COMMISSION REGULATION (EEC) No 3519/91

of 4 December 1991

repealing Regulation (EEC) No 2158/89 determining, for tobacco from the 1988 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 727/70 of 21 April 1970 on the common organization of the market in raw tobacco [1], as last amended by Regulation (EEC) No 1737/91 [2], and in particular Article 4 (5) thereof,

Having regard to Commission Regulation (EEC) No 2824/88 of 13 September 1988 laying down certain detailed rules for the application of the system of maximum guaranteed quantities in the tobacco sector and amending Regulations (EEC) No 1076/78 and (EEC) No 1726/70 [3], and in particular Articles 1 and 2 (4) thereof,

Whereas Council Regulation (EEC) No 1114/88 amending Regulation (EEC) No 727/70 on the common organization of the market in raw tobacco [4] fixes an overall maximum quantity of 385 000 tonnes of leaf tobacco for the 1988 harvest;

Whereas Annexes IV and V to Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87 [5] respectively fix the prices and premiums and the maximum guaranteed quantities by variety and group of varieties of tobacco from the 1988 harvest;

Whereas Commission Regulation (EEC) No 2158/89 of 18 July 1989 determining, for tobacco from the 1988 harvest, the quantity actually produced and the prices and premiums payable under the system of maximum guaranteed quantities [6] reduces the norm and intervention prices, the premiums and the derived intervention prices to be paid for the 1988 harvest under the system of maximum guaranteed quantities for the varieties where an overrun in those quantities has been recorded; whereas the varieties concerned are No 1 (Badischer Geudertheimer) and hybrids thereof, No 7 (Bright), No 8 (Maryland), No 23 (Tsebelia), No 24 (Mavra) and No 26 (Virginia El);

Whereas in its Judgment of 11 July 1991 in Case C-368/89, the Court of Justice declared Regulations (EEC) No 1114/88 and (EEC) No 2268/88 void in so far as they provide for a maximum guaranteed quantity for tobacco of the Bright variety harvested in 1988;

Whereas, in accordance with the principles set out in Article 176 of the Treaty, the Community institutions are required to take the measures necessary to comply with a Judgment of the Court of Justice declaring an act invalid;

Whereas the reasons which led the Court of Justice to declare the abovementioned provisions void as regards the Bright variety also apply to the other varieties where an overrun in the maximum guaranteed quantities has been recorded; whereas the actual financial consequences of the fixing of maximum guaranteed quantities for the 1988 harvest derive from Regulation (EEC) No 2158/89, which reduces the prices and the premiums for varieties harvests of which exceed the maximum guaranteed quantities, whereas that act should accordingly be repealed;

Whereas the payment of the difference between the amounts resulting from the application of Regulation (EEC) No 2158/89 and of Annex IV to Regulation (EEC) No 2268/88 must be paid in accordance with the national provisions applicable on the subject, the same procedure being followed, in accordance with the decisions of the Court of Justice, as in the case of adjustments involving payments to be charged to the national budget; whereas it is accordingly for the Member States to ascertain whether those national provisions and practice rule out the payments in question, particularly where the principle of legal certainty bars any appeal or complaint at the present stage;

Whereas, at all events, the Member States must make the abovementioned payments only where other provisions of Community law concerned are complied with and in particular those of Article 2b (4) of Commission Regulation (EEC) No 1726/70 of 25 August 1970 on the procedure for granting the premium for leaf tobacco [7], as last amended by Regulation (EEC) No 1413/91 [8];

---

[1] OJ No L 94, 28. 4. 1970, p. 1.
[2] OJ No L 163, 26. 6. 1991, p. 11.
[3] OJ No L 254, 14. 9. 1988, p. 9.
[4] OJ No L 110, 29. 4. 1988, p. 35.
[5] OJ No L 199, 26. 7. 1988, p. 20.
[6] OJ No L 207, 19. 7. 1989, p. 15.
[7] OJ No L 191, 27. 8. 1970, p. 1.
[8] OJ No L 135, 30. 5. 1991, p. 15.

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Raw Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2158/89 is hereby repealed.

Article 2

1. The Member States shall pay the difference between the amounts resulting from the application of Regulation (EEC) No 2158/89 and those resulting from the application of Regulation (EEC) No 2268/88 in accordance with national provisions and practice. They shall take the necessary measures to ensure that producers of leaf tobacco have received the intervention price calculated taking account of the repeal of Regulation (EEC) No 2158/89.

2. The Member States may provide that such payments are only to be made, where appropriate, on application from those entitled thereto.

Article 3

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

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

Done at Brussels, 4 December 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission