COUNCIL REGULATION (EEC) No 193/82

of 26 January 1982

laying down general rules for transfers of quotas in the sugar sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 3 June 1981 on the common organization of the markets in the sugar sector [1], as amended by Regulation (EEC) No 192/82 [2], and in particular Article 25 (4) thereof,

Having regard to the proposal from the Commission,

Whereas Article 25 (1) of Regulation (EEC) No 1785/81 lays down that Member States may transfer A quotas and B quotas between undertakings, taking into consideration the interests of each of the parties concerned, and in particular those of sugar-beet or sugar-cane producers; whereas, moreover, Article 25 (4) provides that general rules are to be adopted concerning the adjustment of quotas, in particular in the event of a merger or transfer of undertakings; whereas the incorporation of such a possibility in an inter-trade agreement would facilitate the use of this authorization by the Member State concerned;

Whereas A quotas and B quotas are affected following a merger or transfer of undertakings, a transfer by an undertaking of one of its factories or the closure of an undertaking or one of its factories; whereas, therefore, conditions should be laid down for the adjustment by Member States of the quotas of the undertakings in question;

Whereas it is essential that the adjustment of the quotas of sugar-producing undertakings should not damage the interests of the sugar-beet or sugar-cane producers concerned; whereas the Member States should be authorized to allocate quotas to undertakings other than those directly concerned where some of the beet or cane producers directly affected by a merger, transfer or closure expressly show their willingness to supply their beet or their cane to a given undertaking;

Whereas the second subparagraph of Article 25 (2) of Regulation (EEC) No 1785/81 authorizes Italy, and France as regards the French overseas departments, to adjust the quotas of undertakings without applying the 10 % limit where such transfers are made on the basis of restructuring plans in the beet or cane and sugar manufacturing sectors; whereas, in order to make implementation of such restructuring plans effective, Italy and France as regards the said departments, should be allowed, subject to certain conditions, to regard a group of undertakings as a sugar-producing undertaking;

Whereas for certain operations relating to isoglucose-producing undertakings, rules which tally with those applicable to sugar should be laid down;

Whereas measures taken by the Member States affecting quotas should be communicated to the Commission in order to be able to take effect;

Whereas Council Regulation (EEC) No 3331/74 of 19 December 1974 on the allocation and alteration of the basic quotas for sugar [3], as last amended by Regulation (EEC) No 1785/81, and Council Regulation (EEC) No 748/68 of 18 June 1968 on laying down general rules for postponing part of the sugar production to the following marketing year [4], as amended by Regulation (EEC) No 2829/71 [5], should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Member States shall adopt such measures as they deem necessary to take account of the interests of sugar-beet and sugar-cane producers in the event of allocation of quotas to a sugar-producing undertaking having more than one factory.

Article 2

1. In the event of the merger or transfer of sugar-producing undertakings and in the event of the transfer of sugar factories, the A and B quotas shall, without prejudice, to paragraph 2, be adjusted as follows:

(a) in the event of the merger of sugar-producing undertakings, the Member States shall allocate to the undertaking resulting from the merger an A quota and a B quota equal respectively to the sum

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] See page 1 of this Official Journal.
[3] OJ No L 359, 31. 12. 1974, p. 18.
[4] OJ No L 137, 21. 6. 1968, p. 1.
[5] OJ No L 285, 29. 12. 1971, p. 65.

of the A quotas and the sum of the B quotas allocated prior to the merger to the sugar-producing undertakings concerned;

(b) in the event of the transfer of a sugar-producing undertaking, the Member State shall allocate to the transferee undertaking for the production of sugar the A quota and the B quota of the undertaking transferred or, if there is more than one transferee undertaking, the allocation shall be made in proportion to the sugar production absorbed by each of them;

(c) in the event of the transfer of a sugar factory, the Member State shall reduce the A quota and the B quota of the undertaking transferring ownership of the factory and shall increase the A quota and the B quota of the sugar-producing undertaking or undertakings purchasing the factory in question by the quantity deducted in proportion to the production absorbed.

2. Where a number of the sugar-beet or cane producers directly affected by one of the operations referred to in paragraph 1 expressly show their willingness to supply their beet or cane to a sugar-producing undertaking which is not party to those operations, the Member State may make the allocation on the basis of the production absorbed by the undertaking to which they intend to supply their beet or cane.

3. In the event of the closure, in circumstances other than those referred to in paragraph 1, of:

(a) a sugar-producing undertaking,

(b) one or more factories of a sugar-producing undertaking,

the Member State may allocate the part of the quotas involved in such closure to one or more sugar-producing undertakings.

The Member State may, also in the case referred to in (b) in the preceding subparagraph, where some of the producers concerned expressly show their willingness to supply their beet or cane to a given sugar-producing undertaking, allocate that proportion of the quotas which corresponds to the beet or sugar cane in question to the undertaking which they intend to supply with those products.

