COUNCIL REGULATION (EEC) No 1107/88

of 25 April 1988

amending Regulation (EEC) No 1785/81 on the common organization of the markets in the sugar sector

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, according to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector (3) as last amended by Regulation (EEC) No 3993/87 (4), certain sugars containing added substances other than colouring and flavoured agents must be treated as raw sugars; whereas, because of their very nature, sugars containing those added substances should not be treated differently from flavoured or coloured sugars; whereas, moreover, to avoid customs difficulties when such products are traded and so ensure better administration of the customs nomenclature, sugars containing the added substances in question should, for these purposes, be treated as flavoured or coloured sugars;

Whereas the processing of sugar cane in Spain is, in volume terms, a marginal industry which, before that State's accession to the Community, survived thanks to related activities dependent on the State-trading arrangements for importing molasses and distillates used in the manufacture of rum; whereas those related activities had to cease because of accession; whereas, until crops to replace sugar cane can be grown in the areas where it is currently produced, certain adjustments should be provided for; whereas the quantities of sugar involved are not very large and, since they are marketed very swiftly, tend not to remain in storage; whereas the compensation system for storage costs should, accordingly, be applied progressively to this sugar from the 1988/89 marketing year until the end of the period covered by the system for the alignment of sugar prices which is provided for in the Treaty of the Accession of Spain to the Community;

Whereas the growing of sugar beet and the sugar beet processing industry are of great social and economic importance to the autonomous region of the Azores; whereas the intervention price for white sugar for Portugal applies to both mainland Portugal and the autonomous region of the Azores; whereas, however, this price, which is determined according to rules agreed during the accession negotiations, was initially calculated with reference to the average of the ex-factory prices for mainland refineries and to the derived intervention price for white sugar in the United Kingdom, on which price it must be aligned at the end of a transitional period of seven years following accession; whereas the intervention price for white sugar in Portugal was thus determined; whereas the intervention price for white sugar in Portugal was thus determined on the basis of the refining costs of efficient undertakings refining large volumes of raw sugar, costs which are not comparable with those of a small undertaking producing relatively minor quantities of beet sugar; whereas, moreover, the basic price for sugar beet in the Azores is higher than that for the United Kingdom, because of the beet's low technical yield and the production problems arising from excessive fragmentation of the production plots and insufficient mechanization; whereas, accordingly, there are grounds for providing for Community measures to enable the sugar beet processing industry in the Azores to make adjustments over a certain period, until the expiry of the price-alignment system provided for in the Treaty of Accession to the Community; whereas the most suitable step would be to grant, as an intervention measure during that period, Community aid in respect of the difference between the derived intervention price for white sugar for the United Kingdom and the intervention price for white sugar for Portugal, so as to give economic support to the Portuguese processing industry as the latter price moves in stages towards the derived intervention price for the United Kingdom and is aligned on that price at the end of that period;

Whereas the common organization of the markets in the sugar sector has, since the 1981/82 marketing year, been based on the principle that producers should be financially liable for all the losses resulting from the disposal of the Community's surplus production in relation to internal consumption under a system of price and marketing guaranteed differentiated according to the production quotas allocated to each undertaking; whereas it was decided to apply that principle and that system for a further five marketing years from 1986/87 to 1990/91 in order to curb production in the Community, where there is considerable technical production capacity while the world market for sugar is characterized by constant overproduction in relation to consumption and hence by ever-increasing surplus stocks and low prices; whereas, however, the basic A and B quantities and the A and B quotas for undertakings producing sugar and isoglucose were fixed only for the first two marketing years 1986/87 and 1987/88 in view in

(1) OJ No C 49,-22. 2. 1988, p. 100.
(2) OJ No C 356, 31. 12. 1987, p. 42.
(3) OJ No L 177, 1. 7. 1981, p. 4.
(4) OJ No L 377, 31. 12. 1987, p. 24.

particular of the instability of world market prices for sugar and the cyclical nature of the trend in question;

