



Brussels, 17.7.2013
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2013/0252 (NLE)

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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 27 September 2012, the Court of Justice delivered its judgment in joined cases C-113/10, C-147/10 and C-234/10, *Zuckerfabrik Jülich AG v Hauptzollamt Aachen, British Sugar plc v Rural Payments Agency, Tereos v Directeur général des douanes et droits indirects* (the “Jülich-II” judgement) by which it annulled Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006.

Regulation (EC) No 1193/2009, annulled in its entirety by the judgement of 27 September 2012, retroactively corrected the production levies for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006 as previously fixed by the Commission following the annulment by the Court of Regulations (EC) Nos 1762/2003, 1775/2004, 1686/2005 and 164/2007, with its judgement of 8 May 2008 in Joined Cases C-5/06, and C-23/06 to C-36/06, *Zuckerfabrik Jülich and Others* (‘Jülich I’) and subsequent order of 6 October 2008, in Joined Cases C-175/07 to C-184/07, *SAFBA and Others* (‘SAFBA’).

The levies for the marketing years in question were originally set by the Commission pursuant to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (‘the basic regulation’), which provided, for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006, for a self-financing system of the sugar sector by flexible production levies.

Under Council Regulation (EC) No 1260/2001, the common organisation of the markets in the sugar sector was based on the principle that producers should bear full financial responsibility for the losses incurred each marketing year from disposing of that part of Community production under quota which is surplus to the Community's internal consumption and on a differentiation of price guarantees for disposal, reflecting the production quota allocated to each undertaking.

The principle of financial responsibility was assured by producers being charged a basic production levy on all production of A and B sugar, limited to 2% of the intervention price for white sugar and a B levy charged on the production of B sugar up to a limit of 37.5% of that price. When those levies did not allow achieving the objective of self-financing of the sector each marketing year, the basic regulation provided for an additional levy to be charged to producers. Article 15 of the basic regulation provided for the elements to be taken into consideration for the calculation of the levies.

In its above mentioned judgements, the Court did not put into question the production levy system and the principle by which the sugar producers had to bear the full financial responsibility for the losses incurred in each marketing year by disposing of that part of production under quota which is surplus to the Union's internal consumption and were accordingly liable to a levy on their production under quota, to be fixed by the Commission with a view to covering the losses incurred during the marketing years from 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006.

The Court has ruled, however, that the Commission has repeatedly erred in calculating the annual levies set for the period in question pursuant to Council Regulation (EC) No 1260/2001. Lastly, it found that the method used by the Commission in its Regulation (EC) No 1193/2009 to fix the levies was incorrect because it led to an over-estimation of the costs to be covered and to consequently over-charging sugar producers.

As a result of the invalidity of Regulation (EC) No 1193/2009, the Court held that individuals are entitled to reimbursement of the excess sums unduly paid in respect of the invalid production levies collected by the Member States over the period in question as well as to the payment of interest on such sums.

The judgement has left a legal void as to the exact amount of the levies for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006. Therefore, to comply with the judgement, the levies set for these marketing years should be replaced by new ones, calculated according to the method validated by the Court, with retroactive effect.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission has presented to the Member States various working documents relating to the determination of the corrected sugar levies and the follow-up to the Court's judgement of 27 September 2012. Those working documents were presented at the Management Committee for the Common Organisation of Agricultural Markets on 6 December 2012, on 20 December 2012, on 24 January 2013 and a consolidated version on 28 February 2013.

A number of Member States (DE, BE, LV, IT, FR, NL, UK, CZ) called the Commission to prepare a legal act correcting the levies, which should include the reimbursement by the Union budget of interest on reimbursements made or to be made to the sugar producers who paid excess levies in the relevant years, by the concerned Member States. Some delegations also suggested that interest should be calculated at a uniform rate at the European level.

3. LEGAL ELEMENTS OF THE PROPOSAL

Pursuant to Article 266 TFEU 'The institution whose act has been declared void ...shall be required to take the necessary measures to comply with the judgement of the Court of Justice of the European Union.'. Therefore, following the annulment of Regulation (EC) No 1193/2009, new levies for the period in question are to be fixed.