4. Where the derogation referred to in Article 30 (3) of Regulation (EEC) No 1785/81 is invoked, the Member State in question may require the beet producers and sugar manufacturers concerned by that derogation to incorporate in their inter-trade agreements special clauses for paragraphs 2 and 3 to be applied by that Member State where appropriate.

5. In the event of the lease of a factory belonging to a sugar-producing undertaking, the Member State may reduce the quotas of the undertaking which offers the factory for rent and allocate the portion by which the quota was reduced to the undertaking which rents the factory in order to produce sugar in it.

If the lease is terminated during the period of the three marketing years referred to in Article 5 (d), the adjustment of quotas pursuant to the preceding subparagraph shall be cancelled retroactively by the Member State as at the date on which the lease took effect. However, if the lease is terminated by reason of *force majeure*, the Member State shall not be bound to cancel the adjustment.

6. Where a sugar-producing undertaking can no longer ensure that it meets its obligations under Community regulations towards the sugar-beet or sugar-cane producers concerned, and where that situation has been ascertained by the competent authorities of the Member State in question, the latter may allocate for one or more marketing years the part of the quotas involved to one or more sugar-producing undertakings in proportion to the production absorbed.

7. Where a sugar-producing undertaking is granted by the Member State price and outlet guarantees in respect of the processing of sugar beet into ethyl alcohol, the Member State may, in agreement with that undertaking and the sugar-beet producers concerned, allocate for one or more marketing years all or part of the sugar-production quotas to one or more other undertakings.

Article 3

In the event of the merger or transfer of isoglucose-producing undertakings, in the event of the transfer of an isoglucose-producing factory and in the event of the closure of one or more isoglucose-producing undertakings, the Member State may allocate the quotas in question for the production of isoglucose to one or more undertakings whether or not they have a production quota.

Article 4

Without prejudice to Article 8, the measures, taken pursuant to Article 2 and Article 3, may take effect only if:

(a) the interests of each of the parties concerned are taken into consideration, and

(b) the Member State concerned considers them to be such as to improve the structure of the beet, cane and sugar-manufacturing sectors, and

(c) they concern undertakings established in the same region within the meaning of Article 24 (2) of Regulation (EEC) No 1785/81.

Article 5

For the purpose of this Regulation :

(a) 'merger of undertakings' means the consolidation into a single undertaking of two or more undertakings ;

(b) 'transfer of an undertaking' means the transfer or absorption of the assets of an undertaking having quotas to one or more undertakings ;

(c) 'transfer of a factory' means the transfer of ownership of a technical unit, including all the plant required to manufacture the product in question, to one or more undertakings, resulting in the partial or total absorption of the production of the undertaking making the transfer ;

(d) 'lease of a factory' means the leasehold contract of a technical unit including all the plant required for the manufacture of sugar, with a view to its operation, concluded for a period of at least three consecutive marketing years, which the parties agree not to terminate before the end of the third marketing year, with an undertaking which is established in the same region, within the meaning of Article 24 (2) of Regulation (EEC) No 1785/81, as the factory in question, if, after the lease takes effect, the undertaking which rents the factory can be considered a solely sugar-producing undertaking for its entire production.

Article 6

The measures referred to in Articles 2 and 3 shall take effect when the closure of the undertaking or factory, the merger or transfer occurs :

(a) between 1 July and 31 January of the following year, for the marketing year current during that period ;

(b) between 1 February and 30 June of the same year, for the marketing year following that period.

Article 7

Where a Member State applies Article 25 (2) of Regulation (EEC) No 1785/81, it shall allocate the adjusted quotas before 1 March with a view to applying them in the following marketing year.

Article 8

1. For the marketing years 1982/83 to 1985/86 :

(a) measures taken by a Member State pursuant to Article 25 (2) of Regulation (EEC) No 1785/81 and Articles 2 and 3 of this Regulation may not take effect until they have been communicated to the Commission within the time limits stipulated and the Member State has adopted the appropriate measures for the corresponding transfer of the minimum stock obligations ;

(b) Member States shall inform the Commission, not later than 15 days after the allocation referred to in Article 7 of the adjusted A and B quotas.

2. Where Articles 2 and 3 are applied, Member States shall inform the Commission, not later than 15 days following expiry of the periods referred to in Article 6 of the adjusted A and B quotas.

Article 9

For the purposes of transfers of quotas in Italy and in the French overseas departments under the restructuring plans referred to in the second subparagraph of Article 25 (2) of Regulation (EEC) No 1785/81, a group of sugar-producing undertakings having technical, economic and structural links and jointly and severally liable for their obligations, particularly in respect of beet growers or cane growers, under Community rules may be regarded as a sugar-producing undertaking.

Article 10

Regulations (EEC) No 3331/74 and (EEC) No 748/68 are hereby repealed.

Article 11

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

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

Done at Brussels, 26 January 1982.

For the Council

The President

L. TINDEMANS