Whereas Article 23 (3) of Regulation (EEC) No 1785/81 provides that the Council must, before 1 January 1988 in respect of the marketing years 1988/89, 1989/90 and 1990/91, determine in particular the basic production quantities for A and B sugar and isoglucose and the allocation of the resulting costs for producers in the context of the quota arrangements laid down until the 1990/91 marketing year;

Whereas, on the one hand, in the light of the medium-term outlook for the world sugar market, it is equally unlikely that the downward trend will be reversed, with prices making a significant and lasting recovery, and that the present decline will worsen; whereas it will, on the other hand, be difficult to adjust unilaterally the price and marketing guarantees given to the Community producers until an international agreement on sugar is reached which contains clauses binding on all the signatory countries; whereas, moreover, there is a risk that, in the present situation, any reduction in the guarantees covering this sector might result in some of the beet-growing areas covered by the quotas being given over to other types of farming financed only partly, if at all, by the producers themselves; whereas it is desirable that the present basic quantities of sugar and isoglucose should therefore be kept at the same level during the remaining three marketing years from 1988/89, 1989/90 and 1990/91 and the self-financing arrangements for the sector should be reinforced so as to ensure that all future losses resulting from the disposal of the Community's surplus production are covered, in respect of each marketing year, by the producers' financial contributions;

Whereas the producers' contributions take the form of a basic production levy which is charged on all production of A and B sugar but which is limited to 2 % of the intervention price for white sugar and a B levy which is charged on the production of B sugar but which is subject to a limit of 37,5 % of that price; whereas isoglucose producers under some conditions pay a proportion of those contributions; whereas because of the limits referred to above, the objective of making sugar production self-financing cannot, under the abovementioned circumstances be achieved in respect of each marketing year; whereas an additional levy should therefore be charged for that purpose;

Whereas, in particular in the interests of equal treatment, the additional levy should be calculated for each undertaking on the basis of its share in the revenue generated by the production levies which it has paid in respect of the marketing year in question; whereas, therefore, a coefficient should be determined for the Community as a whole which represents, in respect of that marketing year, the ratio between the total loss recorded and the total revenue generated by the production levies in question; whereas conditions should also be laid down under which beet and sugar cane sellers are to contribute to eliminating the uncovered part of the loss for the marketing year concerned;

Whereas the Treaty of Accession of Spain and Portugal specifically fixed for mainland Portugal quantities of basic A and B sugar which were incorporated into market organization Regulation (EEC) No 1785/81; whereas those quantities represent a total of 60 000 tonnes of white sugar; whereas the second subparagraph of Article 24 (1) of that Regulation provides that, with regard to Portugal, that country must allocate, for its mainland region and within the limit of those basic quantities, an A quota and a B quota to each undertaking situated in that region which is likely to start up sugar production;

Whereas sugar production quotas are allocated to each undertaking on the basis of objective production during a particular reference period; whereas, however, with regard to mainland Portugal where no sugar beet was grown at the time of accession, the Treaty of Accession allowed for the possibility of allocating quotas to an undertaking without reference to production figures, on condition that the undertaking was in a position to start production immediately, i. e. that it had the necessary technical capacity;

Whereas mainland Portugal has recently commenced production of sugar beet and should, according to plan, increase production, by means of an experimental phase during the 1987/88 marketing year, to reach 54 000 tonnes (7 000 tonnes sugar) in 1988/89 and 135 000 tonnes (equivalent to 17 000 tonnes sugar) in 1990/91, which is the last marketing year covered by the present quota system; whereas, however, the sugar-producing undertaking situated in that region does not yet have the technical facilities needed to start production; whereas, to allow more sugar beet to be grown, provision should be made for transitional measures under which quotas could be allocated to that undertaking; whereas accordingly, sugar obtained from beet harvested in Portugal and produced by a sugar-producing undertaking to which quotas have been allocated but which is situated in another Member State should, from 1987/88 until 1990/91, a period generally considered as sufficient for installing the technical production facilities needed for a sugar factory, be considered as having been produced by the undertaking situated in mainland Portugal which owns the processed beet,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1785/81 is hereby amended as follows:

1. Article 1 (2) (a) and (b) is replaced by the following:

'(a) "white sugars" means sugars, not flavoured or coloured or containing any other added substances, containing, in the dry state, 99,5 % or more by weight of sucrose, determined by the polarimetric method;

(b) "raw sugars" means sugars, not flavoured or coloured or containing any other added substances, containing, in the dry state, less than 99,5 % by weight of sucrose, determined by the polarimetric method;'

2. The following second and third subparagraphs are added to Article 8 (1):

'However, as regards sugar obtained from cane harvested in Spain and marketed in that Member State during the marketing years 1988/89 to 1991/92, the compensation system provided for in the first subparagraph shall apply under the conditions laid down in the third subparagraph and shall apply in its entirety to such sugar with effect from the 1992/93 marketing year.

The amount of the storage levy and of the flat-rate reimbursement fixed for each of the marketing years in question shall be applied at the following rates:

(a) 0 % for sugar marketing during the 1988/89 marketing year

(b) 25 % for sugar marketed during the 1989/90 marketing year

(c) 50 % for sugar marketed during the 1990/91 marketing year

(d) 75 % for sugar marketed during the 1991/92 marketing year.'

3. The following paragraph is added to Article 9:

'4a. As an intervention measure during the period 1987/88 to 1991/92 Community aid shall be granted for the adaptation of the white sugar beet processing industry in the autonomous region of the Azores.

The aid shall be granted, within the limit of the A and B quotas for the sugar-producing undertaking situated in the autonomous region of the Azores, in respect of the quantity of white sugar produced during each of the marketing years referred to in the first subparagraph. The amount of aid per 100 kilograms produced during each marketing year shall be equal to the difference between the derived intervention price, for all the areas of the United Kingdom, for the white sugar in question, and the intervention price for Portugal for the said white sugar.'

4. Article 16 (2) is replaced by the following:

'2. The levies on white sugar, raw sugar and molasses shall be equal to the threshold price minus the cif price. For flavoured and coloured sugars and those containing other added substances, obtained from white sugar or raw sugar, the levy on white sugar shall apply.'

5. Article 23 (2) and (3) is replaced by the following:

'2. For the 1988/89, 1989/90 and 1990/91 marketing years, and without prejudice to Articles 24 (1a) and 25, the A and B quotas of sugar-producing undertakings and isoglucose-producing undertakings shall be those which obtained in the 1987/88 marketing year.

3. For the 1988/89, 1989/90 and 1990/91 marketing years, the basic A and B production quantities for sugar and isoglucose shall be those laid down in Article 24 (2) for the 1986/87 and 1987/88 marketing years.

4. The Council, acting in accordance with the procedure laid down in Article 43 (2) of the Treaty, shall determine before 1 January 1991 the system to be applied from 1 July 1991.'

6. The second and third subparagraphs of Article 24 (1) are replaced by the following paragraph:

'1a. With regard to Portugal, that country shall allocate, for its mainland region under the conditions of this Title and within the limit of the basic A and B quantities fixed for that region in paragraph 2, an A quota and a B quota to each undertaking situated in that region which is likely to start up sugar production.

Before such allocation Portugal may use for the benefit of the A and B quotas of the undertaking situated in the autonomous region of the Azores up to 10 % of the basic A and B quantities fixed in respect of mainland Portugal.

However, as a transitional measure, if an undertaking which is intended for sugar production, which is approved as such by Portugal and which is situated in its mainland region is not likely to start up sugar production that Member State may allocate to it, without prejudice to paragraph 2, an A quota and a B quota during the marketing years from 1987/88 to 1990/91.

For the purposes of the third subparagraph, where a sugar-producing undertaking which is situated in another Member State and to which production quotas have been allocated processes sugar beet harvested in Portugal and purchased by the undertaking situated in Portugal in accordance with the provisions of this Regulation, the sugar obtained as a result shall be considered as having been produced by the Portuguese undertaking in question.

The sum of the quotas allocated for each of the marketing years referred to in the third subparagraph may not exceed the quantity of sugar which may thus be produced during the marketing year in question.'

