COUNCIL REGULATION (EEC) No 2077/92

of 30 June 1992

concerning inter-branch organizations and agreements in the tobacco sector

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 medium and long-term prospects for the Community and world agricultural markets require certain instruments of the common agricultural policy to be revised in order to restore market balance; whereas such adjustments, directed principally at increasing the flexibility of the market-support instruments, require the operators concerned to change their economic behaviour to take better account of the actual market situation;

Whereas inter-branch organizations established by individuals or groups, and representing a significant proportion of the various categories involved in production, processing and marketing in the tobacco sector are likely to contribute to better account being taken of the market situation and encourage changes in economic behaviour intended to improve knowledge and organization of production, processing and marketing; whereas some of their activities may contribute to improving market balance and so help achieve the objectives in Article 39 of the Treaty; whereas the measures which may constitute such a contribution by the inter-branch organizations should be defined;

Whereas in view of the above, it appears appropriate to grant specific recognition to bodies which can demonstrate their proven representativeness at regional, inter-regional or Community level and which take positive action in pursuit of the objectives mentioned above; whereas such recognition should be granted by the Member State or by the Commission depending on the scope of the activities of the trade association;

Whereas to support certain activities of inter-branch organizations which are of particular interest in the light of the current rules concerning the market organization for the tobacco sector, provision should be made for the rules adopted by an inter-branch organization for its members to be extended, subject to certain conditions, to all non-member producers and groups in one or more regions; whereas non-members should also be made liable to pay all or part of the subscriptions intended to cover the non-administrative costs incurred in pursuing such activities; whereas this procedure should be implemented in a way which guarantees the rights of the socio-economic groups concerned, in particular the rights of the consumer;

Whereas other activities of the recognized inter-branch organizations may be of general economic or technical interest for the tobacco sector and so be of benefit to all persons active in the branches in question, whether or not they are members of the organization; whereas in such cases it appears reasonable to make non-members liable to pay the subscriptions intended to cover the costs, other than administrative costs, arising directly from performance of the activities in question;

Whereas, in order to ensure correct operation of the scheme, there should be close cooperation between the Member States and the Commission, which should also have permanent monitoring powers, particularly as regards recognition of inter-branch organizations operating at regional or inter-regional level and the agreements and concerted practices adopted by such organizations;

Whereas there should be provision for publication, at the beginning of each year, of a list of the organizations recognized during the previous year, a list of the organizations whose recognition has been withdrawn during the same period and the rules which have been extended with an indication of their scope, for the information of the Member States and other interested parties,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the conditions for the recognition and activity of inter-branch organizations operating in the sector covered by the market organization for tobacco.

Article 2

Inter-branch organizations which:

1. comprise representatives of the economic activities relating to production of, processing of and trade in tobacco;

(1) OJ No C 295, 14. 11. 1991, p. 5.
(2) OJ No C 94, 13. 4. 1992.
(3) OJ No C 98, 21. 4. 1992, p. 31.

2. have been set up on the initiative of all or some of their constituent organizations or associations;

3. are pursuing a number of the following activities at regional level, in a number of Community regions or throughout the Community; taking account where appropriate of consumer interests:

(a) contributing to enhanced coordination of the placing on the market of leaf or baled tobacco;

(b) preparing standard contracts compatible with Community rules;

(c) improving market intelligence and transparency;

(d) increasing value added, particularly by means of marketing and research into new uses which do not pose a threat to public health;

(e) redirecting the sector towards products which better meet market and public health requirements;

(f) carrying out research into methods permitting reduced use of plant health products and guaranteeing product quality and soil conservation;

(g) developing methods and instruments for improving product quality at the production and processing stages;

(h) use of certified seed and monitoring of product quality;

shall be recognized under this Regulation.

Article 3

1. On application, Member States shall recognize inter-branch organizations established in their territory which:

(a) carry out their activities at regional or inter-regional level within the territory;

(b) cover a significant proportion of the production and/or trade in relation to the sphere of action and the branches represented; where an inter-branch organization is inter-regional in scope, it must provide proof of minimum representativeness, in respect of each of the grouped branches, in each region covered;

(c) pursue a number of the activities referred to in Article 2 (3);

(d) do not themselves undertake the production, processing or marketing of the products covered by the market organization referred to in Article 1.

