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In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 811 final

Brussels, 1 December 1980

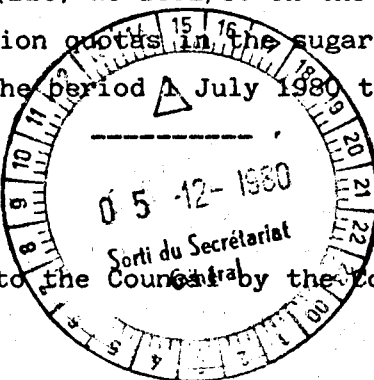
Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 1111/77
laying down common provisions for isoglucose

Proposal for a
COUNCIL REGULATION (EEC)

amending Regulation (EEC) No 1592/80 on the application of the
system of production quotas in the sugar and isoglucose
sectors during the period 1 July 1980 to 30 June 1981

(submitted to the Council by the Commission)



COM(80) 811 final

EXPLANATORY MEMORANDUM

1. For the period 1 July 1979 to 30 June 1980 the basic isoglucose Regulation (1) (as amended by Regulation (EEC) No 1293/79(2)) established a quota system analogous to that applied to sugar during the same period. The introduction of such a regime for isoglucose was provided for in Regulation (EEC) No 1293/79 following a judgement by the European Court of Justice on 25 October 1978 which, under the terms of Article 177 of the EEC Treaty (reference for a preliminary ruling), pronounced on the claim by three isoglucose-producing undertakings that Regulation (EEC) No 1111/77 was invalid to the extent that its Articles 8 and 9 imposed a production levy on isoglucose of 5 UC per 100 kg of dry matter. The Court declared that this levy breached the general principle of non-discrimination within the meaning of Article 40(3) of the EEC Treaty, mainly on the ground that the production levy on sugar applied only to "B" sugar and thus the sugar manufacturers had the possibility of reducing the charge represented by the levy by limiting their production. The Court also pointed out that under the common organisation of the markets in the sugar sector about 60% of the average charge represented by the production levy was borne by the beet growers and that because this element had not been taken into consideration the charges borne by the sugar manufacturers had been materially over-estimated.

In the light of this judgement the Council, on a proposal from the Commission and after consultation with Parliament, adopted Regulation (EEC) No 1293/79 which introduced, in particular, a system of production quotas for isoglucose based on the provisions in force in the sugar sector. In an effort to avoid any discrimination between the two sectors or between undertakings producing isoglucose these quotas were determined by reference, on the one hand, to the actual production of each undertaking in the most recent possible reference period after the Court's judgement in which the dissuasive effect of the levy no longer existed, and, on the other, to the technical annual production capacity of each undertaking.

(1) OJ No L 134, 28.5.1977, p. 4

(2) OJ No L 162, 30.6.1979, p. 10

Hence for the period 1 July 1979 to 30 June 1980 each isoglucose-producing undertaking established in the Community was allocated a basic quota equal to twice its actual production in the period 1 November 1978 to 30 April 1979. To this basic "A" quota was added a "B" quota equal to 27.5% of the basic quota on condition that the sum of the "A" and "B" quotas should be neither less than 65% of the technical annual production capacity of the undertaking in question nor more than 85% of that capacity. Consequently, provision was made (as in the case of "B" quota sugar) to charge a production levy on "B" quota isoglucose. Taking account of the Court's judgement of 25 October 1978, the amount of this levy was limited to the proportion of the levy on "B" quota sugar borne by the sugar manufacturers (i.e. about 40% of the sugar levy). Finally, the Regulation also defined the status of "C" isoglucose. For the rest, Regulation (EEC) No 1293/79 brought the system of export refunds for isoglucose into line with that for sugar syrups, and it repealed the previous production levy system for isoglucose with effect from 1 July 1977.

2. To the extent that it provided for a production levy system for isoglucose by inserting a new Title II (Articles 8 and 9) in the basic isoglucose Regulation (EEC) No 1111/77, Regulation (EEC) No 1293/79 was the subject of a claim for its annulment made to the European Court of Justice by two other isoglucose-producing undertakings.

In essence such a regime, according to the plaintiffs, violated the legal principles of competition, the principle of proportionality, and the principle of equality of treatment, and created a discrimination between sugar producers and isoglucose producers, and between isoglucose producers themselves. In addition, the plaintiffs invoked errors of substantial form, in which they were supported by the European Parliament as the intermediary, in that Parliament had not been consulted in accordance with Article 43(2) of the EEC Treaty.

In its judgements of 29 October 1980 the Court rejected all the basic complaints invoked by the plaintiffs. The grounds for these judgements can be summarised as follows:

a) Re the violation of the principles of the law of competition:

The Court stated that the establishment of a system of undistorted competition was not the only objective laid down in Article 3 of the EEC Treaty, which also provides, in particular, for the establishment of a common agricultural policy, and that the authors of the Treaty, realising that the simultaneous pursuit of these two objectives could, at certain times and in certain circumstances, be difficult, had provided that the Treaty provisions relating to the rules of competition were applicable to the production of and trade in agricultural products only to the extent determined by the Council having regard to the objectives laid down in Article 39 of the EEC Treaty. The Court concluded that these considerations indicated at one and the same time the primacy of the agricultural policy over the objectives in the Treaty relating to competition and the power of the Council to decide to what extent the rules of competition should apply in the agricultural sector. The Court added that in exercising this power, as in the implementing the whole of the agricultural policy, the Council retained a large measure of discretion and that in establishing the regime for isoglucose in the present case the Council had not exceeded this discretionary power.

b) Re the breach of the proportionality principle

The Court rejected this complaint. It took the view that the plaintiffs' argument that the Council had obstructed the rational use of their production capacities was not well-founded since their actual production did not even reach their allotted maximum quotas; that the plaintiffs ought not to expect the Council to take account of the motivations of, and commercial options open to, each individual undertaking when it adopted measures in the general interest of avoiding a situation in which the uncontrolled production of isoglucose could put the Community's sugar policy at risk; and, finally, that it was incorrect to maintain that no restrictive steps had been taken against the sugar industry and that, in any case, the scope for action in respect of that industry was limited because the Council had to have regard to the maintenance of a fair standard of living for those engaged in agriculture.

c) Re the breach of the principle of equality of treatment:

The Court rejected this complaint. It held that - taking account of the fact that isoglucose production had contributed to an increase in sugar surpluses and that it was permissible to apply restrictive measures to such production - it was open to the Council to adopt whatever measures it judged appropriate having regard to the similarity between the two markets and to their interdependence as well as to the specific nature of the market in isoglucose; and, finally, that it was a question of the Council being faced with the delicate situation for the Community's sugar policy created by the production of isoglucose and having to introduce as quickly as possible a transitional regulation.

d) Re the discrimination between sugar producers and isoglucose producers and between isoglucose producers:

The Court rejected these complaints also. It considered that the differences, referred to by the plaintiffs, between the provisions were accounted for by the differences between the two industries from which the Council, in exercising its power of discretion, had drawn the inferences. The Court added that after its first judgement on 25 October 1978 the isoglucose-producing enterprises had reacted differently but the Council was not to be blamed for not having taken into account the commercial options and internal policies of each individual undertaking when adopting measures in the general interest of avoiding a situation in which the uncontrolled production of isoglucose could put the Community's sugar policy at risk.

In rejecting all these complaints the Court established that Regulation (EEC) No 1293/79 is in basic conformity with Community law.

Nevertheless, the Court annulled the Regulation and upheld the claim of error of substantial form on the ground that the Opinion of the European Parliament, as required by the third subparagraph of Article 43(2) of the Treaty, was not obtained.

In essence the Court's view here was that the consultation required by the third subparagraph of Article 43(2) of the Treaty is the means whereby Parliament can effectively participate in the Community's legislative process. The Court added that this requirement was an essential element in the institutional balance sought by the Treaty and that it was a reflection, albeit a limited one, at Community level

of a fundamental democratic principle according to which the people participate in the exercise of power via a representative Assembly. The Court concluded that the regular consultation with Parliament in the cases prescribed by the Treaty therefore constitutes a substantial formality, the non-observance of which would lead to the annulment of the action concerned. The Court stated that in the present case an observance of this consultation requirement would imply the expression by Parliament of an Opinion and that this requirement could not be regarded as having been fulfilled by a simple request by the Council for Parliament's view because, according to the Court, the Council had not exhausted all the possibilities of obtaining Parliament's view, had not requested that the matter be dealt with under the urgent procedure, and had not utilised the possibility offered by Article 139 of the Treaty to request an extraordinary session of Parliament, although on 1 March and 10 May 1979 the Office of the Parliament had drawn the Council's attention to this possibility.

3. In the light of the annulment of Regulation (EEC) No 1293/79 on the ground of error of form, and having regard to the Court's judgement of 29 October 1980, the Commission now proposes that the Council, after consultation with Parliament under the urgent procedure, should reinstate retroactively from 1 July 1979 the provisions contained in the annulled Regulation which, according to the Court, are in basic conformity with Community law. It is both urgent and essential to do this in view of the situation in respect of the period 1 July 1979 to 30 June 1980 created by the Court's annulment. The Council should be aware that the representatives of the Member States on the Management Committee have been notified of the Commission's intention to make this proposal to the Council. In the meantime, pending the Council's decisions in this matter, it is inappropriate to continue to charge a production levy on B isoglucose or to reimburse the levy already collected.

In addition, the Commission deems it necessary to make a further proposal about the provisions concerning isoglucose contained in Council Regulation (EEC) No 1592/80⁽¹⁾. Article 2 of that

(1) OJ No L 160, 26.6.1980, p. 12

Regulation lays down that "Article 9 of Regulation (EEC) No 1111/77 shall apply during the period 1 July 1980 to 30 June 1981." and that "The basic quota of each isoglucose-producing enterprise for the period 1 July 1980 to 30 June 1981 shall be that applicable during the period 1 July 1979 to 30 June 1980."

The effect of the aforementioned Article 2 of Regulation (EEC) No 1592/80 is to apply during a supplementary period of 12 months the isoglucose production regime laid down in Regulation (EEC) No 1293/79, now annulled by the Court (this Regulation having, in particular, inserted a new Article 9 concerning this regime in Regulation (EEC) No 1111/77). The Commission therefore proposes that in order to remove any juridical doubt concerning this provision in Regulation (EEC) No 1592/80 the Council should, after consultation with Parliament under the urgent procedure, confirm the said Article 2 and, to avoid all ambiguity, should state that the text so confirmed will henceforth refer to the new Article 9 of the Regulation which will replace Regulation (EEC) No 1293/79 (the aim of the first proposal).

4. These two proposals aim retroactively to re-establish, or to render more precise, the current provisions. They involve no new financial implications for the Community budget.

Proposal for a
COUNCIL REGULATION (EEC)
amending Regulation (EEC) No 1111/77
laying down common provisions for isoglucose

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas Council Regulation (EEC) No 1111/77⁽²⁾,

in the version as last amended by
Regulation (EEC) No 1293/79⁽³⁾, provided for the application of a
system of production quotas for the period from 1 July 1979 to 30 June
1980;

Whereas in Cases 138/79 and 139/79 the Court of Justice of the European
Communities, on 29 October 1980, annulled Regulation (EEC) No 1293/79,
which amended Regulation (EEC) No 1111/77, on the ground of an infringement of an
essential procedural requirement due to the absence of an opinion of the Parliament as
required by Article 43 of the Treaty; whereas, in rejecting all the
alleged breaches of the principle of the law of competition,
of the principle of proportionality and of non-discrimination invoked
against the system of production quotas introduced by Regulation (EEC) No
1293/79, the Court affirmed that the latter Regulation was in basic
conformity with Community law; whereas it is therefore appropriate to
reintroduce retroactively the provisions of Regulation (EEC) No 1293/79 and
to repeal the provisions of Title II of Regulation (EEC) No 1111/77 as amended
by Regulation (EEC) No 1298/78⁽⁴⁾.

HAS ADOPTED THIS REGULATION:

(1) OJ No C

(2) OJ No L 134, 28.5.1977, p. 4

(3) OJ No L 162, 30.6.1979, p. 10

(4) OJ No L 160, 17.6.1978, p. 9.

Regulation (EEC) No 1111/77 is hereby amended as follows:

1. Article 4(1) is replaced by the following:

"Article 4

1. Provision may be made for an export refund for the products listed in Article 1 when unprocessed and for isoglucose falling within subheading 17.02 D 1 exported in the form of the goods listed in Annex 1.

The level of the refund shall be determined per 100 kilograms of dry matter, taking into account the following in particular:

- a) the export refund fixed pursuant to Article 19(1) of Regulation (EEC) No 3330/74 for the products referred to in Article 1(1)(d) of that Regulation;
- b) the economic aspects of the proposed exportations.

When the refund is being fixed, account may be taken of the need to establish a balance between the use of Community raw materials in the manufacture of processed goods for export to third countries and the use of the products of such countries brought in under inward processing arrangements."

2. Title II is hereby repealed with effect from 1 July 1977.

3. The following Title shall be inserted after Article 7:

(1) OJ No L 160, 17.6.1978, p. 9

TITLE II

Quota Arrangements

Article 8

Article 9 shall apply for the period 1 July 1979 to 30 June 1980.

Article 9

1. For the period referred to in Article 8 a basic quota shall be allotted to each isoglucose-producing undertaking established in the Community.

Without prejudice to the application of paragraph 3, the basic quota of each such undertaking shall be equal to twice its production, as established under this Regulation, during the period 1 November 1978 to 30 April 1979.

2. To each undertaking having a basic quota, there shall also be allotted a maximum quota equal to its basic quota multiplied by a coefficient. This coefficient shall be that fixed pursuant to the second subparagraph of Article 25(2) of Regulation (EEC) No 3330/74 for the period 1 July 1979 to 30 June 1980.

3. If necessary, the basic quota referred to in paragraph 1 shall be corrected so that the maximum quota determined in accordance with paragraph 2:

- does not exceed 85%,
- is not less than 65%

of the technical production capacity per annum of the undertaking in question.

4. The basic quotas established pursuant to paragraphs 1 and 3 shall be fixed for each undertaking as set out in Annex II.

5. Isoglucose-producing undertakings which have not produced any during the reference period referred to in the second subparagraph of paragraph 1 and which can be shown to have resumed systematic production during the period referred to in Article 8 shall be allotted a basic quota equal to the highest volume of their production attained during one of the following periods:

- 1 August 1976 to 31 July 1977,
- 1 July 1977 to 30 June 1978.

A maximum quota, determined in accordance with the provisions of paragraph 2, shall be allotted to such undertakings.

6. A basic quota shall be allotted to undertakings starting systematic production of isoglucose during the period referred to in Article 8 within the limits of a Community reserve quantity equal to 5% of the total of basic quotas established pursuant to paragraph 1.
7. The quantity of isoglucose produced during the period referred to in Article 8 which:
 - exceeds the maximum quota of the undertaking,
 - or
 - was produced by an undertaking not having a basic quotamay not be disposed of on the Community's internal market and must be exported in the natural state to third countries without the application of Article 4.
8. For the quantity of isoglucose production which exceeds the basic quota without exceeding the maximum quota, Member States shall charge a production levy on the isoglucose producer concerned.

For the period referred to in Article 8, the amount of the isoglucose production levy shall be equal to the share of the sugar production levy, as fixed for the 1979/80 sugar year pursuant to Article 28 of Regulation (EEC) No 3330/74, borne by the sugar manufacturers.
9. The Council, acting by a qualified majority on a proposal from the Commission, shall allocate the quotas referred to in paragraphs 5 and 6 and shall adopt any general rules necessary for the application of this Article.
10. Detailed rules for the application of this Article, which shall in particular provide for the levying of a charge on the quantity of isoglucose referred to in paragraph 7 which has not been exported in the natural state during the period referred to in Article 8 and fix the amount of the production levy referred to in paragraph 8, shall be adopted in accordance with the procedure laid down in Article 12."

4. The following Annex II is added:

"ANNEX II

Undertaking	Address of Registered Office	Basic quota in tonnes expressed as dry matter
Maizena GmbH	D-2000 Hamburg 1, Postfach 1000	28 000
Amylum SA	rue de l'Intendant 49, B-1020 Bruxelles	56 667
Roquettes Frères SA	17, Boulevard Vauban F-59000 Lille	15 887
SPAD	15063 Cassano Spinola, I-Alessandria, casella postale 1	5 863
Fabbriche riunite Amido glucosio destrina, SpA	Piazza Erculea 9, I-Milano	10 706
Tunnel Refineries Ltd	Thames Bank House, Greenwich UK-London SE10 OPA	21 696

Article 2

1. This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.
2. It shall apply with effect from 1 July 1979, with the exception of Article 1(2), which shall apply with effect from 1 July 1977.
3. References to Regulation (EEC) No 1293/79 contained in acts adopted in implementation of Regulation (EEC) No 1111/77 shall be construed as references to this Regulation.

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

Done at Brussels,

For the Council

Proposal for a
COUNCIL REGULATION (EEC)
amending Regulation (EEC) No 1592/80 on the application of
the system of production quotas in the sugar and isoglucose
sectors during the period 1 July 1980 to 30 June 1981

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Whereas Article 2 of Council Regulation (EEC) No 1592/80⁽²⁾
applied to the period 1 July 1980 to 30 June 1981

the production quota system for isoglucose
provided for up to 30 June 1980 by Council Regulation (EEC) No 1111/77 of
17 May 1977 laying down common provisions for isoglucose⁽³⁾, as last
amended by Regulation (EEC) No 1293/79⁽⁴⁾;

Whereas Regulation (EEC) No 1293/79 amended Article 9 in
Regulation (EEC) No 1111/77 and thereby introduced the aforesaid
production quota system for isoglucose with effect from 1 July 1979;

Whereas in Cases 138/79 and 139/79 the Court of Justice of the European
Communities, on 29 October 1980, annulled Regulation (EEC) No 1293/79 on
the ground of an infringement of an essential procedural requirement; whereas Article 2
of Regulation (EEC) No 1592/80 applied the production quota system, as
established by the now annulled Regulation, to the period 1 July 1980 to
30 June 1981; whereas, in order to avoid any doubts as to the legality of
this provision, it is appropriate that, in respect of the same period, the
aforesaid Article 2 of Regulation (EEC) No 1592/80 should henceforth
contain a reference to Article 9 of Regulation (EEC) No 1111/77 in the
version contained in Council Regulation (EEC) No /80 of 1980
amending Regulation (EEC) No 1111/77 laying down common provisions for isoglucose⁽⁵⁾
HAS ADOPTED THIS REGULATION:

(1) OJ No C

(2) OJ No L 160, 26.6.1980, p. 12

(3) OJ No L 134, 28.5.1977, p. 4

(4) OJ No L 162, 30.6.1979, p. 10

(5) OJ No L

Article 1

Article 2 of Regulation (EEC) No 1592/80 is hereby replaced by the following:

"Article 2

1. Article 9 of Regulation (EEC) No 1111/77 in the version as amended by Regulation (EEC) No /80 shall apply to the period 1 July 1980 to 30 June 1981.
2. For the period 1 July 1980 to 30 June 1981 the basic quota of each isoglucose-producing undertaking shall be that applicable during the period 1 July 1979 to 30 June 1980 pursuant to Regulation (EEC) No /80."

Article 2

This Regulation shall enter into force on the day of its publication in the Official Journal of the European Communities.

It shall apply with effect from 1 July 1980.

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

Done at Brussels,

For the Council