COMMISSION REGULATION (EEC) No 84/93

of 19 January 1993

on the specific aid to be granted to producer groups in the raw tobacco sector

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 Article 12 (3) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (2), and in particular Article 6 (2) thereof,

Whereas Article 12 of Regulation (EEC) No 2075/92 stipulates that specific aid equivalent to 10 % of the premium is to be granted where cultivation contracts are concluded between a first processor and a recognized group of producers and the deliveries covered by such contracts account for the entire output of the group members;

Whereas the requirements for the recognition of producer groups should be laid down in order that they may qualify for that specific aid;

Whereas to ensure compliance with the market structure, provision should be made that, except in certain special circumstances, a producer may be a member of one group only;

Whereas in line with the intentions of Article 12 of Regulation (EEC) No 2075/92 and in particular to prevent distortion of competition and monitoring difficulties, producer groups should be debarred from engaging in first processing; whereas a processor may, however, be a member of a group in his capacity as a tobacco producer;

Whereas to ensure uniformity of administrative procedures, rules should be laid down covering certain details regarding applications for recognition, its grant and withdrawal, and the monitoring of requirements in its regard;

Whereas to ensure that the specific aid is used effectively, it should be limited to certain purposes, in particular the grant of additional payments to producer members of a group;

Whereas in view of the specific nature of the aid, a procedure should be adopted for its payment which differs from that for the premium;

Whereas provision should be made that the premium, expressed in national currency, shall be identical for all producers who supply tobacco to processors during a certain period, using the conversion rate applicable at the beginning of the year following the harvest;

Whereas because of the time required for the provisions of this Regulation to be implemented in the Member States, special rules should be adopted in respect of the 1993 harvest;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of applying Article 12 of Regulation (EEC) No 2075/92, Member States shall recognize producer groups, at the request of the latter, on condition that they meet the conditions laid down in this Regulation.

2. Where a producer group consists wholly or partly of members who are themselves producer groups, each of those groups must meet the conditions laid down in this Regulation.

3. As from the 1994 harvest, producer groups may not carry out first processing of tobacco.

4. A tobacco producer may not belong to more than one group except where he cultivates more than one variety and the groups in his region of production are not recognized for all the variety groups concerned.

Article 2

1. Producer groups shall satisfy the following requirements:

(a) they shall be set up on the initiative of their members;

(b) they shall contribute by their activities to the attainment of the objectives of Article 39 of the Treaty;

(c) they shall be set up with the aim of adapting collectively the production of the producer members to meet the requirements of the market;

(1) OJ No L 215, 30. 7. 1992, p. 70.
(2) OJ No L 387, 31. 12. 1992, p. 1.

(d) they shall adopt, and shall ensure that their members apply, common rules for the production and the placing of their products on the market, in particular as regards product quality and the use of cultivation practices and shall purchase seed, fertilizers and other capital goods;

(e) their operation shall be regulated by articles of association according to which producer members shall be at least obliged:

— to market the entire production intended for marketing through the group,

— to comply with common production rules;

(f) they shall, for each variety group covered by their activities,

— have at least 120 members holding between them cultivation certificates or quota statements for at least 200 tonnes, or

— have at least 50 members holding between them cultivation certificates or quota statements for at least 2 500 tonnes.

However, in production areas remote from other production areas for the same variety group, a producer group may be recognized where it comprises at least two-thirds of the producers and accounts for at least two-thirds of the quantities shown in the cultivation certificates or quota certificates concerned.

The Member States shall determine the areas which meet the conditions referred to in the second subparagraph, taking into consideration economic and infrastructural criteria. They may lay down additional minimum conditions regarding the number of producers and the output concerned;

(g) their articles of association shall contain provisions to ensure that the members of the group who wish to withdraw from membership may do so:

— after they have been members of the group for a minimum of one year following its recognition, and

— on condition that they notify the group in writing by 31 October at the latest of their withdrawal with effect from the following harvest.

These provisions shall apply without prejudice to national laws or regulations designed to protect the group or its creditors, in specified cases, against any financial consequences which might result from the withdrawal of a member or to preclude withdrawal of a member in the course of the financial year;

(h) both the form in which they are set up and the entire range of their activities shall preclude any discrimination which runs counter to the operation of the common market and the attainment of the general objectives of the Treaty and, in particular, any discrimination connected with the nationality or place of establishment:

— of producers or groups liable to become members of groups, or

— of their economic partners;

(i) they shall have legal personality or sufficient legal capacity to exercise rights and be subject to obligations in accordance with national law;

(j) they shall keep separate accounts of activities in respect of which they are recognized, enabling the competent authority to make a full inspection of the use made by the group of the specific aid;

(k) they shall not hold a dominant position in the Community unless this is necessary for the pursuit of the objectives laid down in Article 39 of the Treaty;

(l) their articles of association shall in addition make it compulsory for their members to comply with the conditions laid down in subparagraphs (d) and (e) at the latest from the date:

— on which recognition takes effect, or

— on which they become members if this is later than the date of recognition.

