

REGULATION (EEC) No 272/70 OF THE COUNCIL
of 21 April 1970
on the common organisation of the market in raw tobacco

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;

Having regard to the Opinion of the European Parliament¹;

Having regard to the Opinion of the Economic and Social Committee²;

Whereas the operation and development of the common market must be accompanied by the establishment of a common agricultural policy, to include in particular a common organisation of markets which may take various forms depending on the product;

Whereas Community production of raw tobacco is of exceptional importance to the economy of certain regions of the Community; whereas, for certain producers in those regions that production represents a major part of their income;

Whereas, in respect of about 90% of Community production, producers at present receive, within the framework of national marketing arrangements, a guarantee that their crop will fetch prices which should ensure them a fair income;

Whereas application of the Common Customs Tariff to imports from third countries cannot, in respect of the greater part of Community production, fill the gap between the cost price of that production and prices ruling on the world market;

Whereas it is therefore appropriate to introduce common provisions of such a kind as will provide

Community producers with guarantees equivalent, as regards employment and living standards, to those afforded under national marketing arrangements;

Whereas these objectives can be achieved by means of an intervention policy based on a system of norm and intervention prices, which includes the obligation to buy in at the intervention price and the granting of premiums to users who purchase leaf tobacco direct from Community producers; whereas this policy must be applied in such a way as to encourage improvements in quality and crop adjustments, in particular the conversion of cultivation to varieties which are in greater demand or are more competitive;

Whereas to this end the norm price must be fixed annually at a level which, account being taken of the direction into which production is to be steered, gives producers an adequate return, and which consequently presupposes rational management and economic viability of undertakings; whereas the intervention price, fixed at a level below that of the norm price, must represent the minimum price at which producers dispose of their products; whereas, therefore, the intervention agencies must be obliged to buy in at the intervention price all tobacco which is offered to them by producers;

Whereas, in order to preserve the freedom of contract in the market for the products in question and to allow producers to obtain a higher price than the guaranteed intervention price, it is necessary to encourage purchases by users direct from producers at a production price as near as possible to the norm price;

Whereas to this end a premium should be granted to users who purchase direct from the producer; whereas this premium should permit the Community tobacco thus purchased to be marketed under normal conditions of competition;

Whereas the premium should be granted also to producers who themselves carry out the first processing and market preparation of their crop;

¹ OJ No C 97, 28.7.1969, p. 52.

² OJ No C 21, 20.2.1969, p. 1.

Whereas the disposal of tobacco held by the intervention agencies should be so organised as to avoid any disturbance of the market and to ensure equal access for all purchasers;

Whereas the proposed price and intervention measures make it possible to envisage an import system limited to the application of the Common Customs Tariff; whereas the latter, pursuant to the Treaty, applies automatically as from 1 January 1970;

Whereas these measures taken together will make it possible to dispense with all quantitative restrictions at the external frontiers of the Community; whereas, however, this machinery may in exceptional circumstances prove defective; whereas, in such cases, so as not to leave the Community market without defence against disturbances which may arise therefrom after the import barriers which existed previously have been removed, the Community should be enabled to take all necessary measures without delay;

Whereas in order to permit the Community to participate in international trade in raw tobacco, provision should be made for the payment of an export refund;

Whereas from 1 January 1970 the levying of any customs duty or tax having equivalent effect and the application of any quantitative restriction or measure having equivalent effect are automatically prohibited in intra-Community trade by the provisions of the Treaty; whereas, furthermore, the establishment of a common organisation of the market in raw tobacco involves the abolition of any tax having effect equivalent to customs duty and any quantitative restriction or measure having equivalent effect which formed part of a national organisation of the markets in this sector; whereas, there being no minimum prices on 31 December 1969, recourse to Article 44 of the Treaty is automatically excluded from 1 January 1970:

Whereas the effectiveness of all these measures governing the common organisation of the market in raw tobacco would be jeopardised by the granting of certain aids on the part of Member States; whereas the provisions of the Treaty which allow the assessment of aids granted by Member States and the prohibition of those which are incompatible with the common market should be made to apply to raw tobacco;

Whereas the proposed Community measures, taken as a whole, offer producers the necessary guarantees, so that it becomes possible for national measures concerning the cultivation and marketing of raw tobacco to be abolished;

Whereas, in order to ensure a balanced development of production in regard to Community needs, machinery for supervising this development should be introduced; whereas, in cases where this development would lead to the quantities taken over by intervention agencies and the volume of production exceeding certain limits, suitable measures to eliminate the imbalance should be taken; whereas programmes of aid for producers affected by the said measures may be approved;

Whereas, in accordance with the provisions governing the financing of the common agricultural policy, provision must be made for the Community to take financial responsibility for expenditure incurred by Member States as a result of the obligations arising from application of this Regulation;

Whereas the common organisation of the market in raw tobacco must take appropriate account, at the same time, of the objectives laid down in Articles 39 and 110 of the Treaty;

Whereas in order to facilitate implementation of the proposed measures, a procedure should be provided for establishing close cooperation between Member States and the Commission within a Management Committee;

HAS ADOPTED THIS REGULATION:

Article 1

A common organisation shall be established for the market in raw tobacco.

This organisation shall comprise a price and trading system for unmanufactured tobacco and tobacco refuse falling within heading No 24.01 of the Common Customs Tariff.

