sugar beet and cane. In the case where growers make use of their right to submit an application for restructuring aid as provided for in Article 4a of Regulation (EC) No 320/2006, the first subparagraph of paragraph 1 of that Article provides that that period has to be the marketing year that precedes the marketing year 2008/2009, i.e. the marketing year 2007/2008. For reasons of clarity it should be provided that the Member States should fix the marketing year 2007/2008 in that situation.

(4) Article 4a of Regulation (EC) No 320/2006 introduces the right for growers of sugar beet and cane to submit, at their own initiative, an application for restructuring aid. The undertakings concerned by such growers' applications are called upon to submit a social plan in accordance with the third subparagraph of paragraph 4 of that Article.

The deadlines for the submission as well as the details that need to be contained therein should be specified.

(5) The details concerning the application procedure to be applied in the case of such growers' applications need to be laid down, in particular with regard to the elements to be contained therein, the addresses at which the applications may be submitted whilst leaving it to the Member States to provide for further means of transmission. Moreover, there is a need to clarify the cases in which the submission of more than one application per grower would lead to the ineligibility of any one of them.

(6) The number of growers' applications submitted as well as the quantity of quota of the undertakings concerned affected by such applications will trigger the need for the undertakings concerned to, decide, for their part, whether they want to submit an application in accordance with Article 4 of Regulation (EC) No 320/2006. Moreover, the Member States need to take quick action for the follow-up decisions once the growers' applications have been received. Therefore, it is important that the situation concerning the applications submitted cannot change and that a grower's application may no longer be withdrawn.

(7) There is also a need to determine the further procedure to be applied by the Member States with a view to the communications to be made to the undertakings concerned by growers' applications as well as to the Commission, and with regard to the decisions on the granting of these applications.

(8) In order to establish a chronological list of applications both from growers and undertakings, the lodging date for the growers' applications should be determined by the lodging date of the last grower's application for each undertaking which has not submitted an eligible application of its own in accordance with Article 4 of Regulation (EC) No 320/2006.

(9) Rules need to be laid down to determine the establishment of the chronological list of growers' applications referred to in Article 4a(3) of Regulation (EC) No 320/2006 in the case where several such applications are being submitted simultaneously and where the amounts of sugar covered by these applications exceed the threshold provided for in paragraph 4 of that Article.

(10) Article 4(1) and (1a) of Regulation (EC) No 320/2006 provide for the possibility for undertakings to submit applications for restructuring aid for the renunciation of quotas as from the marketing year 2008/2009 in two phases, namely a first application until 31 January 2008 and a second until 31 March 2008. Recital 6 of Regulation (EC) No 1261/2007 introducing that possibility, refers to the setting-up of a two-phase-application procedure. It is, therefore, appropriate to provide that the initial applications of undertakings for renunciation of quota may be reconsidered in the light of the additional application to the extent that a further quota is being attributed to the factory or factories concerned or that the initial applications under Article 3(1)(b) or (c) are being reconsidered as applications under Article 3(1)(a) or (b) respectively. As such an additional application has an impact on the obligations to be complied with, a revised restructuring plan taking into account the increased level of quota to be renounced, and the obligations linked to the provision of Article 3(1) of Regulation (EC) No

320/2006 concerned, needs to be established and furnished together with that additional application.

(11) Article 13 of Regulation (EC) No 968/2006 provides for the dates by which the Commission fixes the amounts attributed to each Member State under the restructuring fund. The introduction of the different kinds of application procedures by this Regulation makes it necessary to provide for a longer period of time within which the Commission fixes these amounts.

(12) Article 3(8) of Regulation (EC) No 320/2006 provides for the granting of retroactive payments in certain situations. The rules need to be laid down to determine the procedure to be applied in that context and in particular in order to establish the level of such payments and the date by which they have to be made.

(13) Article 11(6) of Regulation (EC) No 320/2006 provides for the reduction of the temporary restructuring amount in cases where undertakings renounce a percentage of their quota of at least the withdrawal percentage to which they were subject under Regulation (EC) No 290/2007. Paragraph 5 of that Article provides for two instalments for the payment of the restructuring amount. Given that the data for the calculation of the reduction of that amount will not yet be available by the deadline for the payment of the first instalment, it should be provided that the reduction is to be offset against the second instalment of the payment by the undertakings.

