COMMISSION REGULATION (EEC) No 3478/92

of 1 December 1992

layin down detailed rules for the application of the premium system for raw tobacco

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], an in particular Article 7 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common argicultural policy [2], as last amended by Regulation (EEC) No 2205/90 [3], and in particular Article 5 (3) thereof,

Whereas the recognized production areas should be fixed for each group of varieties of tabacco on the basis of the traditional production areas for the purposes of grantin the premium; whereas Member States should be permitted to limit those areas in order, in particular, to improve quality;

Whereas the points which must be included in cultivation contracts must be specified; whereas contracts must be limited to one harvest so that account can be taken of future changes in quotas; whereas sufficiently early final dates for the conclusion and registration of contracts should be fixed to enable them to guarantee, from the very beginning of the year of harvest, both stable outlets to producers for the coming harvest and regular supplies to processors;

Whereas, when a cultivation contract is concluded with a group of producers, the essential details of each individual producer must also be notified to permit effective management and control;

Whereas raw tobacco eligible for the premium must be of sound and fair merchantable quality and free of certain characteristics which prevent normal marketing;

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

Whereas premiums are to be paid for the quantity of leaf tobacco delivered by producers to processors irrespective of variations in quality, provided that the minimum quality requirements are fulfilled; whereas, however, the premium should be adjusted where the moisture content of tobacco delivered differs by up to 3 % from the moisture content to be fixed for each group of varieties on the basis of reasonable quality requirements;

Whereas the period of delivery of the tobacco to processors should be limited in order to prevent fraudulent carry-over from one harvest to antoher;

Whereas the conditions ogverning the payment of premiums and pruchase prices should be laid down in order to prevent fraud; whereas, however, it is the responsibility of the Member States to determine further management and control arrangements pursuant to Article 20 (1) of Regulation (EEC) No 2075/92;

Whereas the premiums must permit Community tobacco producers to dispose of their production under satisfactory conditions of competition compared with imported tobacco, account being taken of Community production costs; whereas provision should be made whereby the premium, expessed in national currency, shall be identical for all producers concerned who deliver their tobacco to processors over a given period of time, by applying the conversion rate applicable at the beginning of the said marketing period;

Whereas premiums may be paid only after a full and final check on all deliveries from the harvest, to guarantee that the operations concerned have actually been carried out and that the quota arrangements have been complied with; whereas, however, the payment of advances to processors on the amounts they are to pay to producers should be provided for on condition that an adequate security is lodged;

Whereas special conditions should be laid down governing the processing of tobacco in Member States other than the Member State in which it has been produced;

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

HAS ADOPTED THIS REGULATION:

Production areas

Article 1

1. For each group of varieties, the production areas referred to in Article 5 (a) of Regulation (EEC) No 2075/92 shall be as laid down in Annex 1 hereto.

[1] OJ No L 215, 30. 7. 1992, p. 70.
[2] OJ No L 164, 24. 6. 1985, p. 1.
[3] OJ No L 201, 31. 7. 1992, p. 9.

Member States may specify more restricted production areas, especially in the interests of quality.

2. The production areas shall be the subject of an annual review in order that they may be adapted, if necessary, to quantitative and qualitative developments on the market.

Cultivation contract

Article 2

1. Cultivation contracts as referred to in Article 5 (c) of Regulation (EEC) No 2075/92 shall be concluded between a producer or groups of producers on the one hand and the processor who carries out the first processing and market preparation operations on the other.

2. Cultivation contracts shall be concluded by group of varieties. They shall commit the processor to taking delivery of the quantity of leaf tobacco provided for in the contract and the producer or group of producers to deliver that quantity to the processor, to the extent that their actual production so allows.

3. Cultivation contracts shall include at least the foolowing details :

(a) the parties to the contract,

(b) the reference of the cultivation certificate or, where quotas are directly allocated to producers, of the quota statement of thep roducers concerned,

(c) the variety of tobacco covered by the contract,

(d) the maximum quantity to be delivered,

(e) the exact location where the tobacco is produced (production area as referred to in Article 1 thereof, province, commune and identification of the parcel or place),

(f) the area of the parcel concerned, excluding service roads and enclosures,

(g) the purchase price, excluding the premium,

(h) the quality to which the price refers,

(i) the minimum quality requirements agreed,

(j) an undertaking whereby the processor undertakes to pay the producer or group of producers an amount at least equal to the premium for the quantity covered by the contract and actually delivered,

(k) the period of payment of the purchase price, which may not exceed one month from the end of each delivery.

4. Contracts shall be valid for one harvest only.

Article 3

1. Cultivation contracts shall be concluded, except in casis of *force majeure,* by 15 March of the year of the harvest covered by the contract at the latest. However, that date shall be deferred to 10 April of the same year for contracts concluded as a result of the allocation of additional quantities pursuant to Article 11 (3) of Commission Regulation (EEC) No 3477/92 [1].

2. Except in cases of *force majeure,* processors must submit the concluded cultivation contracts for registration to the competent body before 1 April of the year of the harvest covered by the contract. However, that date shall be 20 April of the same year for the registration of contracts concluded as a result of the allocation of additional quantities pursuant to Article 11 (3) of Regulation (EEC) No 3477/92.

3. If the period for the conclusion of contracts provided for in paragraph 1 or for the submission of cultivation contracts provided for in paragraph 2 is exceeded by a maximum of 10 working days, the premium reimbursed shall be reduced by 20 %.

4. The competent body shall be that of the Member State in which processing is to take place. Where processing is to take place in a Member State other than that in which the tobacco was grown, the competent body of the Member State in which processing is to take place shall send a copy of the registered contract immediately to the competent body of the producer Member State.

If that body does not itself carry out checks on the premium system it shall send a copy of the registered contract to the control agency referred to in Article 20 (2) of Regulation (EEC) No 2075/92 or to the department responsibl for carrying out checks where the Member State concerned does not have such an agency.

5. Member States shall send the names and addresses of the bodies responsible for the registration of contracts to the Commission. The Commission shall publish a list of those bodies in the 'C' Series of the *Official Journal of the European Communities.*

Article 4

Where a cultivation contract is concluded between a processor and a group of producers, it shall be accomponied by a list containing the names of the producers concerned, their respective areas in accordance with Article 2 (3) (f) and details of their cultivation certificates or their quota statements.

Article 5

Cultivation contracts concluded pursuant to Council Regulation (EEC) No 727/70 [2] for a duration extending beyond the 1992 harest shall cease to apply from the 1993 harvest.

Minimum quality requirements

Article 6

Tobacco delivered to processors must be of sound, fair and merchantable quality and free from any of the characteristics given in Annex 2. The contracting parties may agree on stricter quality requirements.

[1] See page 11 of this Official Journal.
[2] OJ No L 94, 28. 4. 1970, p. 1.

Article 7

The Member States may provide that disputes concerning the quality of tobacco delivered to the first processor shall 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 include one or more representatives of producers and processors, in equal numbers.

Payment of premiums, reimbursement and advances

Article 8

1. The premium to be paid to the producer by the processor and the quantity to be set off against the cultivation contract or quota statement of the party concerned shall be calculated on the basis of the weight of leaf tobacco of the variety concerned taken over by the processor and meeting the minimum quality requirements. Hoewever, where the moisture content differs from the level laid down in Annex 3 for the variety concerned, the wieght shall be adjusted accordingly for each percentage point, up to a maximum of 3 % moisture.

2. The moisture content shall be determined in accordance with on of the methods given in Annex 4.

Article 9

1. Except in cases of *force majeure,* producers shall deliver their entire production to the first processor by 15 May (at the latest) of the year following the year of the harvest, otherwise they shall forfeit entitlement to the premium.

2. Each producer shall notify the control authority in writing by 25 May at the latest of the quantities of leaf tobacco not delivered to a first processor by 15 May and of the place of storage of such tobacco. The competent authority shall take action to ensure that tobacco not delivered to a first processor by 15 May is not declared as coming rom the subsequent harvest.

3. If the control authority establishes the presence of tobacco which is not covered by the declaration referred to in in paragraph 2 hereof, the quantity to be covered by the cultivation certificate or quota statement to which the producer is entitled for the following harvest shall be reduced by twice the quantity not declared.

Article 10

An amount equal to the premium shall be paid to the producer by the processing undertaking within one month of the end of each delivery under contract. Payment to the producer by the processor or group of producers of an amount equal to the premium, and payment of the purchase price, may only be made by bank or postal transfer.

Article 11

The agricultural conversion rate to be used for converting premiums and advances on premiums into national currency shall be teh rate applicable on 1 August of the year of harvest for deliveries up to 31 December of that year and that applicable on 1 January of the following year for deliveries thereafter. Processors shall pay premiums to producers in the currency of the Member State in which the tobacco was harvested.

Article 12

1. The premiums paid to producers shall be reimbursed to the processors, on application, on the basis of a control certificate issued by the competent authorites after verification of all deliveries from the harvest to the processor concerned for the group of varieites in question. The controls shall ensure that no tobacco may be presented more than once for verification and tht the tobacco undergoes normal first processing and market preparation.

2. The Member States shall ensure that tobacco processes is subsequently marketed.

Article 13

Applications for reimbursement of premiums paid to producers must include, for each delivery, harvest and group of varieties, at least the following :

(a) the date of the cultivation contract relating to the delivery concerned, the date of registration of the contract and the official number given to the contract ;

(b) the variety of tobacco delivered ;

(c) the name of the vendor ;

(d) the quantity of tobacco delivered ;

(e) the date on which delivery was begun ;

(g) the purchase price or prices paid, with particulars of the qualities to which those prices refer ;

(h) proof of payment to the producer of an amount equal to the premium ;

(i) the original of the cultivation certificate or of the quota statement issued to the producer.

Article 14

1. Where leaf tobacco originating in or imported from a third country undergoes first processing and market preparation in the Community, the Member State concerned shall decide upon the checks necessary to prevent any premium being paid for that tobacco.

2. Member States shall provide mutual assistance in the case of trade in leaf tobacco between them.

Article 15

1. On application by processors, the Member State shall pay an advance on the premiums to be paid to producers on the basis of a statement of premiums payable, issued by the competent control authority. This statement shall be issued on the basis of cultivation contracts concluded by processors and of deliveries made or planned.

Where within six weeks from the date of receipt advances have not been used by processors for the payment of premiums to producers or reimbursed to the Member State, interest shall be payable on the amount still available, at a rate to be determined by the Member State. Such interest shall be booked to the EAGGF.

2. Payment of advances shall be subject to the lodging of a security equal to the amount of the premium plus 15 %.

3. Securities shall be released on presentation of the certificate referred to in Article 12.

4. The provisions of Commission Regulation (EEC) No 2220/85 [1] shall apply save as otherwise provided for in this Regulation.

Article 16

The certificates referred to in Article 12 must be presented by 31 December of the second year following the year of harvest, at the latest. Where an advance has been paid, the security shall be forfeit in respect of premiums for which the proof required for release has not been provided within the abovementioned time limit.

Article 17

1. Premiums shall be reimbursed or advanced to the processor by the Member States in which the tobacco was harvested.

2. Where tobacco is processed in a Member State other than that in which it was harvested, the Member State in which it is processed shall, after carrying out the requisite checks, provide the producer Member State with all the information necessary to enable it to pay the premium or release the security.

Article 18

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

[1] OJ No L 205, 3. 8. 1985, p. 5.