Since, with effect from the marketing year 2006/2007, Regulation (EC) No 1260/2001 was repealed and replaced by Council Regulations (EC) No 318/2006, on the common organisation of the markets in the sugar sector, and further replaced by (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), Council Regulation (EC) No 1260/2001 can no longer serve as the legal basis for correcting the levies. The Commission is therefore not empowered to adopt the corrective legal act necessary to implement the judgement.

Pursuant to Article 43(3) TFEU 'The Council, on a proposal from the Commission, shall adopt measures on fixing ... levies.'. In view of the nature of the proposed Regulation, Article 43(3) appears to be the appropriate legal basis to fix the corrected sugar levies for the marketing years in questions.

Although the Court did not invalidate Regulation (EC) No 1837/2002, fixing the production levies for the marketing year 2001/2002, taking into consideration that the same method invalidated by the Court has been used for setting the levies for the marketing year 2001/2002, the levies set for that marketing year are to be considered incorrect as well. Therefore, new levies for that marketing year should be fixed and included in the corrective legislative act.

In its above mentioned judgements, the Court has clarified all the elements that have to be taken into consideration for the calculation of the 'average loss', within the meaning of Article 15 of the basic regulation, which has to be used for estimating the 'overall loss' to be covered by the production levies. In particular, the 'average loss' is to be calculated by dividing the actual total refunds paid (lower than that calculated by the Commission in the annulled Regulation (EC) No 1193/2009) by the total exported quantities, regardless whether they were exported with or without a refund. The 'exportable surplus' is also calculated by using all exports, whether a refund has been paid or not. The application of the new method indicated by the Court leads to a substantial decrease of the 'average loss' and the 'overall loss' to be covered by the levies for the period in question.

Therefore, the proposed Regulation will establish the sugar production levies for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006, re-calculated on the basis of the methodology clarified by the Court. This will allow Member States to calculate the reimbursement due to sugar producer in respect of the excess levies that they have been charged over the same period.

Moreover, the revision of the production levies for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006 will impact on the complement price that the sugar producers had to pay to beet growers in respect of the difference between the maximum amount of the A or B levy and the amount of these levies charged for the marketing years 2002/2003, 2003/2004 and 2005/2006.

Indeed, according to the common organisation of the markets in the sugar sector in force until 2006, the levies were paid by sugar manufacturers but the latter recovered 60% of these costs from beet growers, by paying a lower beet price. When the amounts of the levies were set below the maximum level for the A or B levies (i.e. 2% and 37.5% of the intervention price for white sugar respectively), Article 18(2) of the basic regulation provided that sugar manufacturers have to pay beet sellers 60% of the difference between the maximum amount of the levy in question and the amount of the base levy or the B levy actually charged.

Therefore, this corrective legal act establishes the revised complement prices that sugar producers should pay back to beet sellers. Only the difference between the old and the new complement prices should be reimbursed to beet sellers.

The reimbursement of the sugar levies constitutes a correction of the sugar levies originally paid in the EU own resources. Member States have to establish the new sugar levies entitlements based on the new levies within four months following the entry into force of the current act.

4. BUDGETARY IMPLICATIONS

The revision of the sugar production levies for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006 will result in a negative correction of EUR 295 541 212, to be charged to the own resources of the EU budget. Besides the said amount, Member States could claim from the Commission the reimbursement of the interest effectively paid by them, in accordance with their national law, in reimbursing the excess levies collected for the relevant years. The latter expenditure shall be separately charged to the EU budget by the concerned Member States upon presentation of the corresponding proofs of payment.