2. Prior to recognition being granted, Member States shall notify the Commission of the inter-branch organizations which have applied for recognition and provide all necessary information on the branches of economic activity which they encompass, their representativeness, the activities undertaken and any other information required for consideration of the application.

The Commission may oppose recognition within 60 days of notification by the Member State.

3. Member States shall withdraw recognition:

(a) if the conditions laid down in this Regulation cease to be met;

(b) if the inter-branch organization contravenes one or more of the prohibitions listed in Article 7 (3), without prejudice to criminal proceedings which may be brought under national law;

(c) if the inter-branch organization fails in its obligation to make the notification required under Article 7 (2).

Member States shall notify the Commission immediately of decisions to withdraw recognition.

Article 4

1. On application the Commission shall recognize inter-branch organizations which:

(a) carry out their activities throughout or in part of the territories of several Member States, or throughout the Community;

(b) have been established under the national legislation of a Member State or under Community law;

(c) satisfy the provisions of Article 3 (1) (b), (c) and (d).

2. The Commission shall notify applications for recognition to the Member States on whose territories the inter-branch organization is established and in which it carries out its activities. Following such notification, the Member States concerned shall have two months within which to make their comments.

The Commission shall take a decision on recognition within three months of receiving the application and all necessary information.

3. The Commission shall withdraw recognition of the organizations referred to in paragraph 1 in the circumstances referred to in Article 3 (3).

Article 5

The Commission shall publish in the 'C' series of the *Official Journal of the European Communities* the names of the inter-branch organizations recognized, together with a statement of the economic sector or the area in which they operate and the activities pursued within the meaning of Article 2. Withdrawals of recognition shall also be published.

Article 6

Recognition of inter-branch organizations shall imply authorization for them to carry out the activities referred to in Article 2 (3) subject to the conditions laid down in this Regulation.

Article 7

1. Notwithstanding Article 1 of Regulation No 26 [1], Article 85 (1) of the Treaty shall not apply to the agreements and concerted practices of recognized inter-branch organizations intended to implement the measures referred to in Article 2 (3).

2. Paragraph 1 shall apply only provided that:

— the agreements and concerted practices have been notified to the Commission, and that

— within three months of receipt of all the details required the Commission has not found that the agreements or concerted practices are incompatible with Community rules.

The agreements and concerted practices may not be implemented until this period has elapsed.

3. Agreements and concerted practices which:

— may lead to the partitioning of markets in any form within the Community,

— may affect the sound operation of the market organization,

— may create distortions of competition which are not essential in achieving the objectives of the common agricultural policy pursued by the inter-branch organization measure,

— entail the fixing of prices or quotas, without prejudice to measures taken by inter-branch organizations in the application of specific provisions of Community rules,

— may create discrimination or eliminate competition in respect of a substantial proportion of the products in question,

shall in any case be declared contrary to Community rules.

4. If, following expiry of the three-month period referred to in the second indent of paragraph 2, the Commission finds that the conditions for applying this Regulation have not been met, it shall take a decision declaring that Article 85 (1) of the Treaty applies to the agreement or concerted practice in question.

That decision shall not come into effect earlier than the date of notification to the inter-branch organization concerned, unless that inter-branch organization has given incorrect information or abused the exemption provided for in paragraph 1.

Article 8

1. Inter-branch organizations may request that certain of their agreements or concerted practices be made binding for a limited period on individuals and groups in the economic sector concerned which are not members of the trade branches which they represent, in the areas in which the branches operate.

In order for their rules to be extended, inter-branch organizations must represent at least two thirds of the production and/or the trade concerned. Where the proposed extension of the rules is of inter-regional scope, the inter-branch organizations must prove they possess a minimum degree of representativeness, in respect of each of the grouped branches, in each region covered.

2. The rules, of which extension of the scope is requested, shall have been in force for at least one year and shall relate to one of the following objectives:

(a) knowledge of production and the market;

(b) definition of minimum quantities;

(c) the utilization of cultivation methods compatible with the protection of the environment;

(d) the definition of minimum standards of packing and presentation;

(e) use of certified seed and monitoring of product quality.

