COUNCIL REGULATION (EEC) No 2075/92

of 30 June 1992

on the common organization of the market in raw tobacco

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy to include in particular a common organization of markets which may take various forms depending on the product;

Whereas it is the purpose of the common agricultural policy to achieve the objectives of Article 39 of the Treaty, and, in particular in the raw tobacco sector, the stabilization of markets and a fair standard of living for the agricultural population concerned; whereas these objectives may be achieved by adapting resources to requirements, in particular by means of a quality policy;

Whereas the present situation on the tobacco market, on which supply does not correspond to demand, calls for a substantial overhaul of the Community arrangements which have governed the market hitherto, while ensuring the continuation of tobacco growing by the traditional producers; whereas such an overhaul requires simplification of the market management mechanisms, limitation of production in line with the requirements of the market and the demands of the budget, and stronger means of control to ensure that the management mechanisms fully achieve the objectives of the common market organization;

Whereas tobacco varieties can be classified in groups according to cultivation technique and production costs, taking account of the descriptions used in international trade;

Whereas competition on the tobacco market calls for some support of traditional tobacco producers; whereas such support should be based on a premium system allowing the disposal of tobacco in the Community;

Whereas the premium system can be managed efficiently by means of cultivation contracts between growers and first processors which guarantee stable outlets to the growers and regular supplies to the processor; whereas payment of a sum equivalent to the premium by the processor to the producer at the time of delivery of the tobacco covered by the contract, subject to compliance with the quality requirements, provides support for the growers while facilitating management of the premium system;

Whereas, in order to limit Community tobacco production and to discourage the production of varieties which are not readily disposed of, a maximum global guarantee threshold should be laid down for the Community and divided annually into specific guarantee thresholds for the respective groups of varieties;

Whereas, to ensure that the guarantee thresholds are observed, a processing quota system must be instituted for a limited period; whereas for a transitional period the Member States must allocate, within the guarantee thresholds, processing quotas to the firms concerned, the Community rules laid down for the purpose being applied to ensure fair allocation on the basis of quantities processed in the past, but disregarding any abnormal production levels; whereas the necessary measures will be taken to permit the quotas to be allocated to the producers subsequently, under satisfactory conditions; whereas Member States possessing the necessary data to allocate quotas to producers on the basis of past performance, should be authorized to do so;

Whereas first processors must not conclude cultivation contracts for quantities exceeding the quotas allocated; whereas reimbursement of the premium must be limited to an amount corresponding to the quota;

Whereas provision should be made initially for the premium and production limitation systems to run until 1997 so that they can be reviewed in the light of experience and possibly adapted for the subsequent period;

Whereas measures to orientate production can help to stabilize the tobacco market and improve the quality of production; whereas specific aid will enable producer groups to contribute towards the improvement of the organization and orientation of production; whereas a research programe financed with the proceeds of a deduction from the premium will enable tobacco growing to be brought more closely into line with Community requirements as

(1) OJ No C 295, 14. 11. 1991, p. 10.
(2) OJ No C 94, 13. 4. 1992.
(3) OJ No C 98, 21. 4. 1992, p. 18.

regards public health; whereas, lastly, a conversion programme for growers of Mavra, Tsebelia, Forchheimer Havanna IIc and hybrids of Geudertheimer tobacco is necessary because of the importance of these varieties for the economy of certain Community regions;

Whereas the establishment of a single market requires a single system of trade at the external frontiers;

Whereas quantitative restrictions at the Community's external frontiers can be dispensed with; whereas, however, should exceptional circumstances arise, in order not to leave the Community market without protection against any disturbance, the Community should be able to take all the necessary measures without delay;

Whereas unforeseen market circumstances may necessitate the adoption by the Commission of exceptional market support measures;

Whereas the achievement of a single market would be jeopardized by the grant of certain aids; whereas the Treaty provisions governing the appraisal of aids granted by Member States and the prohibition of aids incompatible with the common market should be applied to the tobacco sector;

Whereas, in accordance with Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (1), the Community should bear financial responsibility for expenditure incurred by Member States pursuant to this Regulation;

Whereas experience shows that more stringent controls in the tobacco sector are essential, whereas in appropriate cases certain powers of control could be assigned to an independent supervisory agency to deal with the specific requirements of the tobacco market;

Whereas the common organization of the tobacco market must take account, simultaneously and appropriately, of the objectives laid down in Article 39 and 110 of the Treaty;

Whereas the transition from the arrangements instituted by Council Regulation (EEC) No 727/70 of 21 April 1970 on the common organization of the market in raw tobacco (2), to the arrangements provided for herein must take place in the best possible conditions; whereas transitional measures may prove necessary to ensure this; whereas the new arrangements should not become fully applicable until the 1993 harvest,

HAS ADOPTED THIS REGULATION:

Article 1

The common organization of the market in raw tobacco shall comprise rules on:

— a premium system,

— measures to orientate and limit production,

— arrangements for trade with third countries.

The common organization shall cover raw or unmanufactured tobacco and tobacco refuse falling within CN heading 2401.

Article 2

Raw tobacco varieties shall be classified in the following groups:

(a) flue-cured:

tobacco dried in ovens with controlled air circulation, temperature and humidity;

(b) light air-cured:

tobacco dried in the air under cover, not left to ferment;

(c) dark air-cured:

tobacco dried in the air under cover, left to ferment naturally before being marketed;

(d) sun-cured:

tobacco dried in the sun;

(e) fire-cured:

tobacco dried by fire;

(f) Basma (sun-cured);

(g) Katerini (sun-cured);

(h) Kaba-Koulak (classic) and similar (sun-cured).

The varieties in each group are listed in the Annex.

TITLE I

Premium system

Article 3

1. From the 1993 harvest until the 1997 harvest a premium system shall be applied. The amount of the premium shall be the same for the tobacco varieties in each of the various groups.

(1) OJ No L 94, 28. 4. 1970, p. 13. Regulation as last amended by Regulation (EEC) No 2048/88 (OJ No L 185, 15. 7. 1988, p. 1).

(2) OJ No L 94, 28. 4. 1970, p. 1. Regulation as last amended by Regulation (EEC) No 860/92 (OJ No L 91, 7. 4. 1992, p. 1).

2. However, for flue-cured, light air-cured and dark air-cured tobaccos grown in Belgium, Germany and France, a supplementary amount shall be granted. This amount shall be equal to 50 % of the difference between the premium granted for these tobaccos in accordance with paragraph 1 and the premium applicable for the 1992 harvest.

3. The purpose of the premium shall be to supplement the incomes of producers whose products correspond to market requirements and to facilitate the disposal of tobacco produced in the Community.

Article 4

1. In accordance with the procedure laid down in Article 43 (2) of the Treaty, the Council shall fix the amount of the premium and the supplementary amounts for each tobacco harvest, taking particular account of past and foreseeable possibilities for the disposal of the various types of tobacco, under normal conditions of competition, on the Community and world markets.

2. The amount of the premium shall be fixed:

(a) per kilogram of leaf tobacco not having undergone first processing and market preparation;

(b) for each group of raw tobacco.

Article 5

Granting of the premium shall be subject in particular to the following conditions:

(a) the tobacco must come from a production area specified for the variety concerned;

(b) quality requirements must be fulfilled;

(c) the leaf tobacco must be delivered by the producer to the premises of the first processor under a cultivation contract.

Article 6

1. Cultivation contracts shall comprise:

— an undertaking by the first processor to pay to the grower, in addition to the purchase price, a sum equal to the premium at the time of delivery for the quantity under contract and effectively delivered;

— an undertaking by the grower to deliver to the premises of the first processor raw tobacco corresponding to the quality requirements.

2. The competent body shall reimburse the amount of the premium to the first processor against presentation of proof that the grower has delivered the tobacco and that the amount referred to in paragraph 1 has been paid.

Article 7

Detailed rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23.

They shall comprise:

— delimitation of the production areas for each variety,

— quality requirements for delivered tobacco,

— additional points to be included in the cultivation contract and the final date for its conclusion,

— the possible obligation for the first processor to provide a security if he requests an advance, and the conditions governing the provision and release of the said security,

— specific conditions for the grant of the premium in cases where the cultivation contract is concluded with a group of producers,

— measures to be taken in the event of failure of the grower or first processor to fulfil his statutory obligations.

TITLE II

System of production limitation

Article 8

A maximum global guarantee threshold for the Community is hereby fixed at 350 000 tonnes of raw leaf tobacco per harvest. However, for 1993, this threshold is fixed at 370 000 tonnes.

Every year, within this limit the Council shall fix, in accordance with the procedure laid down in Article 43 (2) of the Treaty, a specific guarantee threshold for each group of varieties, taking particular account of market conditions and socio-economic and agronomic conditions in the production areas concerned.

Article 9

1. To ensure observance of the guarantee thresholds a system of processing quotas is hereby instituted for the harvests of 1993 to 1997.

2. For each harvest, in accordance with the procedure laid down in Article 43 (2) of the Treaty, the Council shall allocate among the producer Member States the quantities available for each group of varieties.

3. On the basis of the quantities allocated pursuant to paragraph 2 and without prejudice to the application of paragraph 5, Member States shall distribute processing quotas on a transnational basis for the 1993 and 1994 harvests among the first processors in proportion to the average quantities delivered for processing during the three years preceding the year of the last harvest, broken down by

group of varieties. However, production in 1992 and deliveries from this harvest shall not be taken into account. The procedure for allocating processing quotas for the following harvests shall not be affected by this allocation.

First processors who start business after the beginning of the reference period shall obtain a quantity proportional to the average quantity delivered for processing during their period of business.

For first processors which begin business in the year of harvest or during the preceding year, Member States shall reserve 2 % of the total quantities availabe to them by group of varieties. Within this percentage, the said first processors shall obtain a quantity not exceeding 70 % of their processing capacity, provided that they offer adequate guarantees as to the efficiency and long-term viability of their business.

4. However, Member States may distribute quotas directly to producers if they dispose of the necessary data on production of all producers for the three harvests preceding the last harvest, in relation to varieties and quantities produced and delivered to a processor.

5. When the quotas are allocated as provided for in paragraphs 3 and 4, no account shall be taken in particular, when calculating the reference production, of any quantities of raw tobacco produced in excess of the maximum guaranteed quantities applicable under Regulation (EEC) No 727/70.

Where appropriate, production shall be taken into account only within the limit of the quota allocated during the years taken into consideration.

Article 10

A first processor may not conclude cultivation contracts or be reimbursed the amount of the premium for quantities exceeding the quota allocated to him, or to the producer.

Article 11

Detailed rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23. They shall include the adjustments, as provided for in Article 9 (5), in the method of distribution of the quotas and the preconditions for applying the quotas at the level of the producers, in particular in relation to their previous situations.

TITLE III

Measures to convert production

Article 12

1. In order to concentrate supply and adapt it to the qualitative requirements of the market, specific aid equivalent to 10 % of the premium shall be granted where cultivation contracts are concluded between a first processor and a recognized group of producers and where the deliveries covered by such contracts account for the entire output of the members of the group.

2. Specific aid shall be paid to the producers' group for the purpose of improving the organization and orientation of production.

3. Detailed rules for the application of this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 23. They shall include:

— the definition of producers' groups eligible for specific aid,

— the conditions for recognizing producers' groups,

— the use to which specific aid may be put.

Article 13

1. A Community fund for tobacco research and information shall be set up. It shall be financed from the proceeds of a deduction not exceeding 1 % from the premium at the time of payment.

2. The fund shall finance and coordinate programmes of research and information to promote greater knowledge of the harmful effects of tobacco and the appropriate preventive and curative measures relevant to such effects and to orientate Community tobacco production towards the least harmful varieties and qualities.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 23.

Article 14

A three-year programme for the conversion of plantations of Mavra, Tsebelia, Forchheimer Havanna IIc and hybrids of Geudertheimer tobacco to varieties more in line with market requirements or to other agricultural crops shall be adopted by the Commission in accordance with the procedure laid down in Article 23. The programme shall be launched beginning with the 1993 harvest. It may comprise specific measures to compensate growers for any loss of income due to the conversion.

TITLE IV

Trade with third countries

Article 15

Except where this Regulation provides otherwise or where the Commission adopts a derogation in accordance with the

procedure laid down in Article 23, the following shall be prohibited in trade with third countries:

(a) the collection of any charge with an effect equivalent to a customs duty;

(b) the application of any quantitative restriction or measure with equivalent effect.

Article 16

1. If, by reason of imports or exports, the Community market in one or more of the products referred to in Article 1 suffers or is liable to suffer serious disturbance which may jeopardize the objectives of Article 39 of the Treaty, appropriate measures may be taken in respect of trade with third countries until the disturbance or threat of disturbance has ceased.

2. If the situation referred to in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide on the necessary measures, which shall be notified to the Member States and be immediately applicable. If the Commission receives a request from a Member States it shall take a decision thereon within 24 hours after receipt of the request.

3. The measures taken by the Commission may be referred to the Council by any Member State within three working days of the date of notification. The Council shall meet without delay. It may amend or repeal the measure in question by a qualified majority.

TITLE V

General and transitional provisions

Article 17

In order to deal with unforeseen market circumstances, exceptional support measures may be taken in accordance with the procedure laid down in Article 23. The scope and duration of such measures may not exceed that which is strictly necessary to support the market.

Article 18

Except where this Regulation provides otherwise, Articles 92, 93 and 94 of the Treaty shall apply to production of and trade in the products referred to in Article 1.

Article 19

Expenditure incurred pursuant to Title I and III shall be regarded as expenditure within the meaning of Article 1 (2) of Regulation (EEC) No 729/70.

Article 20

1. Member States shall take all the necessary measures to ensure compliance with the Community provisions concerning raw tobacco. To this end they shall notify to the Commission, within six months after the adoption of this Regulation, the arrangements they intend to make for the purposes of management and control. Within three months after such notification the Commission shall approve the arrangements or ask for adjustments. Where adjustments are required the Member State shall make them at the earliest opportunity. Any modification of national arrangements shall be notified without delay by the Member States to the Commission and examined by it in accordance with the same procedure.

2. Each producer Member State shall set up, in accordance with its legal order, a specific agency to carry out certain checks in connection with the Community arrangements for tobacco. However, Member States who have a threshold quantity of less than 45 000 tonnes pursuant to Article (9) 2, may choose not to set up such an agency.

3. The agency shall be given complete administrative autonomy. It shall be given full powers by the Member States concerned to carry out the tasks assigned to it.

Its staff shall be sufficient in number and level of training to accomplish the tasks specified above.

4. Before the beginning of each marketing year, the Member State concerned shall, acting on a proposal from the agency, draw up and send to the Commission a budget estimate and work schedule to ensure correct application of the premium system. The Commission may ask the Member State, without prejudice to the responsibilities of the latter, to make any change in the budget estimate or work schedule that it deems appropriate.

Persons designated by the Commission may at any time monitor any of the work carried out by the agency.

The agency shall submit to the Member State and the Commission regular reports on the work which it has carried out. Such reports must mention any problems encountered and, where appropriate, suggestions as to how to improve the checking arrangements.

5. 50 % of actual expenditure by the agency shall be chargeable to the general budget of the European Communities, the remainder being covered by the Member State concerned.

6. The annual amount representing the actual expenditure referred to in paragraph 5 shall be decided upon by the Commission on the basis of the particulars provided by the Member States concerned. The amount shall be granted when the Commission is satisfied that the agency has been set up and is performing the work assigned to it. In order

to facilitate the setting-up and operation of the agency, the amount in question may be paid in advance in the form of instalments during the year in question, in accordance with the agency's annual budget, the latter being drawn up with the agreement of the Member State and the Commission before the end of October of each following year.

7. Member States shall take the necessary measures to ensure that the inspection officers designated pursuant to paragraphs 2 to 4:

— have access to the premises of production, processing and marketing,

— can examine accounting data and other documents relevant to the checking procedure, and make copies or take extracts from them,

— can ask for any relevant information.

8. Detailed rules for the application of this Article shall be adopted by the Commission in accordance with the procedure laid down in Article 23.

Article 21

Member States and the Commission shall send each other any information necessary for the application of this Regulation. Detailed rules for the sending and dissemination of such information shall be adopted in accordance with the procedure laid down in Article 23.

Article 22

A Management Committee for Tobacco (hereinafter called 'the Committee') shall be established, consisting of representatives of Member States and presided over by a representative of the Commission.

Article 23

1. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

2. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council. In that event the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

3. The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 24

The Committee may consider any other matter raised by its chairman, either on his initiative or at the request of the representative of a Member State.

Article 25

This Regulation must be applied in such a way that account is taken, simultaneously and appropriately, of the objectives laid down in Articles 39 and 110 of the Treaty.

Article 26

Before 1 April 1996 the Commission shall submit a proposal to the Council concerning the arrangements provided for in Titles I and II for application from the 1998 harvest onwards. The Council shall act on this proposal in accordance with the procedure laid down in Article 43 (2) of the Treaty.

Article 27

Where transitional measures prove necessary to facilitate the transition from the arrangements set up by Regulation (EEC) No 727/70 to those laid down in this Regulation, such measures shall be adopted in accordance with the procedure laid down in Article 23.

Article 28

Regulation (EEC) No 727/70 is repealed with effect from the 1993 harvest.

Article 29

This Regulation shall apply from the 1993 harvest.

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

Done at Luxembourg, 30 June 1992.

For the Council

The President

Arlindo MARQUES CUNHA

ANNEX

CLASSIFICATION OF TOBACCO VARIETIES

I. FLUE-CURED

Virginia
Virginia D and hybrids thereof
Bright

II. LIGHT AIR-CURED

Burley
Badischer Burley and hybrids thereof
Maryland

III. DARK AIR-CURED

Badischer Geudertheimer, Pereg, Korso
Paraguay and hybrids thereof
Dragon Vert and hybrids thereof
Philippin
Petit Grammont (Flobecq)
Semois
Appelterre
Nijkerk
Misionero and hybrids thereof
Rio Grande and hybrids thereof
Forchheimer Havanna IIc
Nostrano del Brenta
Resistente 142
Goyano
Hybrids of Geudertheimer
Beneventano
Brasile Selvaggio and similar varieties
Fermented Burley
Havanna

IV. FIRE-CURED

Kentucky and hybrids
Moro di Cori
Salento

V. SUN-CURED

Xanthi-Yaka
Perustitza
Samsun
Erzegovina and similar varieties
Myrodata Smyrnis, Trapezous and Phi I
Kaba Koulak (non-classic)
Tsebelia
Mavra

VI. Basmas

VII. Katerini and similar varieties

VIII. Kaba Koulak (classic)
Elassona
Myrodata Agrinion
Zichnomyrodata