5. OPTIONAL ELEMENTS

The Commission will issue a declaration accompanying the present proposal for a Council Regulation, in order to clarify certain elements related to the reimbursement of the principal

and interest, the reimbursement to the beet sellers, the accounting procedure and monitoring of the reimbursement process.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector¹, and in particular Article 15(8) first indent, Article 16(5), and Article 18(5) thereof, empowered the Commission to adopt detailed rules on the amounts of the levies to be collected, the coefficient for the additional levy and the repayment to beet sellers.
- (2) The Commission established the production levies for the marketing years 2001/2002², 2002/2003³, 2003/2004⁴, 2004/2005⁵ and 2005/2006⁶.
- (3) Article 18(2) of Regulation (EC) No 1260/2001 provided that when basic production levy is lower than the maximum amount referred to in Article 15(3) or when the B levy referred to in that Article is lower than the maximum amount referred to in Article 14(4) of that Regulation, adjusted, where necessary, in accordance with paragraph 5 of that Article, sugar manufacturers had to pay back beet sellers 60% of the difference between the maximum amount of the levy concerned and the amount of the levy to be charged.
- (4) In accordance with Article 9(1) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector⁷, the amounts to be paid by sugar manufacturers to beet sellers in respect of the difference between the maximum amount of the basic levy and the B levy and

¹ OJ L 178, 30.6.2001, p. 1.

² OJ L 278, 16.10.2002, p. 13.

³ OJ L 254, 8.10.2003, p. 4.

⁴ OJ L 316, 15.10.2004, p. 64.

⁵ OJ L 271, 15.10.2005, p. 12.

⁶ OJ L 51, 20.2.2007, p. 17.

⁷ OJ L 50, 21.2.2002, p. 40.

the amounts of that levies charged, were set for the marketing years 2002/2003⁸, 2003/2004⁹ and 2005/2006¹⁰.

- (5) In the framework of the reform of the common market organisation for the sugar sector, Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector¹¹ has repealed and replaced Regulation (EC) No 1260/2001 as of the marketing year 2006/2007. Regulation (EC) No 318/2006, subsequently repealed and incorporated into 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)¹², has replaced the variable sugar production levy system of self-financing the production quota regime by a new production charge aimed at contributing to the financing of the expenditure occurring in the sugar sector under the common market organisation for sugar.
- (6) On 8 May 2008 the Court of Justice declared invalid¹³ Commission Regulations (EC) No 1762/2003 of 7 October 2003 fixing the production levies in the sugar sector for the 2002/2003 marketing year¹⁴ and (EC) No 1775/2004 of 14 October 2004 setting the production levies in the sugar sector for the 2003/2004 marketing year¹⁵. In its judgment, the Court held that all the quantities of sugar in exported products, regardless of whether or not refunds have actually been paid, are to be taken into account for the purpose of calculating the estimated average loss per tonne of product.
- (7) The Court also declared invalid¹⁶ Commission Regulation (EC) No 1686/2005 of 14 October 2005 setting the production levies and the coefficient for the additional levy in the sugar sector for the 2004/2005 marketing year¹⁷.
- (8) In order to comply with the Court's rulings, the Commission adopted Regulation (EC) No 1193/2009 correcting Regulations (EC) No 1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for the marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006¹⁸.
- (9) On 29 September 2011 the General Court delivered its judgment in case T-4/06, in which it stated that there was no proper legal basis for a differentiated coefficient for the additional levy in the sugar sector and annulled Article 2 of Regulation (EC) No 1686/2005 as replaced by Article 3 of Commission Regulation (EC) No 1193/2009.
- (10) On 27 September 2012 the Court declared invalid Regulation (EC) No 1193/2009, stating that Article 15(1)(d) of Regulation (EC) No 1260/2001 was to be interpreted as meaning that the total amount of refunds should have included the total amounts paid, for the purpose of calculating the estimated average loss per tonne of product¹⁹.

⁸ OJ L 254, 8.10.2003, p. 5.

⁹ OJ L 316, 15.10.2004, p. 65.

¹⁰ OJ L 51, 20.2.2007, p. 16.

¹¹ OJ L 58, 20.2.2006, p. 1.

¹² OJ L 299, 16.11.2007, p. 1.

¹³ Joined cases C-5/06 and C-23/06 to C-36/06, ECR 2008, I-03231.

¹⁴ See the reference in footnote 3.

¹⁵ See the reference in footnote 4.

¹⁶ Orders of 6 October 2008 in joined cases C-175/07 to C-184/07, ECR 2008, I-00142, as well as in cases C-466/06, ECR 2008, I-00140, and C-200/06, ECR 2008, I-00137.

¹⁷ See the reference in footnote 5.

¹⁸ OJ L 321, 8.12.2009, p. 1.

¹⁹ Joined cases C-113/10, C-147/10 and C-234/10, not yet published.

- (11) Consequently, the levies should be fixed at the appropriate level. The 'average loss' within the meaning of Article 15(1)(d) of Regulation (EC) No 1260/2001 should be calculated by dividing the refunds paid by the exported quantities, whether a refund is paid or not, for exports defined in accordance with Article 6(5) of Commission Regulation (EC) No 314/2002 of 20 February 2002 laying down detailed rules for the application of the quota system in the sugar sector²⁰. The 'exportable surplus' within the meaning of Article 15(1)(c) of Regulation (EC) No 1260/2001 should also be calculated by using all exports, whether a refund has been paid or not.
- (12) Considering that the same method invalidated by the Court was used to calculate the levies for the marketing year 2001/2002, the production levies and the coefficient for the additional levy for the marketing year 2001/2002 should also be corrected accordingly.
- (13) It follows from the Court's judgement that the corrected levies should apply from the same dates as the levies which were declared invalid.
- (14) As a consequence of the fixing of the sugar levies according to the new method referred to in recital (11), the amounts payable by sugar manufacturers to beet sellers in respect of the difference between the maximum amount of the base levy and the amount of the levies chargeable for the marketing years 2002/2003, 2003/2004 and 2005/2006 should also be newly set, with retrospective effect.
- (15) For the 2001/2002 marketing year, the uncovered overall loss recalculated following the method referred to in recital (11) amounts to EUR 14.123.937. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should be set accordingly and be applicable for that marketing year.
- (16) For the 2002/2003 marketing year, the application of the method referred to in recital (11) results in 2% for the basic levy and 16,371% for the B levy, which should be applicable for that marketing year with retrospective effect. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 for that marketing year.
- (17) For the 2002/2003 marketing year, Commission Regulation (EC) No 1440/2002 of 7 August 2002 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2002/03 marketing year²¹ set the maximum amount of the B levy at 37,5% of the intervention price for white sugar while the B levy revised according to the method referred to in recital (11) applicable for that marketing year is 16,371 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers should be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (18) For the 2003/2004 marketing year, the application of the new calculation method referred to in recital (11) results in 2% for the basic levy and 17,259% for the B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and the B levy. Therefore, there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001, for that marketing year.

²⁰ OJ L 50, 21.2.2002, p. 40.

²¹ OJ L 212, 8.8.2002, p. 3.

- (19) For the 2003/2004 marketing year, Regulation (EC) No 1440/2002 set the maximum amount of the B levy at 37,5% of the intervention price for white sugar while the B levy revised according to the method referred to in recital (11) applicable for that marketing year is 17,259 % of the intervention price for white sugar. This difference requires that the amount payable by sugar manufacturers to beet sellers should be fixed per tonne of beet of standard quality for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (20) For the 2004/2005 marketing year, the application of the method referred to in recital (11) does not change the basic levy and the B levy. For that marketing year, the uncovered overall loss calculated following the new method amounts to EUR 57.648.788. The coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001 should therefore be set. It follows from the Court's judgement referred to in recital (9) that the coefficient should be uniform for the Member States of the Union as constituted on 30 April 2004 and the Member States of the Union as constituted on 1 May 2004.
- (21) For the 2005/2006 marketing year, the application of the method referred to in recital (11) results in an amount of 1.2335% for the basic levy without the need for a B levy. The recalculated overall loss is covered in its entirety by the receipts from the basic production levy and there is no need to fix the additional coefficient referred to in Article 16(2) of Regulation (EC) No 1260/2001, for that marketing year.
- (22) For the 2005/2006 marketing year, Commission Regulation (EC) No 1296/2005 of 5 August 2005 revising the maximum amount for the B production levy and amending the minimum price for B beet in the sugar sector for the 2005/06 marketing year²² set the maximum amount of the B levy at 37,5% of the intervention price for white sugar. While the basic levy, revised in accordance with the method referred to in recital (11) applicable for that marketing year, is 1,2335 % of the intervention price for white sugar, there is no need for any B levy to be fixed. Due to these differences, it is necessary to fix the amounts per tonne of beet of standard quality payable by sugar manufacturers to beet sellers for that marketing year, in accordance with Article 18(2) of Regulation (EC) No 1260/2001.
- (23) For reasons of legal certainty and to ensure uniform treatment of the concerned operators in different Member States, it is necessary to set a common date upon which the levies fixed by this Regulation should be established within the meaning of the second subparagraph of 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 resources²³,

