COMMISSION REGULATION (EU) No 222/2011

of 3 March 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 2010/2011

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 187, in conjunction with Article 4 thereof,

Whereas:

(1) The world market prices for sugar have been at a constant high level since the beginning of the 2010/2011 marketing year. Forecasts of world market prices based on the New York's sugar futures exchange market for the terms of March, May and July 2011 further indicate a constant high world market price.

(2) The cumulated negative difference between availability and utilisation of sugar and isoglucose over the last two marketing years is estimated at 1,0 million tonnes, and would result in the lowest level of ending stocks in the EU since the implementation of the 2006 reform of the sugar sector. Any further shortfall of imports threatens to seriously disrupt the availability of supply on the Union sugar market and to further deteriorate in the absence of measures for the sector.

(3) Exports from African, Caribbean and Pacific (ACP) countries and Least Developed Countries (LDCs) to the European Union are not expected to increase in the short run.

(4) On the other hand, a good harvest in some parts of the Union has led to the production of sugar in excess of the quota set out in Article 56 of Regulation (EC) No 1234/2007. Part of this sugar should be made available to the sugar market of the Union in order to partially satisfy demand and to avoid excessive price increases. The available quantity of sugar in excess of the quota is estimated at 0,5 million tonnes. This estimate takes into account contractual commitments of sugar producers in respect of certain industrial uses provided for in Article 62 of Regulation (EC) No 1234/2007, and the quantities for which export licences have already been issued.

(5) 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 [2] has fixed that levy at EUR 500 per tonne.

(6) The extraordinarily low supply of sugar on the internal market in the 2010/2011 marketing year may allow the Commission to exceptionally fix the surplus levy at zero for a limited quantity of sugar produced in excess of the quota, without any risk of accumulation of quantities.

(7) 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. In order to preserve the balance between the two sweeteners, the appropriate quantity of out of quota isoglucose to be released on the internal market should be established on the basis of the relation of the quotas for each of the two products fixed in Annex VI to Regulation (EC) No 1234/2007.

(8) 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.

(9) 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 available production, should prevent speculative actions within the system created by this Regulation.

(10) Applications should only be possible until the end of June and should only be valid for a short period of time. This should encourage a rapid availability of the quantities on the Union market.

[1] OJ L 299, 16.11.2007, p. 1.

[2] OJ L 176, 30.6.2006, p. 22.

(11) 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.

(12) The competent authorities of the Member States should notify the Commission of the applications received.

(13) 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.

(14) Member States should immediately inform the applicants whether their application was fully or partially granted.

(15) Account taken that the release on the Union market of quantities in excess of the certificates delivered is subject the surplus levy set out in Article 64(2) of Regulation (EC) No 1234/2007, it is 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, for reasons of consistency, and to prevent abuse of the exceptional release of out-of-quota sugar and isoglucose on the Union market during marketing year 2010/2011.

(16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

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 a maximum quantity of 500 000 tonnes of sugar in white sugar equivalent and 26 000 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 2010/2011, shall be fixed at EUR 0 per tonne.

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 2010/2011 marketing year, in accordance with Article 56 of that Regulation.

3. Each applicant may submit one application for each product per week.

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 [1].

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

(a) they 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;

(b) the quantity of sugar applied for shall not exceed the quantity of out-of-quota sugar production that the applicant declared in storage in his latest notification done in accordance with Article 21(1) of Commission Regulation (EC) No 952/2006 [2]. That quantity shall be reduced by the quantities covered by unused certificates and export licences that were already issued to the applicant under this Regulation or under Commission Regulation (EC) No 397/2010 [3]. The quantity of isoglucose applied for shall not exceed 10 % of the isoglucose quota allocated to the applicant;

(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.

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

[1] OJ L 13, 19.1.2000, p. 12.
[2] OJ L 178, 1.7.2006, p. 39.
[3] OJ L 115, 8.5.2010, p. 26.

Article 3

Submission of applications

Applications for certificates shall be submitted each week, from Monday to Friday, 1 p.m. (Brussels time) starting from the first Monday after the entry into force of this Regulation until 24 June 2011.

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 Monday at the latest, by fax or electronic mail, of the admissible applications submitted during the preceding week. Member States that received no applications but have sugar or isoglucose quota allocated to them in marketing year 2010/2011, 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:

(a) fix an allocation coefficient, which the Member States shall apply to the quantities covered by each notified certificate application;

(b) reject applications not yet notified;

(c) close the period for submitting the applications.

Article 6

Issue of certificates

1. Without prejudice to Article 5, every week from Monday to Friday at the latest, the competent authorities of the Member States shall issue certificates for the applications notified to the Commission, in accordance with Article 4(2), during the preceding week.

A template of the certificate is set out in the Annex to this Regulation.

2. Each Monday Member States shall notify the Commission of the quantities of sugar and/or isoglucose for which they issued certificates in the preceding week.

Article 7

Validity of certificates

Certificates shall be valid until the end of the month following the month of issue.

Article 8

Transferability of certificates

Neither the rights nor the obligations deriving from the certificates shall be transferable.

Article 9

Monitoring

1. Applicants shall add to their monthly notifications provided for in Article 21(1) of Regulation (EC) No 952/2006 the quantities for which they received certificates in accordance with Article 6 of this Regulation.

2. Before the end of the second month following the month during which the certificate was issued, each applicant shall submit to the competent authorities of the Member States proof that all quantities covered by his certificate were released on the Union market. Quantities covered by the certificate but not released on the Union market for reasons other than *force majeure*, shall be subject to payment of an amount of EUR 500/tonne. Member States shall communicate the quantities released on the Union market to the Commission.

3. Member States shall calculate and notify the Commission of the difference between the total quantity of sugar and isoglucose produced by each producer in excess of the quota and the quantities which have been disposed by the producers in accordance with the second subparagraph of Article 4(1) of Regulation (EC) No 967/2006. If the remaining quantities of out of quota sugar or isoglucose of a producer are less than the quantities for which that producer applied for under this Regulation, the producer shall pay an amount of EUR 500/tonne on that difference.

Article 10

Entry into force

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

It shall expire on 30 June 2012.

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

Done at Brussels, 3 March 2011.

For the Commission
The President
José Manuel BARROSO

ANNEX

(Model for the certificate referred to in Article 6(1))

CERTIFICATE

for the reduction, for the 2010/2011 marketing year, of the levy provided for in Article 3 of Regulation (EC) No 967/2006

Member State:	
Quota holder:	

Product:	
Quantities applied:	
Quantities issued:	

For the marketing year 2010/2011, the levy referred to in Article 3 of Regulation (EC) No 967/2006 shall not apply to the quantities issued of this certificate, subject to the respect of the rules laid down in Commission Regulation (EU) No 222/2011, in particular in Article 2(4)(c)

Signature of the Competent authority of the Member State Date of issue

This certificate shall be valid until the end of the month following the month of issue