3. Extension of the rules shall be subject to approval by the Commission in accordance with the procedure laid down in Article 9.

Article 9

1. In the case of rules laid down by inter-branch organizations recognized by the Member States, the Member States shall publish for the information of the socio-economic groups concerned the agreements or concerted practices which it is intended to extend to non-member individual operators or groups in a particular region or group of regions.

Those concerned shall have two months in which to make their comments.

2. At the end of this period and prior to taking a decision, the Member States shall notify the Commission of the rules which they intend to make binding and supply all

[1] Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products (OJ No 30, 20. 4. 1962, p. 993/62). Regulation as amended by Regulation (EEC) No 49 (OJ No 53, 1. 7. 1962, p. 1571/62).

appropriate information. Notification shall include all the comments received following publication in accordance with paragraph 1 and an evaluation of the application for extension.

3. The Commission shall publish in the 'C' series of the *Official Journal of the European Communities* rules of which extension is requested by inter-branch organizations which it has recognized under Article 4. Following publication, the Member States and the socio-economic groups concerned shall have two months in which to make their comments.

4. If the rules of which extension is requested are 'technical rules' within the meaning of Directive 83/189/EEC (1), they shall be notified to the Commission in accordance with Article 8 of that Directive at the same time as the notification provided for in paragraph 2.

Without prejudice to paragraph 5, where the conditions for delivery of a reasoned opinion under Article 9 of that Directive are met, the Commission shall refuse to approve the rules of which extension has been requested.

5. The Commission shall take a decision within three months of notification by the Member State in accordance with paragraph 2 and, where paragraph 3 applies, within five months of publication in the *Official Journal of the European Communities* of the application for extension of rules.

The Commission shall in any case take a negative decision if it finds that the extension:

— prevents competition in a substantial part of the common market,

— restricts freedom of trade, or

— jeopardizes the objectives of the common agricultural policy or those of any other Community rules.

6. The rules, application of which has been extended, shall be published in the *Official Journal of the European Communities*.

7. When, pursuant to this Article, rules are made binding on non-members of an inter-branch organization, the Member State or the Commission, as appropriate, may decide that individuals or groups which are not members shall pay the organization all or part of the subscriptions paid by members, to the extent that such subscriptions are not used to cover the administrative costs of applying the rules or concerted practices.

(1) OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Directive 90/230/EEC (OJ No L 128, 18. 5. 1990, p. 15).

Article 10

1. Where one or more of the activities referred to in paragraph 2 are pursued by a recognized inter-branch organization and are in the general economic interest of those persons whose activities relate to one or more of the products, the Member State which has granted recognition, or the Commission, where recognition has been granted under Article 4, may decide that individuals or groups which are not members of the association but which benefit from those activities shall pay the organization all or part of the subscriptions paid by its members to the extent that such subscriptions are intended to cover costs, other than administrative costs of any description, directly incurred as a result of pursuing the activities in question.

2. The activities referred to in this Article shall relate to one or other of the following objectives:

— research to add value to the products, in particular through new uses which do not pose a threat to public health,

— studies to improve the quality of leaf or baled tobacco,

— research into methods of cultivation permitting reduced use of plant health products and guaranteeing conservation of the soil and the environment.

3. The Member States concerned shall notify the Commission of decisions which they intend to take under paragraph 1. Such decisions may not take effect until three months have elapsed from the date of notification to the Commission. The Commission may within this time limit call for the rejection of all or part of the draft decision if the general economic interest put forward does not appear to be well founded.

4. Where the activities of an inter-branch organization recognized by the Commission pursuant to Article 4 are in the general economic interest, the Commission shall notify its draft decision to the Member States concerned, who shall then have two months in which to make their comments.

Article 11

Any measure by the Member States or the Commission imposing a subscription on individuals or groups which are not members of an inter-branch organization shall be published in the *Official Journal of the European Communities*. The measure may not take effect until two months have elapsed from the date of publication.

Article 12

Detailed rules for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 2075/92 (2).

(2) See page 70 of this Official Journal.

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