HAS ADOPTED THIS REGULATION:

Article 1

1. The production levies in the sugar sector for the marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006 are set out in point (1) of the Annex.
2. The coefficients required for calculating the additional levy for the marketing years 2001/2002 and 2004/2005 are set out in point (2) of the Annex.

²² OJ L 205, 6.8.2005, p. 20.

²³ OJ L 130, 31.5.2000, p. 1.

3. The amounts payable by sugar manufacturers to beet sellers in respect of the A or B levies for the marketing years 2002/2003, 2003/2004 and 2005/2006 are set out in point (3) of the Annex.

Article 2

The date of establishment, referred to in the second subparagraph of Article 2(2) of Regulation (EC, Euratom) No 1150/2000, of the levies fixed by this Regulation, shall be the last day of the fourth month following the day of entry into force of this Regulation, at the latest.

Article 3

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

Article 1(1) shall apply from:

- 16 October 2002 for the marketing year 2001/2002,
- 8 October 2003 for the marketing year 2002/2003,
- 15 October 2003 for the marketing year 2003/2004,
- 18 October 2005 for the marketing year 2004/2005, and
- 23 February 2007 for the marketing year 2005/2006.

Article 1(2) shall apply from:

- 16 October 2002 for the marketing year 2001/2002, and
- 18 October 2005 for the marketing year 2004/2005.

Article 1(3) shall apply from:

- 8 October 2003 for the marketing year 2002/2003,
- 15 October 2003 for the marketing year 2003/2004, and
- 23 February 2007 for the marketing year 2005/2006.

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

Done at Brussels,

For the Council
The President

ANNEX

(1) Production levies in the sugar sector referred to in Article 1(1)

	2001/2002	2002/2003	2003/2004	2004/2005	2005/2006
(a) EUR per tonne of white sugar as the basic production levy on A sugar and B sugar	12,638	12,638	12,638	12,638	7,794
(b) EUR per tonne of white sugar as the B levy on B sugar	236,963	103,447	109,061	236,963	-
(c) EUR per tonne of dry matter as the basic production levy on A isoglucose and B isoglucose	5,330	5,330	5,330	5,330	3,394
(d) EUR per tonne of dry matter as the B levy on B isoglucose	99,424	46,017	48,261	99,424	-
(e) EUR 12,638 per tonne of dry matter equivalent sugar/isoglucose as the basic production levy on A inulin syrup and B inulin syrup	12,638	12,638	12,638	12,638	7,794
(f) EUR 236,963 per tonne of dry matter equivalent sugar/isoglucose as the B levy on B inulin syrup.	236,963	103,447	109,061	236,963	-

(2) Coefficients required for calculating the additional levy referred to in Article 1(2)

Marketing year 2001/2002: 0,01839

Marketing year 2004/2005: 0,07294

(3) Amounts to be paid by sugar manufacturers to beet sellers in respect of the A or B levies referred to in Article 1(3)

	2002/2003	2003/2004	2005/2006
Complement price for A beet*			0,378
Complement price for B beet*	10,414	9,976	18,258

* Complement price in respect of A or B levy per tonne of beet of the standard quality (EUR).

