COMMISSION REGULATION (EC) No 1066/95

of 12 May 1995

laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the raw tobacco quota system for the 1995, 1996 and 1997 harvests

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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], as last amended by Regulation (EC) No 711/95 [2], 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 for the 1995, 1996 and 1997 harvests; 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 time limits should be set for the quotas to be allocated sufficiently early to enable producers to take account of them as far as possible in tobacco production;

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 Article 9 (3) of Regulation (EEC) No 2075/92 provides for production quotas to be allocated to producers in proportion to the average quantities delivered for processing during the reference period; whereas that period includes 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 [3], as last amended by Regulation (EEC) No 860/92 [4];

Whereas the method for calculating quotas for the 1990 and 1991 harvests 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 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 for the benefit of producers in that Member State;

Whereas provision should be made for production quota certificates to be issued to producers on the basis of their tobacco deliveries during the reference year harvests; 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 threshold quantities applicable for a harvest may be greater than those fixed for the previous harvest for certain groups of varieties, but smaller for others; whereas the additional quantities should be allocated to those concerned in accordance with objective criteria, taking account of certain priorities to be determined by the Member States to suit their situation;

Whereas account should be taken of the conversion programme 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 the quantities allocated to certain producers must be made available to other producers where the persons entitled do not conclude cultivation contracts;

Whereas the possibility of transferring quotas should be restricted to cases economically justified by the transfer of ownership of the producer's holding; whereas temporary quota transfers must not be allowed, in order to prevent the circumvention of the restrictions laid down in the quota arrangements;

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 production quota certificate and the prevention of fraud;

[1] OJ No L 215, 30. 7. 1992, p. 70.
[2] OJ No L 73, 1. 4. 1995, p. 13.
[3] OJ No L 94, 28. 4. 1970, p. 1.
[4] OJ No L 91, 7. 4. 1992, p. 1.

Whereas the voluntary exchange of production quotas between producers can facilitate the rationalization of production;

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

Whereas provision should be made to ensure that the date and documents belonging to processors and producers are available for use when checks are being carried out;

Whereas, in the interests of sound management, transparency and monitoring, the production quota allocated to each producer must be made public;

Whereas the role which could be played by the inter-branch organizations in the management of the system of quotas should be specified; 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 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.

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 this own name and on his 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

Production quotas

Article 3

Member States may either allocate the production quotas directly among the producers, or require the producers to apply for production quotas.

Member States shall issue the producers with quota certificates not later than 31 January of the year of harvest.

The production quotas shall be set for each group of varieties as defined in the Annex to Regulation (EEC) No 2075/92.

For the 1995 harvest, Member States are hereby authorized to extend the deadline referred to in the second paragraph until 31 May.

Article 4

The allocations of a production quota for a harvest shall be without prejudice to the allocation of quotas for subsequent harvests.

Article 5

1. The quotas for each producer shall be equal to the average quantity each produces as a percentage of the total of the average quantities calculated in accordance with Article 9 of Regulation (EEC) No 2075/92 and Article 6 of this Regulation, such percentage being applied to the specific guarantee threshold of the Member State for the group of varieties in question.

2. The production quotas for producers who received a quota or a cultivation certificate for the 1993 or 1994 harvest pursuant to the third subparagraph of Article 9 (3) of Regulation (EEC) No 2075/92 in its original version or who began to grow a new group of tobacco varieties after the 1992 harvest shall be calculated as follows:

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

— for the first harvest following the first year of activity, the producer shall obtain a quota porportional to his first production quota for the group of varieties in question,

— for subsequent harvests, the producer shall obtain a production quota proportional to the average quantity supplied during the years prior to the year of the last harvest for the group for varieties in question.

3. Producers' 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 producer shall be calculated by group of varieties in accordance with paragraphs 2 and 3.

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 calendar year of the harvest in question. However, quantities delivered for processing on the basis of Article 2 (5) and (6) of Commission Regulation (EEC) No 3478/92 [1] shall be deemed to have been delivered during the year of the harvest in which they were entitled to the premium. Only tobacco actually delivered giving rise to entitlement to the premium shall be taken into account.

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

3. Where the quantities of the different varieties of tobacco delivered to processing undertakings for the 1990 or 1991 harvest exceeded the maximum guaranteed quantity fixed pursuant to Regulation (EEC) No 727/70, such quantities shall be multiplied by a reduction coefficient. This reduction coefficient shall be equal to the maximum guaranteed quantity in question, divided by the total quantity of tobacco delivered.

Article 7

1. Where tobacco produced in one Member State is processed in another Member State, the quotas shall be allocated in accordance with paragraphs 2, 3 and 4, without prejudice to other provisions of this Title.

2. The Member State of processing shall inform the Member State of production, for each producer and group of varieties, of the quantities of raw tobacco from the Member State of production delivered for processing during the reference years to be used for calculating the production quotas in accordance with Article 9 (3) of Regulation (EEC) No 2075/92.

3. The information shall be forwarded within 15 days following the publication of this Regulation for the 1995 harvest and thereafter not later than 15 November of the year preceding the harvest.

4. The Member State of production shall allocate the corresponding quantity of its specific guarantee threshold to producers who delivered tobacco to processors located in another Member State during the reference years referred to in paragraph 2.

When the production quotas are allocated, producers who delivered tobacco to processors located in another Member State during the reference years shall be treated in the same way as producers who delivered their production to a processor located in their Member State.

Article 8

1. For each group of varieties, Member States shall issue production quota certificates, within the limit of their guarantee thresholds, to producers located in a production area recognized in accordance with point (a) of Article 5 of Regulation (EEC) No 2075/92.

