



Brussels, 17.7.2013
COM(2013) 526 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

Commission Declaration

Accompanying Commission proposal for a Council Regulation fixing the production levies in the sugar sector for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006, the coefficient required for calculating the additional levy for the marketing years 2001/2002 and 2004/2005 and the amounts to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum amount of the levies and the amount of these levies to be charged for the marketing years 2002/2003, 2003/2004 and 2005/2006.

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1. REIMBURSEMENT OF THE PRINCIPAL AND INTEREST

In its judgement of 27 September 2012¹, the Court of Justice of the European Union has held that, as a result of the invalidity of Commission Regulation (EC) No 1193/2009², producers are entitled to reimbursement of the excess sums unduly paid in respect of the invalid production levies paid in the relevant marketing years. Such excess levies have accrued to the Union budget net of 25% of the collection fees which have accrued to the national budgets pursuant to Article 2(3) of Council Decision 2000/597/(EC, Euratom) on the system of the European Communities' own resources³.

The proposed Council Regulation fixes sugar production levies for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005 and 2005/2006, which will allow Member States to determine the amounts to be reimbursed to sugar producers. Only the difference between the old and the new levies, and not the entire amounts collected over the period concerned, is to be reimbursed to sugar producers.

It follows from the general principle of unjust enrichment that Member States should be able to recover the amounts actually reimbursed, net of 25% retained by them by way of collection costs, from the EU budget.

The Court clarified that individuals entitled to reimbursement of sums paid unduly in respect of production levies in the sugar sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums. It follows that reimbursements by Member States to economic operators of sums unduly paid under the EU law shall therefore include the payment of interest, to the extent provided for by national law in similar situations.

Member States shall apply their national law for calculating the amount of interest.

2. REIMBURSEMENT OF BEET SELLERS

The proposed Council Regulation lays down in its Article 1(3) the revised complement prices on the basis of which sugar producers have to make a repayment to beet sellers. It has to be underlined that only the difference between the old and the new complement prices should be used for the calculation of the reimbursement to beet sellers, including interest payable under the same conditions referred to in Section 1.

¹ Joined cases C-113/10, C-147/10 and C-234/10, not yet published.

² OJ L 321, 8.12.2009, p. 1.

³ OJ L 253, 7.10.2000, p. 42.

Before reimbursing sugar producers the excess levies paid over the period in question, Member States should put in place administrative procedures ensuring that the concerned producers repay, where relevant, the amounts due to the beet sellers. In the absence of such repayment, the reimbursement to sugar producers should be reduced proportionally.

3. ACCOUNTING PROCEDURE

The own resources regulatory framework does not include any provision that would allow for the payment of interest from the EU to the Member States. Therefore, when claiming back to the Commission expenditure incurred, Member States must inform the Commission about the amounts effectively paid as restitution to the concerned economic operators, distinguishing the principal from the interest components.

3.1. Principal amounts

The reimbursement of the sugar levies constitutes a correction in the EU own resources. This implies that Member States can deduct 75% of the excess amount effectively paid, by way of charging the own resources of the EU.

Based on Article 2(2) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom on the system of the Communities' own resources⁴, Member States have to establish the corrected sugar levies applicable in the relevant years by the date laid down in Article 2 of the proposed Council Regulation fixing the sugar levies.

As the proposed Council Regulation refers to a correction of the sugar levies originally paid, Member States have all the elements in their possession to establish the correct amounts to be reimbursed.

Member States can recover, via a negative correction in the so-called A-statement, the amounts effectively paid as reimbursement of the excess levies unduly collected. It should be stressed that in the A-statement, Member States will have first to include the full amount (100%) reimbursed as correction. Subsequently, the amount net of the sums retained by them as collection costs (75%) shall be posted in the last column of the statement. This is the normal procedure to take into account the collection costs.

According to Article 2 of the proposed Council Regulation, the establishment by the Member States for the own resources has to be done the last day of the fourth month following the day of entry into force of that Regulation, at the latest. Member States have to introduce the result of the establishment in the A-statements that they have to transmit to the Commission on the first working day after the 19th day of the second month following the month during which the entitlement was established, at the latest.

Therefore, in practical terms, Member States have to establish the correction of the own resources on the last day of [...], at the latest. They have to introduce the entitlement in the A-statements to be transmitted to the Commission on [...], at the latest.

Depending on the adoption date of the Council Regulation, the financial impact on the revenue part of the EU budget could either be in 2013, in 2014 or in both financial years.

3.2. Interest

As indicated above, it follows from the general principle of unjust enrichment that individuals entitled to reimbursement of sums paid unduly as a result of the production levies in the sugar

⁴ OJ L 130, 31.5.2000, p. 1.

sector determined on the basis of an invalid regulation are also entitled to payment of the interest on such sums to the extent provided for by national law in similar situations.

Interest effectively paid shall be declared, using the procedure for making monthly payments referred to in Article 15 of Council Regulation (EC) No 1290/2005 on the financing of common agricultural policy, under budget line 05 07 02 dedicated to the 'settlement of disputes'. In particular, this budget line 'is intended to accommodate, if necessary, appropriations to cover expenditure (positive or negative) for which the Commission may be made responsible by a decision of a Court of Justice, including the cost of settling claims for damages and interest'.

4. MONITORING OF REIMBURSEMENT PROCESS

For monitoring purposes, Member States should notify the Commission an overview of the amounts that are to be reimbursed to sugar manufacturers, distinguishing the principal and the interest amounts, before starting the reimbursement process, and in any case by the second month following the entry into force of the Regulation at the latest. This notification should include a detailed explanation of the legal basis in the national law used to determine the interest payable and the rate applied, and the period considered for the calculation of the interest amount. In accordance with the principle of equivalence, the Commission wishes to emphasise that the interest rate used shall correspond to the one normally used for similar national reimbursements.

The Commission reserves the right to ask for additional justifications of the amounts declared as paid and to take any appropriate measure to protect the Union's financial interests.