FINANCIAL STATEMENT		FS/13/367494		
		6.2.2013.1		
		DATE: 15.04.2013		
1. BUDGET HEADING: See budgetary forecast below.		APPROPRIATIONS:		
Article 1 1 (Levies and other duties provided for under the common organisation of the markets in sugar): 05 07 02 (Settlements of disputes)		123,4 Mio € 53,4 Mio €		
2. TITLE: COUNCIL REGULATION fixing the production levies in the sugar sector for marketing years 2001/2002, 2002/2003, 2003/2004, 2004/2005, 2005/2006 and fixing 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 2002/03, 2003/04 and 2005/06.				
3. LEGAL BASIS: Article 43(3) of the Treaty on the Functioning of the European Union				
4. AIMS: On 27 September 2012, the Court of Justice delivered its judgment in joined cases C-113/10, C-147/10 and C-234/10 (the Jülich-II judgement) by which it annulled Commission Regulation (EC) No 1193/2009 of 3 November 2009. This regulation aims to establish retroactively the sugar production levies for the marketing years from 2001/02 to 2005/06 re-calculated on the basis of the methodology clarified by the Court.				
5.	FINANCIAL IMPLICATIONS	12 MONTH PERIOD (EUR million)	CURRENT FINANCIAL YEAR 2013] (EUR million)	FOLLOWING FINANCIAL YEAR 2014 (EUR million)
5.0	EXPENDITURE - CHARGED TO THE EU BUDGET (REFUNDS/INTERVENTIONS) - NATIONAL AUTHORITIES - OTHER	53,4 Mio €	53,4 Mio €	n.a.
5.1	REVENUE - OWN RESOURCES OF THE EU (LEVIES/CUSTOMS DUTIES) – See comments - NATIONAL	-214,1 Mio €	-214,1 Mio €	n.a.
5.0.1	ESTIMATED EXPENDITURE	2015	2016	2017
5.1.1	ESTIMATED REVENUE			2018
5.2 METHOD OF CALCULATION: See Comments				
6.0	CAN THE PROJECT BE FINANCED FROM APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET?			No
6.1	CAN THE PROJECT BE FINANCED BY TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET?			Yes
6.2	WILL A SUPPLEMENTARY BUDGET BE NECESSARY?			No
6.3	WILL APPROPRIATIONS NEED TO BE ENTERED IN FUTURE BUDGETS?			See comments.

OBSERVATIONS:

On 27 September 2012, the Court of Justice delivered its judgment in joined cases C-113/10, C-147/10 and C-234/10 (the Jülich-II judgement) by which it annulled Commission Regulation (EC) No 1193/2009 of 3 November 2009. The Court has ruled that the Commission has repeatedly erred in calculating the annual levies set for the period in question. The Court held that individuals are entitled to reimbursement of the excess sums unduly paid in respect to the invalid production levies collected by the Member States over the period in question and accrued to the Union budget.

The corrective legal act retroactively establishes the sugar production levies for the marketing years from 2001/02 to 2005/06 re-calculated on the basis of the methodology clarified by the Court. Following the judgement, the reimbursement to operators has to include interest (based on the national rules and according to the principle of unjust enrichment the EU has to reimburse the Member States on the compensatory interests paid).

The total amount to be reimbursed to Member States is the following:

Own resources - principal

295,5 Mio €- 10,0 Mio €(already reimbursed in 2009) * 75% = 214,1 Mio €of levies after collection fees.

Compensatory interest

The compensatory interest claimed is not included in the amounts under own resources. The estimated amount given above is calculated for 100% of the difference between old and new levies. The interest rates will be determined by national law and so the final amount cannot be definitely determined at this point in time. The interest rates used as a basis for estimating the financial impact of 53.4 Mio € are those published in the following regulations: EU Regulation No 2012/2001; EU Regulation No 1852/2002; EU Regulation No 1842/2003; EU Regulation No 1751/2004; EU Regulation No 956/2005; EU Regulation No 1119/2005; EU Regulation No 1668/2005; EU Regulation No 1489/2006; EU Regulation No 981/2007; EU Regulation No 1190/2007; EU Regulation No 999/2008; EU Regulation No 1012/2009; EU Regulation No 974/2010; EU Regulation No 1036/2011; EU Regulation No 938/2012.

The amount will be paid under the budget line 05 07 02. In case the Regulation is not adopted in time so that payments can take place in the 2013 budget year, an amount will have to be included in the amending letter for Budget 2014.