ANNEX I

Recognized production areas

Group of varieties in accordance with the Annex to Regulation (EEC) No 2075/92	Member State	Production areas
I. Flue-cured	Germany	Schleswig-Holstein, Lower Saxony, Franconia, Rhine valley and adjacent valleys, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Thuringia
	Greece	Sterea Hellas, Thessaly, Macedonia, Thrace, Peloponnese, Epirus
	France	Aquitaine, Midi-Pyrénées, Auvergne-Limousin, Champagne-Ardenne, Alsace-Lorraine, Rhône-Alpes, Franche-Comté, Provence, Val-de-Loire, Centre, Poitou-Bretagne, Charente, Languedoc-Roussillon, Normandy, Burgundy, Nord-Pas-de-Calais, Picardy, Ile-de-France
	Italy	Friuli, Veneto, Lombardy, Piedmont, Tuscany, Marche, Umbria, Lazio, Abruzzi, Molkise, Compania, Basilicata, Apulia, Calabria
	Spain	Extremadura, Andalusia, Castile-Leon, Castile-La Mancha
	Portugal	Beira Interior, Ribatejo Oeste, Alentejo, Autonomous Region of the Azores
II. Light air-cured	Germany	Rhine valley and adjacent valleys, Mittelfranken, Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Thuringia
	Greece	Macedonia, Thessaly
	France	Aquitaine, Midi-Pyrénées, Auvergne-Limousin, Alsace-Lorraine, Rhône-Alpes, Franche-Comté, Val-de-Loire, Centre, Poitou-Bretagne, Burgundy, Charente, Languedoc-Roussillon
	Italy	Veneto, Lombardy, Piedmont, Umbria, Emilia-RTomagna, Lazio, Abruzzi, Molise, Compania, Basilicata, Apulia, Sicily, Friuli, Tuscany, Marche
	Spain	Extremadura, Andalusia, Castile-Leon, Castile-La Mancha
	Portugal	Beiras, Ribatejo Oeste, Entre Douro e Minho, Trás-os-Montes, Autonomous Region of the Azores
III. Dark air-cured	Belgium	Flandes, Hainaut, Namur, Luxembourg
	Germany	Rhine valley and adjacent valleys, Mittelfranken, Brandenburg, Mecklenburg-Western Pomerania
	France	Aquitaine, Midi-Pyrénées, Languedoc-Roussillon, Auvergne-Limousin, Poitou-Bretagne, Charente, Val-de-Loire, Centre, Rhône-Alpes, Provence, Franche-Comité, Alsace-Lorraine, Champagne-Ardenne, Picardy, Nord-Pas-de-Calais, Normandy, Burgundy, Réunion
	Italy	Friuli, Trentino, Veneto, Tuscany, Lazio, Molise, Compania, Apulia, Sicily
	Spain	Extremadura, Adalusia, Castile-Leon, Castile-Leon, Castile-La Mancha, Valencia (Comunidad autonoma), Navarre, Rioja, Catalonia, Madrid, Galicia, Asturias, Cantabria, zone of Compezo in the Basque region, La Palma (Canary Islands)
IV. Fire-cured	Italy	Veneto, Tuscany, Umbria, Lazio, Campania
	Spain	Extremadura, Andalusia
V. Sun-cured	Greece	Epirus, Sterea Hellas, Thessaly, Peloponnese, Macedonia, Thrace and Islands
	Italy	Lazio, Abruzzi, Campania, Basilicata, Apulia, Sicily
VI. Basmas	Greece	Thrace, Macedonia, Sterea Hellas, Thessaly
VII. Katerini and similar varieties	Greece	Macedonia, Sterea Hellas, Epirus, Thessaly
VIII. Kaba Koulak classic, Elassona, Myrodata Agrinion, Zichnomyrodata	Greece	Macedonia, Thessaly, Sterea Hellas, Thrace, Epirus, Peloponnese and Islands

ANNEX II

Minimum quality requirements

Tobacco eligible for the premium referred to in Article 3 of Regulation (EEC) No 2075/92 must be of sound and fair merchantable quality having regard to the typical characteristics of the variety concerned and must not contain any of the following:

(a) pieces of leaf;

(b) leaf badly torn by hail;

(c) leaf with serious damage on more than one-third of the surface;

(d) leaf diseased or attacked by Insects on more than 25 % of the surface;

(e) leaf marked by pesticides;

(f) leaf which is unripe or distinctly green in colour;

(g) leaf damaged by frost;

(h) leaf attacked by mould or rot;

(i) leaf with uncured veins, moist or attacked by rot or with pulpy or prominent stems;

(j) leaf from suckers or side-shoots;

(k) leaf having an unusual odour for the variety in question;

(l) leaf with soil still adhering;

(m) leaf with moisture content exceeding by more than three points the moisutre content fixed in Annexe III.

