COMMISSION REGULATION (EEC) No 3477/92

of 1 December 1992

laying down detailed rules for the application of the raw tobacco quota system for the 1993 and 1994 harvests

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco [1], and in particular Articles 11, 14 and 27 thereof,

Whereas Article 9 of Regulation (EEC) No 2075/92 introduces a quota system for the various groups of tobacco varieties; whereas the quantities available by group of varieties are to be distributed between the Member States by the Council in accordance with the procedure laid down in Article 43 (2) of the Treaty;

Whereas the allocation of a certain quantity conferring entitlement to the premium for a given harvest does not imply the acquisition of any right as regards subsequent harvests;

Whereas time limits should be set for the quotas to be allocated sufficiently early to enable producers and processors to take account of such factors as far as possible in tobacco production;

Whereas Article 9 (3) of Regulation (EEC) No 2075/92 provides for processing quotas to be allocated to the first processors in proportion to the average quantities delivered for processing during the reference period; whereas that period covers 1989, 1990 and 1991; whereas deliveries should be grouped by harvest in order to take account in particular of overruns in the maximum guaranteed quantities fixed pursuant to Council Regulation (EEC) No 727/70 of 21 April 1970 on the common organization of the market in raw tobacco [2], as last amended by Regulation (EEC) No 860/92 [3];

Whereas the method for calculating quotas must be adjusted so as to bar speculative tobacco production in excess of the maximum guaranteed quantities applicable pursuant to Regulation (EEC) No 727/70; whereas that adjustment must entail reducing the quantities in question in proportion to the overrun; whereas, however, provision should be made to ensure that reduction does not apply to producers who have not contributed to the overrun in the maximum guaranteed quantities; whereas to that end basic reference quantities should, where necessary, be allocated to them;

Whereas care should be taken to ensure that processors share out their quotas fairly and without discrimination between the producers who have delivered tobacco to them during the reference periods concerned; whereas, however, it should be possible for processors not to issue cultivation certificates to certain producers for reasons of rationalization and quality improvement;

Whereas account should be taken of the conversion programmes provided for in Article 14 of Regulation (EEC) No 2075/92 and of certain producers' need to switch to producing varieties more in line with market requirements by setting aside for them some of the quantities available; whereas account should be taken in addition of the particular situation of producers in the former German Democratic Republic;

Whereas provision should be made for cultivation certificates to be issued to producers on the basis of their tobacco deliveries during the 1989, 1990 and 1991 harvests in order to permit producers to change processors from one harvest to another on presentation of the certificate; whereas Member States must be permitted to raise the quantities to be taken into consideration in order to take account of the particular situation of certain producers;

Whereas the quantities allocated to certain producers must be made available to other producers where the persons entitled do not conclude cultivation contracts;

Whereas provisions should be laid down to enable account to be taken of tobacco processed in a Member State other than that of production; whereas in that case the quantity of raw tobacco in question should be taken over in the Member State of production and the processors should be required to use the resulting processing quotas for producers in that Member State;

Whereas the same principles must apply where the Member State chooses, pursuant to Article 9 (4) of Regulation (EEC) No 2075/92, to allocate quotas directly to producers; whereas in that case it must inform the Commission of its intention sufficiently early for the latter to be able to check that the data necessary for allocating quotas directly to the producers exist;

[1] OJ No L 215, 30. 7. 1992, p. 70.
[2] OJ No L 94, 28. 4. 1970, p. 1.
[3] OJ No L 91, 7. 4. 1992, p. 1.