(14) Regulation (EC) No 968/2006 should, therefore, be amended accordingly.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 968/2006 is amended as follows:

1. in Article 1, the following paragraph 3 is added:

3. For the purposes of this Regulation:

(i) "application" shall mean an application by a sugar producing undertaking in accordance with Article 4 of Regulation (EC) No 320/2006;

(ii) "grower's application" shall mean an application submitted by a grower of sugar beet or cane in accordance with Article 4a of Regulation (EC) No 320/2006.;

2. Article 2(4) is replaced by the following:

4. Unless an agreement can be found earlier, the consultation shall consist of at least two meetings and shall last for up to 20 days as from the day on which the invitation to the consultation was sent.

By way of derogation from the first subparagraph, for applications for restructuring aid in accordance with Article 4(1a) of Regulation (EC) No 320/2006, the consultation shall last for up to 10 days and consist of at least one meeting.;

3. Article 6 is amended as follows:

(a) in paragraph 1, the introductory phrase is replaced by the following:

1. 20 days after it has received a copy of the invitation to the consultation referred to in Article 2(3) at the latest, the Member State shall inform the parties involved in the restructuring plan of its decision on:;

(b) in paragraph 2, the following subparagraph is added:

By way of derogation from paragraph 1, if the competent authority has received no eligible application from an undertaking by the deadline set out in Article 4(1) of Regulation (EC) No 320/2006, but has received eligible growers' applications, the Member State shall inform the parties of its decision for each undertaking concerned no later than 15 February 2008. In this case, the Member States shall fix the marketing year 2007/2008 as the period referred to in Article 3(6) of Regulation (EC) No 320/2006.;

4. in Article 7, the following paragraph is added:

4. The social plan referred to in the third subparagraph of Article 4a(4) of Regulation (EC) No 320/2006 shall be submitted by 31 January 2008 at the latest. The social plan shall set-out the impact of the quota reduction triggered by the growers' applications on the workforce and actions and measures foreseen in favour of the workforce, as well as the costs involved.;

5. the following Article 7a is inserted:

Article 7a

Grower's application for restructuring aid

1 Each grower's application shall contain at least the following elements:

a name and address of the applicant;

b name and address of the undertaking concerned by the application;

c the amount of white sugar and/or beet/cane tonnage and/or hectares for which the grower has rights for delivery to the undertaking referred to in point (b) for the 2007/2008 marketing year for the production of quota sugar;

d the amount of delivery rights to be ceased;

e where applicable, a document proving the existence of the delivery rights for the 2007/2008 marketing year referred to in point (c);

f a statement of the grower that he/she is aware of the conditions pertaining to the aid scheme;

g a statement of the grower that he/she has not transferred his/her delivery rights referred to in point (d) to any third parties;

h the signature of the applicant.

2 Each grower's application for restructuring aid shall only cover one product (beet/cane) and one undertaking. In the case where a grower has delivery rights for more than one product and/or with more than one undertaking, he/she may submit one application per product and/or undertaking.

3 Once submitted, a grower's application may not be withdrawn, subject to Article 10(5).;

6. Article 8(6) is replaced by the following:

> Within two working days after issuing an acknowledgment of receipt, the competent authority of the Member State shall inform the Commission thereof, using the model table set out in Annex I. If applicable, a separate table shall be used for each product and each marketing year concerned.;

7. the following Article 8a is inserted:

Article 8a

Receipt of grower's application for restructuring aid

1 The grower's application shall be submitted to the competent authority of the Member State where the undertaking concerned is located either under the address listed for that Member State in Annex II or, where applicable, under any other address or by way of any other means of transmission communicated by the competent authority of the Member State concerned for this purpose. Each grower's application shall be sent to only one address and shall contain the elements mentioned in Article 7a(1).

In the case where a grower submits more than one application in respect of the same product and the same undertaking, or the same application under more than one address, his application or applications shall be ineligible.

2 Growers' applications must be received at the competent authority between 0.00 hours on 30 October 2007 and 24.00 hours on 30 November 2007. The relevant time shall be local time at the place of destination. Applications received before 30 October 2007 or after 30 November 2007 shall be disregarded.

3 For the purpose of the application of Article 4a(3) of Regulation (EC) No 320/2006, the Member States shall establish a provisional calculation of the amount of quota affected by growers' applications. The details of the growers' applications, especially the identity of the applicants, shall not be divulged to any third party.

The communications provided for in Article 4a(3) of Regulation (EC) No 320/2006 shall contain all amounts of delivery rights to be ceased for which applications have been submitted.;

8. Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

> 4. Where an application is considered eligible, the Member State shall notify the Commission within two working days after its decision, using the model table set out in Annex I.;

(b) the following paragraphs are added:

> 6. If the competent authority has received no eligible application from an undertaking by the deadline set out in Article 4(1) of Regulation (EC) No 320/2006, it shall verify the growers' applications concerning this undertaking in view of: