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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.2.2009
COM(2009) 37 final

2009/0008 (CNS)

Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 637/2008 as regards the national restructuring programmes for the cotton sector

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

In its conclusions of 20 November 2008 the Council invited the Commission to propose modification of the Regulation (EC) No 637/2008, in order to extend the programming period of restructuring programmes in the cotton sector. Such modification would allow the restructuring process to be carried out in the most effective manner.

- **General context**

After annulment of the 2004 cotton reform by the Court of Justice on 7 September 2006, the Commission proposed a new support scheme for cotton on 9 November 2007 (COM(2007) 701). On 23 June 2008, the Council adopted Regulation (EC) No 637/2008 amending Regulation (EC) No 1782/2003 and establishing national restructuring programmes for the cotton sector. The new support scheme provides for area payments, for a maximum guaranteed area of cotton per Member State.

In parallel, the national restructuring programmes aim to aid the European cotton sector in view of the difficulties posed by the changed legal and market context. Specifically, the cotton ginning industry in some production areas is faced with considerably overcapacity.

- **Existing provisions in the area of the proposal**

The current proposal concerns technical modifications of Council Regulation (EC) No 637/2008 with regard to the application of the national restructuring programmes.

- **Consistency with the other policies and objectives of the Union**

Not applicable.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

– Extensive consultation of interested parties in the cotton sector was carried out for the preparation of the new reform proposal for the cotton sector in 2006 and 2007. As the current proposal modifies technical details of the existing legal framework, which has already become applicable in 2009, further consultations were not opportune.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

As the proposal concerns specific modification of the existing legal framework for Member States with regard to the execution of their restructuring programmes, no impact assessment was carried out.

Whereas no additional funds are available, the option suggested by Council is considered the most feasible, within the constraints of the reform of the cotton sector agreed in June 2008.

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Council Regulation (EC) No 637/2008 foresees four year restructuring programmes. However, in view of the substantial difficulties the sector is facing, Member States should be given the possibility to submit an eight year programme instead. An eight year period will provide the possibility to launch a larger number of measures without increasing the annual budgetary envelopes.

Ginning factories not operated by their owners in the reference marketing year are excluded as beneficiaries from the measures foreseen in Council Regulation (EC) No 637/2008. The proposed technical modification ensures all ginning factories that operated in the reference period can be eligible.

- **Legal basis**

Article 37(2) of the Treaty establishing the European Community and Protocol No 4 on cotton (annexed to the Act of Accession of 1979).

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

In order to assure a level playing field in the cotton sector, a common framework for restructuring measures is essential and has been adopted by Council in June 2008. The current proposal does not modify this Council Regulation fundamentally.

Subsidiarity with regard to these restructuring programmes is assured by allowing Member States to select measures from the menu in the Council Regulation that best respond to the challenges in their production regions.

- **Proportionality principle**

The proposal complies with the proportionality principle because the proposed modifications leave intact the general framework decided by Council in June 2008, while providing for additional options for Member States.

- **Choice of instruments**

Proposed instrument: Council Regulation amending Council Regulation (EC) No 637/2008.

4. BUDGETARY IMPLICATION

The proposal does not increase the annual budgetary envelope available to the Member States for the restructuring programmes, but it does provide Member States with the possibility to submit a programme for a duration of eight years, i.e. for the period 2010 to 2017. The level of the annual support to the restructuring programme was already fixed in Council Regulation (EC) No 637/2008 and remains unchanged. If Member States choose to submit an eight-year programme, their annual budgetary envelope shall be automatically transferred to their national ceiling for direct payments, as determined in Annex VIII to Regulation (EC) No 1782/2003, in 2018.

Proposal for a

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amending Regulation (EC) No 637/2008 as regards the national restructuring programmes for the cotton sector

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third subparagraph of Article 37(2) thereof,

Having regard to the Act of Accession of 1979, and in particular paragraph 6 of Protocol No 4 on cotton¹ annexed thereto,

Having regard to the proposal from the Commission²,

Having regard to the opinion of the European Parliament³,

Whereas:

- (1) Chapter 2 of Council Regulation (EC) No 637/2008 of 23 June 2008 amending Regulation (EC) No 1782/2003 and establishing national restructuring programmes for the cotton sector⁴ contains provisions on four-year restructuring programmes to be decided at Member State level to finance, among others, specific measures to assist the ginning industry.
- (2) The economic situation of the cotton sector in the Community, and the need to carry out substantial restructuring operations immediately including all ginning companies concerned, justifies the introduction of an eight-year programming period. However, in case a more substantial eight-year programme is carried out, the transfer to the national ceiling as determined in Annex VIII to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers⁵ should follow without further delay.
- (3) Article 7(2)(a) of Regulation (EC) No 637/2008 lays down that the beneficiaries of the aid under Chapter IV of Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton⁶ in the marketing year 2005/2006 are the beneficiaries of the

¹ OJ L 291, 19.11.1979, p. 174.

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 178, 5.7.2008, p. 1.

⁵ OJ L 270, 21.10.2003, p. 1.

⁶ OJ L 148, 1.6.2001, p. 3. Regulation repealed by Regulation (EC) No 1782/2003.

measures referred to in Article 7(1)(a), (b) and (d) of Regulation (EC) No 637/2008. Some ginning factories were not operated by their owners in the reference marketing year and those owners were not beneficiaries under Chapter IV of Regulation (EC) No 1051/2001 and thus are excluded from participating in the restructuring process. For the national restructuring programmes to be effective all ginning factories that were active in the reference marketing year 2005/2006 and eligible for support under Chapter IV of Regulation (EC) No 1051/2001 should be covered by the measures under Article 7(1)(a), (b) and (d) of Regulation (EC) No 637/2008. Therefore, it is appropriate that the owner of the factory should qualify as the beneficiary under the restructuring programmes with reference to the above mentioned measures.

- (4) Regulation (EC) No 637/2008 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 637/2008 is amended as follows:

- (1) In Article 4(1) the following subparagraph shall be inserted after the first subparagraph:

"By way of derogation from the first subparagraph, Member States may opt to submit to the Commission, before 31 December 2009, a single draft modified restructuring programme for a duration of eight years."

- (2) In Article 5(2), the following subparagraph shall be added:

"However, if a Member States opts to submit a draft modified restructuring programme for a duration of eight years, as provided for in the second subparagraph of Article 4(1), its annual budget as referred to in paragraph 1 of this Article shall be transferred to its national ceiling as determined in Annex VIII to Regulation (EC) No 1782/2003 in the financial year 2018 and shall be applicable to direct payments paid in that year. The Member State concerned shall submit a communication on the implementation of the restructuring programme and the achievement of its objectives by 1 January 2018."

- (3) In Article 7(2), point (a) shall be replaced by the following:

"(a) the owners of the ginning facilities in respect of which aid under Chapter IV of Council Regulation (EC) No 1051/2001(*) was granted in the marketing year 2005/2006, for aid under the measures referred to in paragraph 1(a), (b) and (d) of this Article;

(*) OJ L 148, 1.6.2001, p.3".

Article 2

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

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

Done at Brussels,

*For the Council
The President*