Commission Implementing Regulation (EU) No 1240/2011 of 30 November 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 2011/2012

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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 level close to or even above the Union internal market price since several months. Forecasts of world market prices based on the sugar futures exchange markets of New York and London for the terms of March, May and July 2012 further indicate a constant high world market price. Imports from third countries benefiting from certain preferential agreements are therefore expected to increase only moderately during the 2011/2012 marketing year.

(2) The forecasted sugar balance within the Union for the 2011/2012 marketing year identifies a deficit between utilisation of quota sugar and what should have been available of about 700 000 tonnes. The resulting low level of ending stocks threatens to disrupt the availability of supply of the Union's sugar market and increase the Union internal sugar market price.

(3) 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 of nearly 5 million tonnes. Taking account of estimations on contractual commitments of sugar producers in respect of certain industrial uses provided for in Article 62 of Regulation (EC) No 1234/2007 and the 2011/2012 export commitments for out-of-quota sugar, substantial quantities of out-of-quota sugar of about 1 000 000 tonnes will still be available. Part of this sugar could be made available to the sugar market of the Union in order to partially satisfy demand and to avoid excessive price increases

(4) Article 187 of Regulation (EC) No 1234/2007 empowers the Commission to take the necessary measures for the sector if quotations or prices on the world market of sugar reach a level that disrupts or threatens to disrupt the availability of supply on the Union

market. In this context, possible measures are not limited to the explicitly mentioned measure of full or partial suspension of import duties.

(5) In the 2010/2011 marketing year, the world market price for sugar was close to or even above the recorded average Union market price for certain periods of time. Against this background and taking transport costs and delays linked to imports into account, the instrument of a reduction of import duties alone might not be sufficient to address the shortage of quota sugar and the upward pressure on prices on the EU market.

(6) 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.

(7) The continuing low supply of sugar on the internal market in the 2011/2012 marketing year may allow the sale of 400 000 tonnes of out-of-quota sugar on the internal market. Because the supply shortage is less severe than in the 2010/2011 marketing year and the measure is taken at an earlier stage compared to the 2010/2011 marketing year with still some uncertainties regarding exact quantities available on the EU market, the setting of a reduced levy is appropriate, in order to avoid any risk of accumulation of quantities. For that limited quantity of sugar produced in excess of the quota a reduced surplus levy should be fixed, at a level per tonne representing the difference between the most recent publicly available average Union price and the world market price.

(8) 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.

(9) For that reason and with the view to increasing the supply, 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 with a reduced surplus levy.

(10) The validity of the certificates should be limited in time to encourage a fast improvement of the supply situation.

(11) 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 production should prevent speculative actions within the system created by this Regulation.

(12) 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. The minimum eligibility requirements for applications should be specified.

(13) The competent authorities of the Member States should notify the Commission of the applications received. In order to simplify and standardise those notifications, models should be made available.

(14) 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.

(15) Member States should immediately inform the applicants whether the quantity applied for was fully or partially granted.

(16) The reduced surplus levy should be paid after the application is admitted and before the certificate is issued.

(17) The competent authorities should notify the Commission of the quantities for which certificates with a reduction of the surplus levy have been issued. For this purpose, models should be made available by the Commission.

(18) Sugar quantities released on the Union market of quantities in excess of the certificates issued under this Regulation should be subject the surplus levy set out in Article 64(2) of Regulation (EC) No 1234/2007. It is therefore 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. This consistent approach is aimed at preventing abuse of the mechanism introduced by this Regulation.

(19) For the purpose of establishing average prices for quota and out-of-quota sugar on the Union market in accordance with Article 13(1) of Commission Regulation (EC) No 952/2006 of 29 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 318/2006 as regards the management of the Community market in sugar and the quota system[(3)], sugar covered by a certificate issued pursuant to this Regulation should be considered as quota sugar.

(20) 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 400 000 tonnes of sugar in white sugar equivalent and 21 000 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 2011/2012, shall be fixed at EUR 85 per tonne. The reduced surplus levy shall be paid after the application, referred to in Article 2, is admitted and before the certificate, referred to in Article 6, is issued.

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 2011/2012 marketing year, in accordance with Article 56 of that Regulation.

3 Each applicant may submit not more than one application for sugar and one for isoglucose per application period.

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[(4)].

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

a the applications 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, rounded to no decimal places;

b the quantities applied for in this application period, expressed in tonnes of white sugar equivalent and tonnes of isoglucose in dry matter, shall not exceed 50 000 tonnes in the case of sugar and 2 500 tonnes in the case of isoglucose;

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;

e the application shall indicate a reference to this Regulation and the expiry date for the submission of the applications for the application period in question;

f the applicant shall not introduce any additional conditions to those laid down in this Regulation.

6 An application which is not submitted in accordance with paragraphs 1 to 5 shall not be admissible.

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

Article 3

Submission of applications

1 The first period during which applications may be submitted shall end on 7 December 2011 at 12 noon, Brussels time.

2 The periods during which applications may be submitted for the second and subsequent application periods shall begin on the first working day following the end of the preceding period. They shall end at 12 noon, Brussels time, on 14 December 2011, 11 January 2012, 25 January 2012, 1 February 2012, 15 February 2012, 6 June 2012, 27 June 2012 and 11 July 2012.

3 The Commission may suspend the submission of applications for one or several application periods.

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 Friday at the latest, by fax or electronic mail, of the admissible applications submitted during the preceding application period. That notification shall not contain the data referred to in Article 2(5)(a)(i). Member States that received no applications but have sugar or isoglucose quota allocated to them in marketing year 2011/2012, 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.