COUNCIL REGULATION (EC) No 1261/2007

of 9 October 2007

amending Regulation (EC) No 320/2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Regulation (EC) No 320/2006 [1] was adopted with the aim of enabling the least competitive sugar producers to give up their quota production. However, the renunciation of quotas under that Regulation has not reached the level that was initially expected.

(2) In accordance with Article 10(2) of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector [2], a linear reduction of national and regional quotas is to be carried out by the end of February 2010 at the latest, with a view to avoiding market imbalances in the marketing years as from 2010/2011, taking into account the results of the restructuring scheme. Such a linear cut may penalise the most competitive undertakings and weaken the industry as a whole. To avoid this, it is considered necessary to improve the functioning of the restructuring scheme, in order to increase the renunciation of quotas under that scheme.

(3) It appears that sugar undertakings have been discouraged from making applications for restructuring aid by the fact that there is no certainty as regards the amount of restructuring aid that they will receive, since Member States can decide to increase the minimum percentage of the aid reserved for growers of beet, cane or chicory and for machinery contractors, in accordance with Article 3(6) of Regulation (EC) No 320/2006. To remove this uncertainty, the amount of aid to be reserved to growers and machinery contractors should be fixed at 10 % of the aid to be granted to the sugar undertakings, and the growers concerned should be granted an additional payment for the 2008/2009 marketing year. In certain cases, a longer preparatory period for the restructuring process is needed. Where, in such cases, undertakings decide to apply for restructuring aid as from the marketing year 2009/2010, and in order not to disadvantage growers in such cases, the additional payment to growers should also be granted for the 2009/2010 marketing year provided that the undertaking's application is submitted by 31 January 2008.

(4) In order not to penalise undertakings and growers who took part in the restructuring scheme in the 2006/2007 and 2007/2008 marketing years, the difference between the aid amount granted for those marketing years and the aid amount that would have been granted for the 2008/2009 marketing year should be paid retroactively to them.

(5) In order to create a further incentive to participate in the restructuring scheme, it is considered appropriate to provide for the exemption of a part of the temporary restructuring amount to be paid in accordance with Article 11 of Regulation (EC) No 320/2006 for the 2007/2008 marketing year to those undertakings which renounce, for the 2008/2009 marketing year, a percentage of their quota of at least the withdrawal percentage applied to the undertaking in 2007/2008. The amount to be exempted should correspond to this withdrawal percentage.

(6) Moreover, it is appropriate to set up a two-phase application procedure which should allow undertakings who decide up until 31 January 2008 to renounce a part of their quota, corresponding to at least that withdrawal percentage, to submit a second application by 31 March 2008 enabling them to renounce a further part or the totality of their quota in view of the market situation known at that stage.

(7) It is considered that the restructuring scheme would give better result if growers were able to give up on their own initiative their production of beet or cane intended to be processed into quota sugar. To that end, growers should in the 2008/2009 marketing year be given the possibility to apply directly for the aid provided for in Article 3(6) of Regulation (EC) No 320/2006 provided that they cease to deliver sugar beet or cane to the undertakings to which they were bound by delivery contracts in the previous marketing year. As a consequence, Member States should reduce the quota of the sugar undertakings concerned. In certain cases it may be more appropriate to apply this possibility at Member State level rather than at undertaking level.

[1] OJ L 58, 28.2.2006, p. 42.
[2] OJ L 58, 28.2.2006, p. 1. Regulation as last amended by Commission Regulation (EC) No 247/2007 (OJ L 69, 9.3.2007, p. 3).

(8) In order to avoid endangering the economic viability of the sugar undertakings concerned by growers' aid applications, the quota reduction should be limited to 10 % of the quota allocated to each undertaking, which corresponds to the percentage of quota which the Member State can re-allocate each marketing year in accordance with Article 11(1) of Regulation (EC) No 318/2006.

(9) Where the quota of a sugar undertaking is reduced as a result of growers' aid applications, that undertaking should be granted restructuring aid as referred to in Article 3(1)(c) of Regulation (EC) No 320/2006. Consequently, the aid amounts granted should be those referred to in Article 3(5)(c) of that Regulation. However, those amounts should be adjusted downwards if the undertaking does not take measures in favour of the workforce concerned by the reduction of quota production.

(10) A sugar undertaking concerned by growers' aid applications should until 31 January preceding the marketing year concerned retain the right to submit an application for restructuring aid as provided for in Articles 3 and 4 of Regulation (EC) No 320/2006, provided that it renounces a quota corresponding to at least the same level of quota reduction that would have resulted from the applications for aid lodged by growers. In that case the sugar undertaking's aid application should replace the growers' applications.