Whereas the possibility of transferring quotas should be restricted to cases economically justified by the transfer of ownership of the processor or the transfer of the producer's holding;

Whereas account should be taken of the joint operation of a production unit by members of a family, in particular as regards minimum quantities per cultivation certificate and the prevention of fraud;

Whereas temporary quota transfers must not be allowed, in order to prevent the circumvention of the restrictions laid down in the quota arrangements; whereas work done under contract by processors on behalf of other processors may, however, be permitted so that those holding quotas may use them in full even if their processing capacity proves insufficient; whereas, however, the possibility of allocating quotas to undertakings which do not themselves process a substantial proportion of the tobacco purchased from producers should be ruled out;

Whereas provision should be made for the resolution of disputes, if any, through joint bodies;

Whereas a definition should be laid down of the role which could be played by the inter-branch organizations in the management and monitoring of the system of quotas; whereas provision should also be made to ensure that the data and documents belonging to processors are available for use when checks are being carried out; whereas temporary provisions will be needed for the period in which the inter-branch organizations have yet to be recognized pursuant to Council Regulation (EEC) No 2077/92 (1);

Whereas Member States must now take appropriate action to equip themselves with the means necessary for distributing the quotas direct to producers from the 1995 harvest onwards;

Whereas the processing capacity of a new undertaking should be established in the light both of existing practice in first processing and of the undertaking's level of technology;

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

HAS ADOPTED THIS REGULATION:

TITLE I

General provisions

Article 1

This Regulation lays down detailed rules governing the application of the quotas provided for in Article 9 of Regulation (EEC) No 2075/92 and their repercussions on producers with regard to the 1993 and 1994 harvests.

(1) OJ No L 215, 30. 7. 1992, p. 80.

Article 2

For the purposes of this Regulation:

— first processing means the processing of raw tobacco supplied by a producer (grower) into a stable, storable product, packaged in good-quality homogeneous bales or parcels which meet the requirements of the final users (manufacturers),

— processing undertaking means any natural or legal person operating, in his own name and on his own account, one or more establishments for the first processing of raw tobacco, having appropriate plant and equipment,

— producer means any natural or legal person or group thereof who delivers raw tobacco produced by himself or by the members of the group to a processing undertaking in his or the group's own name and on his or its own account, under a cultivation contract concluded by him or in his name,

— Member State of production means the Member State in which the raw tobacco delivered to a processing undertaking was produced,

— Member State of processing means the Member State in which the first processing of the tobacco takes place.

TITLE II

Processing quotas

Article 3

1. The Member States shall set processing quotas for each processor and each group of varieties as defined in the Annex to Regulation (EEC) No 2075/92 by 15 January 1993 for the 1993 harvest and 15 December 1993 for the 1994 harvest at the latest.

2. The Member States shall determine the data which must appear in quota allocation applications and the deadline by which they must reach the competent authority.

3. No quota shall be allocated to a processor which does not undertake to issue cultivation certificates in accordance with Article 9.

Article 4

The allocation of a quota or the issue of a cultivation certificate for a harvest shall be without prejudice to the allocation of quotas or the issue of cultivation certificates for subsequent harvests.

Article 5

1. Quotas of processors shall be equal to the average quantity each produces as a percentage of the total average quantities calculated in accordance with Article 9 of Regulation (EEC) No 2075/92 and Articles 6 and 7 of this Regulation, such percentage being applied to the specific guarantee threshold of the Member State for the group of varieties in question, without prejudice to the third subparagraph of Article 9 (3) of Regulation (EEC) No 2075/92.

2. Processing undertakings' percentages shall be expressed to at least four decimal places. Quotas shall be expressed in kilograms.

Article 6

1. The average quantities delivered for processing by each processor shall be calculated by group of varieties in accordance with this Article.

2. For the purposes of calculating the average quantities delivered for processing, all the tobacco from a harvest shall be deemed to be delivered during the year of the harvest in question.

However, the quantities of tobacco delivered by producers located outside the production areas specified in accordance with Article 5 (a) of Regulation (EEC) No 2075/92 shall not be taken into account in the calculation referred to in the previous subparagraph.

3. Where the harvest has not exceeded the maximum guaranteed quantity fixed for a variety of tobacco pursuant to Regulation (EEC) No 727/70, the total quantity delivered to the processing undertaking from that harvest shall be taken into account.

4. Subject to the provisions of Article 7, where the quantities of the various varieties of tobacco from the 1989, 1990 or 1991 harvests delivered to processors exceed the maximum guaranteed quantity fixed pursuant to Regulation (EEC) No 727/70, those quantities shall be multiplied by a coefficient of reduction. The coefficient of reduction shall be equal to the maximum guaranteed quantity in question, divided by the total quantity of tobacco delivered.

Article 7

1. Where the quantities of the various varieties of tobacco delivered to the processor do not exceed the maximum guaranteed quantity fixed pursuant to Regulation (EEC) No 727/70 in the 1989 or 1990 harvests but do exceed the maximum guaranteed quantity in the following harvest or harvests, each processor shall obtain a basic reference quantity.

The basic reference quantity shall be equal to the quantity delivered to the processor in question in the most recent harvest where the maximum guaranteed quantity was not exceeded. This basic reference quantity shall be taken into account in respect of the following harvest or harvests, within the limit of the quantity actually delivered.

2. Where the total quantity of tobacco delivered giving rise to the allocation of basic reference quantities is higher than the maximum guaranteed quantity for the following harvest or harvests, the basic reference quantities shall be reduced so that their amount does not exceed the maximum guaranteed quantity in question.

3. To calculate the coefficient of reduction referred to in Article 6 (4), the maximum guaranteed quantity and the total quantity of tobacco delivered shall be reduced by the total of all the basic reference quantities for the harvest in question. This coefficient of reduction shall not apply to the quantities delivered to the processor over and above their basic reference quantities.

Article 8

1. Where tobacco produced in one Member State is processed in another Member State, the processing quotas shall be allocated in accordance with this Article, without prejudice to other provisions of this Title.

2. The Member State of processing shall inform the Member State of production of the quantities of raw tobacco from the Member State of production delivered for processing to each processor by group of varieties in 1989, 1990 and 1991.

3. The information shall be forwarded by 15 December 1992 at the latest for the 1993 harvest and by 15 November 1993 at the latest for the 1994 harvest.

4. When the processing quotas are calculated, the Member State of production shall treat processors established in another Member State in the same way as the processors established in its own territory.

Where the Member State of production has decided to allocate the quotas direct to producers, it shall reserve a corresponding amount of its specific guarantee threshold for processors located in another Member State.

5. After the processing quotas have been allocated, the Member State of production shall immediately inform the Member State of processing of the processing quota to be allocated to each processor concerned on the basis of the quantities of raw tobacco coming from the Member State of production. The Member State of processing shall immediately inform the processor thereof.

6. Processing quotas calculated by reference to tobacco produced in another Member State may only be used to process tobacco produced in the same Member State of production.

Article 9

1. For each group of varieties, processors shall issue cultivation certificates, if need be at the request of the interested party, within the limit of their processing quotas to producers located in a production area recognized in accordance with Article 5 (a) of Regulation (EEC) No 2075/92, in proportion to the tobacco from the same group of varieties which they deliver in the 1989, 1990 and 1991 harvests. For the purposes of calculating such deliveries in cases where the maximum guaranteed quantities fixed for the 1989, 1990 and/or 1991 harvest are exceeded, the provisions of Article 6 shall apply *mutatis mutandis*. The abovementioned cultivation certificates shall indicate in particular the holder of the certificate, the group of varieties and the quantity of tobacco for which they are valid.

2. The Member States shall determine the procedures for the issuing of the cultivation certificates, as well as the measures to be taken for the prevention of fraud in accordance with Article 20 (1) of Regulation (EEC) No 2075/92.

They may lay down minimum quantities (not exceeding 500 kilograms) for the issue of cultivation certificates.

3. Where a producer shows proof that his production has been abnormally low during a given harvest as a result of exceptional circumstances, the Member State shall calculate, at the request of the producer concerned, the quantity to be taken into consideration for that harvest in making out his cultivation certificate. The reference quantity of the relevant processing undertaking shall be adjusted accordingly. The Member States shall notify the Commission of any decisions they intend to take.

4. Italy and Greece respectively may establish a reserve of leaf tobacco belonging to other groups of varieties, for allocation as a priority to producers undertaking conversion programmes in accordance with Article 14 of Regulation (EEC) No 2075/92.

Germany is hereby authorized to allocate a maximum of 35 % of the threshold to producers whose holdings are located in the territory of the former German Democratic Republic.

5. Where the guarantee threshold fixed for a group of varieties for a particular harvest and a particular Member State in accordance with Article 9 (2) of Regulation (EEC) No 2075/92 is higher than the guarantee threshold or the maximum guaranteed quantity fixed pursuant to Regulation (EEC) No 727/70 for the previous harvest, the quantity exceeding that guarantee threshold or that maximum guaranteed quantity shall be distributed, at their request, between all the producers who have delivered tobacco to the processor in question in proportion to the quantities delivered. The Member States may provide for coefficients of equivalence in order to take account of the different yields of the various varieties of tobacco and the various production areas.

Where applicable, the quantities available under the first subparagraph shall be reduced by those set aside for the purposes of paragraph 4.

6. Cultivation certificates shall be issued by 1 March of the year of harvest at the latest.

Article 10

1. Each producer shall deliver tobacco from any given group of varieties to a single processing undertaking only. Where he obtains a cultivation certificate from several processors to which he delivered tobacco from the 1989, 1990 and 1991 harvests and from the same group of varieties, the quantities shall be aggregated within the processing undertaking to which he delivered tobacco from the 1991 harvest. If the producer has delivered tobacco to several processors during the harvest, he shall indicate the undertaking from which he wishes to receive the cultivation certificate.

However, producer groups which are producers for the purposes of the third indent of Article 2 may deliver their production to several processors.

2. Producers may conclude cultivation contracts with a processing undertaking other than that which issued the cultivation certificate, on presentation of the latter.

3. The Member State shall transfer quotas between processors where the application of this Article so requires.

Article 11

1. Cultivation certificates which have not been used to conclude contracts at the date fixed for the purpose must be returned to the processor in question by the producer no later than 10 working days after that date.

2. If the producer does not return the certificate to the processor within the time limit laid down, his reference quantity for the following harvest and for the same group of varieties shall be reduced by 0,5 % per day overdue, up to a maximum of 15 %.

3. Quantities entered in unutilized cultivation certificates and other quantities which may be available shall be distributed by the processors fairly and on the basis of objective criteria before 1 April of the year of harvest. Such criteria may be laid down by the inter-branch organizations recognized in accordance with the provisions of Regulation (EEC) No 2077/92.

TITLE III

Production quotas

Article 12

If a Member State contemplates allocating quotas direct to producers in accordance with Article 9 (4) of Regulation (EEC) No 2075/92, it shall so inform the Commission before 15 December of the year in question, indicating the sources of data available for calculating quotas.

Article 13

The provisions of Title II shall apply *mutatis mutandis*, subject to the following conditions:

1. The cultivation certificates shall be replaced by production quota statements issued by the competent authority in the Member State;
2. Pursuant to Article 11, production quota statements unused by producers must be returned to the authorities which made them out. The available quantities shall be shared out among the producers concerned on the basis of the criteria referred to in Article 11 (3).

TITLE IV

Transfer of rights

Article 14

Except in the cases provided for in this Title, quotas may not be transferred or be the subject of transactions, whether for a consideration or free of charge and quantities produced by a producer or processed by a processing undertaking may not be taken into account for the benefit of another producer or another processor, for the purposes of calculating the latter's quota.

Article 15

1. The lease or any other form of temporary disposal of a processing undertaking or part thereof to another natural or legal person shall not entail the transfer of the processing quota.

For the purposes of calculating the processing quota, quantities processed by a person leasing processing facilities shall be taken into account.

2. Where a processor is taken nover by another processor, the quotas allocated to the former and the quantities serving to calculate its future quotas shall be allocated to the undertaking taking it over.

3. Where a processor ceases to operate without being taken over by another processor or where it relinquishes its whole quota or part thereof, or where it does not undertake to issue cultivation certificates in accordance with Article 9 thereof, the quota or the part still available thereof shall be distributed proportionately between the other processors. However, no additional distribution of processing quotas may take place after 30 May of the year of the harvest in question. The rights of producers who have delivered tobacco to a processor relinquishing its quota or part thereof shall be transferred to the other processing undertakings in accordance with rules to be laid down by the Member State.

4. Where raw tobacco is processed under contract, that quantity shall be deemed to have been processed by the undertaking on whose behalf processing took place, provided that the latter undertaking itself processes at least 50 % of the quota allocated to it or of the reference quantity laid down.

Article 16

1. Where a tobacco-producing holding is transferred to another party on any ground whatever, and in particular as a result of sale or lease, or in the event of an inheritance, the new incumbent shall be entitled to the cultivation certificate or quota for the whole reference period, unless the contract specifies otherwise.

2. Where part only of a tobacco-producing holding is transferred to another party, the new incumbent shall be entitled to the cultivation certificate or quota in proportion to the agricultural areas taken over. However, the parties concerned may agree that entitlement shall continue to be held by the person formerly entitled thereto.

3. Reference quantities and rights acquired by a producer leasing the areas he farms shall continue to be held by him when the lease terminates.

4. Where several members of a family jointly farm, or have farmed, a tobacco holding, they must request that only one cultivation certificate or quota statement be issued on the basis of the aggregated quantities to which they are entitled.

TITLE V

Final and transitional provisions

Article 17

The Member States may provide that disputes relating to the distribution or transfer of quotas or production certificates must be submitted to an arbitration body. The Member States shall lay down the rules governing the membership and the decision-making procedures of such bodies; the latter must comprise an equal number of representatives of producers and processors.

Article 18

1. The Member States shall verify the allocation of quotas by processing undertakings in accordance with the provisions laid down to that end. Inter-branch organizations recognized in accordance with the provisions of Regulation (EEC) No 2077/92 may take part in such checks, in the management of quotas and in particular in the application of the provisions of the third subparagraph of Article 9 (3) of Regulation (EEC) No 2075/92.

2. For the purpose of applying paragraph 1 processors shall allow the competent authorities and the organizations in question access to the data and documents necessary for the allocation of quotas and the preparation of cultivation certificates, and their use.

Article 19

For the 1993 harvest, the Member States may, for the purpose of applying Articles 11 (3) and 12, bring together on a joint basis the existing recognized professional organizations until such time as the inter-branch organizations recognized pursuant to Regulation (EEC) No 2077/92 have been set up.

Article 20

The Member States shall establish a computerized database which shall contain, for each processor and each producer, information identifying their establishments or their holdings, the quotas or the quantities appearing on cultivation certificates allocated to them and any other information which may be useful for monitoring the quota system and for the distribution of quotas direct to producers from the 1995 harvest onwards.

Article 21

Where a quota or a cultivation certificate covers a producer group which is also a producer of tobacco in accordance with the third indent of Article 2, the Member State shall ensure that the quantity is distributed fairly between all members of the group. In that case, the provisions of Title II shall apply *mutatis mutandis* to distribution between the members of the group; however, with the agreement of all the producers concerned, the group may undertake a different distribution with a view to improved organization of production.

Article 22

For the purposes of the third subparagraph of Article 9 (3) of Regulation (EEC) No 2075/92, the Member State shall estimate the processing capacity of undertakings by reference to the processing capacity of existing undertakings taking account in particular of any technical dissimilarities or differences in equipment.

Article 23

This Regulation shall enter into force on the seventh 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, 1 December 1992.

For the Commission

Ray MAC SHARRY

Member of the Commission