2. Marketing through the group within the meaning of paragraph 1 (e) shall cover at least the following operations:

— the conclusion by the group in its own name and on its behalf of cultivation contracts for the whole of the production of the members of the group,

— the supply of the whole of the production of the members of the group,

— the preparation of the product for delivery to the processors.

Article 3

1. The Member State in whose territory the producer group has its registered headquarters shall be competent to recognize producer groups.

2. The Member State:

— shall draw up a draft granting recognition within two months of the date on which application for recognition is made, or shall reject the application,

— shall forward the draft decision on recognition to the Commission which shall approve or reject it within two months. The Commission may approve the decision subject to conditions concerning the operation of the producer group.

3. The Member State shall determine the date on which recognition takes effect. This may not precede the date on which the group in fact begins to operate.

Article 4

1. Recognition of a producer group shall be withdrawn by the Member State concerned:

(a) if the specific aid is used for purposes other than those laid down in Article 7;

(b) if the conditions for recognition are no longer fulfilled;

(c) if recognition is based on erroneous information;

(d) if the group obtained recognition by improper means;

(e) if the Commission decides that Article 85 (1) of the Treaty applies to the agreements, decisions and concerted practices.

2. Recognition shall be withdrawn by the Member State with effect from the date on which the conditions for recognition are no longer met.

Aid paid after that date shall be recovered, together with interest from the date of the payment of the aid to the date of its recovery. The interest rate to be applied shall be that in force for analogous recovery operations under national law.

3. In cases where recognition has been withdrawn because of serious infringements, the aid amount to be recovered shall be increased by 30 %.

In such cases, recognition may not be restored within 12 months of the date of withdrawal.

Article 5

1. Member States shall make regular inspections of groups to check that the conditions for recognition continue to be met and that the specific aid is being used in accordance with the provisions of Article 7.

2. Each recognized group shall update the information concerning recognition annually before 15 November and shall notify the Member State of any change made since the previous period.

Article 6

Where a Member State refuses or withdraws recognition of a group it shall inform the Commission accordingly within two months following the communication of its decision to the group and shall give its reasons for refusing or withdrawing recognition.

Article 7

1. The specific aid may be used by the producer groups for the following purposes only:

— the grant of an income supplement to members, adjusted in relation to the quality delivered, excluding the lowest quality classified by the group,

— the employment of technical staff to assist members in improving the quality of their production,

— the supply to members of certified seeds and seedlings and of other means of production contributing to the qualitative improvement of the product,

— the implementation of infrastructural measures for enhancing the value of products supplied by the members, in particular tobacco-grading facilities.

2. The expenditure referred to in the first indent of paragraph 1 shall be equivalent to not less than 75 % and not more than 90 % of the total amount of the specific aid. The group shall make no deduction for any reason whatsoever from the specific aid.

Article 8

1. The specific aid shall be paid to the producer group, at its request, in one instalment by the Member State in which the group is established, on the basis of the following:

— evidence that the group has received an amount equivalent to the premium paid by the processor in respect of the quantity concerned,

— evidence that the amount referred to in the first indent has been reimbursed to the processor pursuant to Article 12 of Commission Regulation (EEC) No 3478/92 [1] or that the security guaranteeing it has been released pursuant to Article 157 (3) of that Regulation, and

— any additional documents considered necessary by the Member State.

2. If the specific aid is paid by a Member State other than that in which processing took place, the latter shall forward to the Member State responsible for the payment of the aid, at its request, the supporting evidence and documentation referred to in paragraph 1 which it has in its possession.

3. The agricultural conversion rate to be applied for the conversion of the specific aid into national currency shall be that applicable on 1 January of the year following the year of the harvest.

Article 9

For the 1993 harvest Member States may pay the specific aid to producer groups

— which do not have the minimum number of members provided for in Article 2 (1) (f),

— whose articles of association do not contain the provision referred to in Article 2 (1) (g),

on condition that those groups were recognized by the Member State before 1 July 1992 and that they produced tobacco for the 1992 harvest as part of the activities for which they are recognized.

Article 10

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

It shall apply with effect from the 1993 harvest.

[1] OJ No L 351, 2. 12. 1992, p. 17.

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

Done at Brussels, 19 January 1993.

For the Commission

René STEICHEN

Member of the Commission