(11) Article 6 of Regulation (EC) No 320/2006 provides for aid for diversification. It has become apparent that there is need to clarify the meaning of the third subparagraph of paragraph 4 of that Article. It should be made clear that the aid payable in accordance with that Article in respect of measures envisaged under Axis 1 and 3 of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) [1] is limited by the amounts and rates of support as set out in the Annex to that Regulation.

(12) Article 10(4) of Regulation (EC) No 320/2006 provides for the dates of payments of the aids under the restructuring fund. Experience shows that under certain conditions a further incentive for the uptake of the fund could be set by advancing the payments. The Commission should therefore be empowered to decide on such a measure taking into account the availability of financial means in the fund.

(13) Regulation (EC) No 320/2006 should therefore be amended accordingly.

(14) Account should be taken in this Regulation of the fact that the total quota for production of inulin syrup has already been renounced under the restructuring scheme in the 2006/2007 marketing year. Hence, there is no longer any need to refer to that product or to the raw material from which it is produced, that is to say chicory,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 320/2006 is amended as follows:

1. Article 3 shall be amended as follows:

(a) paragraph 1(c) shall be replaced by the following:

'(c) renounces a part or the total of the quota assigned by it to one or more of its factories and does not use the production facilities of the factories concerned for refining raw cane sugar.

This last condition shall not apply in respect of:

— the sole processing plant in Slovenia,

— the sole beet processing plant in Portugal,

existing on 1 January 2006 and full-time refiners as defined in point 13 of Article 2 of Regulation (EC) No 318/2006.';

(b) in paragraph 6, the first and second subparagraphs shall be replaced by the following:

'An amount of 10 % of the relevant restructuring aid fixed in paragraph 5 shall be reserved for:

(a) growers of sugar beet and cane having concluded a delivery contract with the undertaking concerned during a period preceding the marketing year referred to in paragraph 2 for the production of sugar under the relevant quota renounced;

(b) machinery contractors, being private persons or enterprises having worked under contract with their agricultural machinery for the growers, for the products and in the period referred to in point (a).

After consultation of the interested parties, Member States shall determine the period referred to in the first subparagraph.';

(c) the following paragraphs shall be added:

'7. For the 2008/2009 marketing year, growers referred to in paragraph 6(a) shall receive an additional payment of EUR 237,5 per tonne of sugar quota renounced.

[1] OJ L 277, 21.10.2005, p. 1. Regulation as last amended by Regulation (EC) No 2012/2006 (OJ L 384, 29.12.2006, p. 8).

This additional payment shall also be made for the 2009/2010 marketing year where the undertaking concerned renounces a part or the totality of the sugar quota allocated to it as from that marketing year provided that the application is submitted by 31 January 2008.

8. This paragraph shall apply to:

(a) undertakings having renounced under the restructuring scheme in the 2006/2007 or 2007/2008 marketing year a part or the totality of the quota allocated to them; and

(b) growers concerned by the quota renunciation referred to in point (a).

Where the amounts granted to undertakings and growers in the 2006/2007 and 2007/2008 marketing years were less than the amounts that they would have received if they had restructured under the conditions applicable in the 2008/2009 marketing year, the difference shall be granted to them retroactively.

The same shall apply in respect of inulin syrup producers and chicory growers. The latter shall, for that purpose, be deemed as being eligible for the additional payment referred to in paragraph 7.';

2. after Article 4(1), the following paragraph shall be inserted:

'1a. Undertakings may submit an additional application for restructuring aid to renounce, as from the marketing year 2008/2009, a further part or the totality of the quota allocated to them, until 31 March 2008 in the case where:

— applications at growers' initiative in accordance with Article 4a or of an undertaking in accordance with paragraph 1 of this Article to renounce quota as from the marketing year 2008/2009 have been granted, and

— the quota renounced accordingly corresponds at least to the withdrawal percentage set on 16 March 2007 by Article 1(1) or Article 1(2) of Commission Regulation (EC) No 290/2007 of 16 March 2007 establishing for the 2007/2008 marketing year, the percentage provided for in Article 19 of Council Regulation (EC) No 318/2006 (*).

However, undertakings situated in Member States where the withdrawal percentage set at the date specified in the second indent of the first subparagraph is 0 may make use of the possibility stipulated in that subparagraph independently of whether applications at growers' initiative or by themselves were submitted previously.

(*) OJ L 78, 17.3.2007, p. 20.';

3. the following Article shall be inserted:

'Article 4a

Application for restructuring aid by growers

1. For the 2008/2009 marketing year, any grower of sugar beet or cane intended to be processed into quota sugar may submit to the Member State concerned a direct application for the aid provided for in Article 3(6) and 3(7), accompanied by a commitment to cease delivery of a certain amount of quota beet or cane to the undertaking with which he has concluded a delivery contract in the preceding marketing year.