7. In Article 28 (2), the introductory words are replaced by the following:

'2. Before the end of each of the 1988/89, 1989/90 and 1990/91 marketing years, a cumulative recording shall be made of the 1986/87 to 1989/90 marketing years which precede the year of recording:'

8. Article 28 (5), (6) and (7) is replaced by the following:

'5. Where the figures recorded pursuant to paragraph 1 show that, because of the ceiling placed on the basic production levy and the B levy fixed in paragraphs 3 and 4, the foreseeable total loss for the current marketing year is likely not to be covered by the receipts expected from those levies, the maximum percentage referred to in the first indent of paragraph 4 shall be adjusted to the extent necessary to cover the said total loss but without exceeding 37,5 %.

The revised maximum percentage for the B levy shall be fixed for the current marketing year before 15 September of that marketing year. At the same time the percentage referred to in the second subparagraph of Article 5 (2) shall be adjusted accordingly.

6. The Council, acting by a qualified majority on a proposal from the Commission, may decide that all or part of the losses resulting from any granting of the production refunds referred to in Article 9 (3) must be included in the total loss referred to in paragraph 1 (e) of this Article.

7. The levies referred to in this Article shall be collected by the Member States.

8. Detailed rules for the application of this Article and in particular:

— the amounts of the levies to be collected,

— the revised maximum percentage for the B levy,

— the adjusted minimum price for B beet corresponding to the revised maximum percentage for the B levy.'

9. The following Article is inserted after Article 28:

'Article 28a

1. Where, in respect of a particular marketing year, the total loss recorded pusuant to Article 28 (1) and 2 is not fully covered by the receipts from the production levies for that marketing year after application of Article 28 (3) to (5), an additional levy shall be charged to manufacturers, without prejudice to Article 5, so as to cover fully that part of the total loss in question which is not covered by the said receipts.

2. The additional levy shall be calculated for each sugar-producing undertaking and each isoglucose-producing undertaking by multiplying the total amount of the production levies payable by the undertaking in respect of the marketing year in question by a coefficient to be determined. This coefficient shall represent, for the Community as a whole, the ratio between the total loss recorded for the marketing year in question pursuant to Article 28 (1) and (2) and the receipts from the basic production levy and the B levy owed by sugar manufacturers and isoglucose manufacturers for that marketing year, the ratio being reduced by 1.

3. The additional levy shall be paid by the manufacturers in question before the 15th day of December following the marketing year in respect of which it is payable.

Sugar manufacturers may require that sellers of Community-produced beet or Community-produced cane, as the case may be, refund part of the additional levy in question which has been collected. Such refund may at most be equal to the maximum amount contributed by the beet or cane sellers, as provided for by Article 28, towards the basic production levy and the B levy for the marketing year in question multiplied by the coefficient referred to in paragraph 2.

The refund referred to in the second subparagraph shall be effected on beet delivered under the marketing year in question. However, the parties concerned may agree that the refund shall be effected on beet delivered under the following marketing year.

4. For the purposes of the information recorded pursuant to Article 28 (2), account shall be taken of the revenue generated by charging the additional levy referred to in paragraph 1.

5. Detailed rules for the application of this Article, and in particular the coefficient referred to in paragraph 2, shall be adopted in accordance with the procedure laid down in Article 41.'

10. The second subparagraph of Article 32a (1) is replaced by the following:

'In the marketing years 1986/87 to 1990/91, the elimination levy designed to eliminate a deficit of 80

million ECU for each marketing year shall apply in accordance with the particulars set out in paragraphs 2 and 3.'

11. In Article 32a (4), 'during the marketing years 1986/87 and 1987/88' is replaced by 'during the marketing years 1986/87 to 1990/91.'

Article 2

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

2. It shall apply from 1 July 1988, with the exception of Article 1 (3) and (6) which shall apply from the beginning of the 1987/88 marketing year.

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

Done at Luxembourg, 25 April 1988.

For the Council

The President

H.-D. GENSCHER