ANNEX III

Moisture content referred to in Article 8

Group of varieties	Moisture content (%)
I. Flue cured	16
II. Light air-cured	
Germany, France,	22
other Member States	20
III. Dark air-cured	
Belgium, Germany, France	26
other Member States	22
IV. Fire-cured	22
V. Sun-cured	16
VI. Basmas	16
VII. Katerini	16
VIII. Kaba Koulak classic, Elassona, Myrodata Agrinion, Zichnomyrodata	16

ANNEX IV

Community methods for the determination of the moisture content of raw tobacco

I. METHODS TO BE USED

A. *Beaudesson method*

1. Apparatus

Beaudesson EM10 drying oven : a warm air electric dryer in which the air is passed over the sample to be dried by forced convection by means of a special ventilation fan. The moisture content is determined by weighing before and after drying, the balance being calibrated in such a way that the reading given by the 10 g quantity used corresponds directly to the moisture content value in % (per cent).

2. Procedure

A 10 g quantity is weighted out in a pan with a perforated base and then put into the drying column, where it is supported by a spiral ring. The oven is turned on for five minutes, during which time the warm air causes the sample to dry at a temperature of about 100 °C. At the end of five minutes, an automatic timer stops the process. The temperature of the air at the end of the drying process is recorded from a built-in thermometer. The sample is weighed and its moisture content is read directly and corrected if necessary by the addition or subtraction of tenths of a per cent according to the temperature reading, using the scale provided with the apparatus.

B. *Brabender method*

1. Apparatus

Brabender oven : an electric dryer consisting of a thermostated cylindrical chamber, ventilated by forced convection, into which are simultaneously placed 10 metal pans, each containing 10 g of tobacco. These pans are put onto a table, which can be rotated by means of a central handwheel into 10 different positions, allowing each of the pans, after drying, to be placed in a position where it can be weighed within the apparatus : a system of levers allows each of the pans to be placed successfully on the arm of a built-in balance, without the necessity of removing the samples from the chamber. The balance has an optical read-out scale, and gives a direct reading for the moisture content. A second balance is attached to the apparatus, the being used only to weigh out the initial quantities.

2. Procedure

The thermostat is set at 110 °C.

The chamber is set to preheat : minimum period 15 minutes.

Ten 10 g quantities are weighted out.

The oven is filled.

The samples are dried for 50 minutes.

Weights for determination of the gross moisture content are read.

C. *Other methods*

Member States may use other methods of measurement, based in particular on the determination of the electrical resistance or dielectric properties of the batch concerned, on condition that the results are calibrated on the basis of an examination of a representative sample using one of the methods referred to in A and B.

II. SAMPLING

The following is the procedure to be followed for the sampling of leaf tobacco for determination of its moisture content using one of the methods referred to in I.A and B :

1. Selection of samples

Select from each bale a number of leaves proportional to its weight.

The number of leaves selected should be sufficient to be properly representative of the bale as a whole.

The sample must include equal quantities of leaf from the outside of the bale, leaf from the centre and leaf from a position intermediate between these.

2. Homogenization

All the leaves selected are mixed together in a plastic bag and several kilograms of them are chopped up (cutting width 0,4/2 mm).

3. Sub-sampling

After chopping, mix the chopped leaves thoroughly and withdraw a representative sample.

4. Measurement

Measurement must be carried out on the whole of this reduced sample and precautions should be taken to ensure that:

— no variations in moisture content occur (air- and water-tight bag or container),

— the homogeneity of the sample is not affected by the setting of waste.