By way of derogation from the first subparagraph, in the framework of an agreement within the trade it may be decided that only growers who have concluded delivery contracts in the preceding marketing year with one and the same undertaking shall be entitled to submit an application as referred to in the first subparagraph provided that:

— the quota allocated to that undertaking corresponds to at least 10 % of the remaining sugar quota fixed for the Member State concerned in Annex III to Regulation (EC) No 318/2006, and

— the amount of sugar quota to be renounced by that undertaking plus the amount of sugar quota already renounced by all undertakings within the Member State concerned as a consequence of previous applications in accordance with Article 4 of Regulation (EC) No 320/2006 correspond to at least 60 % of the sugar quota fixed for that Member State in Annex III to Regulation (EC) No 318/2006 on 20 February 2006. For those Member States which were not members of the Community on 1 July 2006, the reference to the said Annex III shall concern the version applicable on the date of their accession to the Community.

2. The applications referred to in paragraph 1 shall be submitted by 30 November 2007. Applications may be submitted as from the 30 October 2007.

3. The Member State concerned shall establish a list of applications referred to in paragraph 1 in the chronological order of their lodging and shall communicate the total amount of quota affected by the applications received within 10 working days following the deadline for submission as referred to in paragraph 2 to the Commission and the undertakings concerned.

4. By 15 March 2008, the Member State concerned shall, on the basis of the chronological order referred to in paragraph 3 and after the verification provided for in the fourth indent of Article 5(2), grant growers' applications corresponding to up to 10 % of the sugar quota allocated to each undertaking and shall reduce in proportion the sugar quota of the undertaking concerned in accordance with Article 11(4) of Regulation (EC) No 318/2006. However, in the case referred to in the second subparagraph of paragraph 1 of this Article, the Member States concerned shall, under the same conditions, grant growers' applications corresponding up to 10 % of the remaining sugar quota fixed for this Member State in Annex III to Regulation (EC) No 318/2006.

In the case where any of the limits of 10 % referred to in the first subparagraph is reached, the Member State concerned shall reject the applications above this limit according to the chronological order of submission.

The undertaking concerned shall establish and implement a social plan as referred to in Article 4(3)(f).

5. As a result of the Member State's acceptance of applications in accordance with paragraph 4, the amount of restructuring aid to be granted shall be as follows:

(a) for growers and contractors, 10 % of the relevant aid amount fixed in Article 3(5)(c) and for growers the additional payment referred to in Article 3(7);

(b) for undertakings, the relevant aid amount fixed in Article 3(5)(c), reduced by 10 %, or by 60 % if the undertaking concerned does not respect the requirement set out in the third subparagraph of paragraph 4 of this Article.

6. Paragraphs 4 and 5 of this Article shall not apply where an undertaking's application in accordance with Article 4 has been granted as from the marketing year 2008/2009 renouncing an amount of quota higher than the quota affected by the growers' applications. The same shall apply in any case, where an undertaking's application has been granted as from the marketing year 2008/2009 renouncing more than 10 % of its quota.';

4. in Article 5(1), the following subparagraph shall be added:

'In the case of submission of additional applications for restructuring aid in accordance with Article 4(1a), Member States shall decide, after the verification provided for in the fourth indent of Article 5(2) on the granting of that aid linked to these applications by the end of April 2008.';

5. in Article 6(4), the third subparagraph shall be replaced by the following:

'The aid provided for in paragraph 1 of this Article shall not be higher than the amounts and rates of support laid down in the Annex to Regulation (EC) No 1698/2005.';

6. Article 10(5) shall be replaced by the following:

'5. The Commission may decide to postpone payment of the aids referred to in Articles 6, 7, 8 and 9 until the necessary financial resources have been paid into the restructuring fund or, in the case where the necessary financial resources are available in that fund, to advance the dates for the payment of the aids.';

7. in Article 11, the following paragraph shall be added:

'6. In the 2008/2009 marketing year, undertakings which were subject to the application of the withdrawal percentage set on 16 March 2007 by Article 1(1) or Article 1(2) of Regulation (EC) No 290/2007 and which renounce a percentage of their quota of at least that withdrawal percentage shall be exempted from part of the temporary restructuring amount to be paid for the 2007/2008 marketing year.

In the case where the conditions referred to in the first subparagraph of this paragraph are fulfilled, the reduction of the temporary restructuring amount shall be calculated by multiplying that amount by the withdrawal percentage set in accordance with Article 1(1) or 1(2)(c) of Regulation (EC) No 290/2007.'

Article 2

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

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

Done at Luxembourg, 9 October 2007.

For the Council
The President
F. TEIXEIRA DOS SANTOS