The production quota 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. Member States shall determine the procedures for the issuing of the production quota 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.

3. Member States may lay down minimum quantities (not exceeding 500 kilograms) for the issue of production quota certificates.

4. Where a producer provides proof that, as a result of exceptional circumstances, his production was abnormally low during a harvest included in his reference period, 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 quota certificate ; for the 1993 and subsequent harvests, the quantity may not be greater than the quantities entered in the quota certificates or the cultivation certificates allocated to the producer for the harvest in question. Member States shall notify the Commission of any decisions they intend to take.

[1] OJ No L 351, 2. 12. 1992, p. 11.

Article 9

1. 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 for the previous harvest, the quantity exceeding that guarantee threshold shall be distributed in accordance with objective and consistent criteria to be adopted and published by the Member State. Member States shall inform the Commission forthwith of the measures they have adopted in this respect.

Where applicable, the quantities available under the first subparagraph shall be reduced by those set aside for the purposes of paragraph 2.

Member States may, in particular, stipulate that the additional quantities are to be allocated, as a priority, to producers :

(a) for whom the quantity covered by their quota certificate has been reduced in relation to the previous harvest for another group of varieties ;

(b) who can significantly rationalize their production of tobacco of the group of varieties in question if they receive the additional quantity ;

(c) who began to produce the group of varieties in question in 1990 or 1991.

Member States which establish a national pool of production quota certificates in accordance with Article 14 may also place the additional quantities into this pool.

2. Italy and Greece may, for the 1995 harvest, 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.

Article 10

Each producer may deliver tobacco from a given group of varieties from the same harvest to a single processing undertaking only.

However, producer groups which are producers may deliver their production to several processing undertakings.

Article 11

1. Production quota certificates which have not been used to conclude contracts at the date fixed for that purpose must be returned by the producer to the authorities of the Member State which drew them up, no later than five working days after that date.

2. If the producer does not return the certificates referred to in paragraph 1 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 the certificates referred to in paragraph 1 and other quantities which may be available shall be distributed by Member States fairly and on the basis of published objective criteria before 30 April of the year of harvest. In the distribution of these quantities priority must be given to producers who already have a quota. When adopting the criteria, the Member State must take account of the opinion of the inter-branch organizations recognized in accordance with Regulation (EEC) No 2077/92.

For the 1995 harvest, Member States are hereby authorized to extend the deadline referred to in the first subparagraph until 29 July.

TITLE III

Transfer of rights

Article 12

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 may not be taken into account for the benefit of another producer for the purposes of calculating his quota.

Article 13

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 production quota certificate 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 production quota certificate in proportion to the agricultural areas taken over. However, the parties concerned may agree that full entitlement shall be held by the person formerly or newly entitled.

3. Without prejudice to paragraph 1, 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 production quota certificate be issued on the basis of the aggregated quantities to which they are entitled.

Article 14

1. Subject to authorization by the Member State concerned, producers may exchange among themselves their rights to a production quota certificate for a group of varieties against a certificate for a different group of varieties. The Member State may provide for the establishment of a national pool of production quota certificates which the holders may wish to exchange between groups of varieties.

2. Exchange of rights to a production quota certificate in accordance with paragraph 1 shall be considered a definitive transfer between the producers concerned of the reference quantities on the basis of which the certificate was established.

TITLE IV

Final and transitional provisions

Article 15

Member States may provide that disputes relating to the distribution or transfer of production quota certificates must be submitted to an arbitration committee. Member States shall lay down the rules governing the membership and the proceedings of such committees.

Article 16

Processing undertakings and producers shall allow the competent authorities access to the data and documents necessary for the implementation of this Regulation and their use.

Article 17

For the 1995, 1996 and 1997 harvests, Member States may, for the purpose of applying Article 11 (3), bring together on a joint basis 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 18

1. Member States shall establish a computerized database which shall contain, for each processing undertaking and each producer and group of producers, information identifying their establishments or their holdings, the quotas or the quantities appearing on production quota certificates allocated to them and any other information which may be useful for monitoring the quota system.

2. Member States shall ensure that:

— data in the computerized database are preserved,

— the database is used exclusively for the application described in paragraph 1,

— measures are applied to safeguard the data, in particular against theft and interference,

— persons covered by the scheme have access to the files relevant to themselves without excessive expense or delay,

— persons covered by the scheme are able to have information concerning them changed, where justified, and in particular to have data which is no longer of interest periodically deleted.

3. Processing undertakings and producers:

— must not hinder in any way the establishment of the computerized database by duly qualified officials,

— must provide these officials with all the information required pursuant to this Regulation.

4. Member States shall ensure that, subject to national laws on the protection of data of a personal nature, the quota of each individual producer used for the conclusion of cultivation contracts or, where applicable, the quota of each producer who is a member of a producer group, is made public not later than one month after the deadline for the return of unused production quota certificates, in such a way as to be known to all producers concerned in a restricted production area as defined in Article 1 of Regulation (EEC) No 3478/92.

Article 19

Where a production quota covers a producer group which is itself a producer, the Member State shall ensure that the quantity in question is distributed fairly between all members of the group. Member States must also have at their disposal exact data on the production of all the individual producers so that the production quotas may be allocated to them if necessary.

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 members, the group may undertake a different distribution with a view to improved organization of production.

Article 20

This Regulation shall enter into force on the 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, 12 May 1995.

For the Commission
Franz FISCHLER
Member of the Commission