TITLE I

Prices

Article 2

1. For leaf tobacco at the production stage norm prices and intervention prices shall be fixed for the Community each year for the crop of the following calendar year.

2. The norm price shall be fixed with reference to the norm price for the preceding crop at a level which takes account of the need to promote specialisation in accordance with the economic structures and the natural conditions of Community

production and which presupposes the rational management and economic viability of undertakings, while contributing to the improvement of quality and ensuring a fair income for producers.

The intervention price shall be fixed at 90% of the corresponding norm price.

3. Norm and intervention prices shall be fixed:

- (a) for leaf tobacco which has not undergone first processing and market preparation;
- (b) for each Community produced variety;
- (c) and for a reference quality of each variety, the characteristics of which shall be specified and which is sufficiently representative of the quality of a normal crop.

4. Community produced varieties of tobacco shall mean types differentiated according to their botanical characteristics, but not so as to exclude consideration, where necessary, of ecological modifications of those types.

5. The prices mentioned in this Article and the reference qualities to which they relate shall be fixed before 1 August of each year in accordance with the procedure laid down in Article 43 (2) of the Treaty.

Article 3

1. A premium shall be granted to natural or legal persons who purchase leaf tobacco direct from Community producers.

The premium shall be granted only to purchasers:

- (i) who have concluded with producers contracts in the form to be laid down under the provisions of paragraph 3 or have purchased leaf tobacco at sales by auction;
- (ii) who subject the product thus purchased to first processing and market preparation with a view to sale for manufacture into tobacco products or for export to third countries; or

who, after having subjected the product thus purchased to first processing and market preparation, undertake to use it for manufacture into tobacco products or to export it to third countries.

2. By way of derogation from the second subparagraph of paragraph 1, the premium shall be granted to individual producers or associations of producers who subject their own leaf tobacco to first processing and market preparation when their products have been sold for manufacture or for export to third countries.

3. Rules for applying this Article, including those relating to administrative supervision, shall be adopted in accordance with the procedure laid down in Article 17.

These rules shall lay down the clauses which must be included in contracts, including the clauses which specify the price payable to the producer and the amount of the premium to which the contract gives entitlement.

Article 4

1. The premium, which must be such as to secure the norm price and ensure the sale of the tobacco produced in the Community, shall be fixed for each variety at an amount consisting of:

- (a) a component calculated with regard to:
 - (i) past and foreseeable outlets for the sale of the tobacco under normal conditions of competition on the Community market;
 - (ii) the influence of trends in prices for tobacco imported from third countries in so far as such tobacco is competitive as a substitute for tobacco produced in the Community;
- (b) a standard component designed to secure, in the best possible manner, the guaranteed price and income and ensure the sale of Community tobacco.

2. When the costs of first processing and market preparation of leaf tobacco as baled tobacco are taken into account in determining the amount of the premium, these costs shall correspond to the costs of well-managed undertakings established in the Community to carry out first processing and market preparation.

3. The amount of the premium shall be fixed:

- (a) per kilogramme of leaf tobacco which has not undergone first processing and market preparation;
- (b) for each Community-produced variety and for the corresponding reference quality.

The amount of the premium thus fixed shall be applicable to all tobacco of the variety in question. However, in so far as for a given variety there is a danger that the granting of a premium of the same amount to tobacco of different qualities of that variety might interfere with the proper working of the common organisation of the market and the qualitative adjustment of production to market requirements, the amount of the premium may, by way of exception, be fixed, in the case of qualities

differing from that taken as the reference quality, at an amount above or below that normally applicable to all tobacco of the variety.

4. Before 1 November each year the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall fix the amount of the premium for each variety applicable to the crop of the following calendar year.

Article 5

1. The intervention agencies designated by the Member States shall be obliged, subject to the conditions specified in this Article, to buy in Community-grown leaf tobacco offered to them, provided that it is not purchased under the provisions of Article 3.

2. Under conditions to be laid down in pursuance of paragraphs 5 and 6, intervention agencies shall buy in tobacco of the reference quality at the intervention price, adjusted where appropriate by applying the scale of price increases and reductions provided for in paragraph 3.

3. A scale of price increases and reductions shall be fixed for each variety so that the intervention price can be adjusted when products are offered whose quality does not correspond to the reference quality. This scale shall be established on the basis of commercial practice and objective criteria.

4. The intervention agencies shall be obliged to buy in only those consignments of leaf tobacco which comply with the minimum quality characteristics taken as a basis for the scale provided for in paragraph 3.

5. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules governing the buying in of leaf tobacco by intervention agencies.

6. Detailed rules for the application of this Article, in particular the fixing of scales of price increases and reductions and the procedures and conditions under which intervention agencies take over, shall be adopted in accordance with the procedure laid down in Article 17.

Article 6

1. Derived intervention prices may be fixed for baled tobacco which has been obtained from

Community-grown leaf tobacco and has undergone first processing and market preparation.

2. For a stated variety the derived intervention price shall be equal to the intervention price, fixed in accordance with the provisions of Article 2, for leaf tobacco of the same variety, plus the cost of first processing and market preparation of Community leaf tobacco as baled tobacco; these costs shall correspond to the costs of well-managed undertakings established in the Community to carry out first processing and market preparation.

3. The derived intervention price shall be fixed:

(a) for baled tobacco obtained by the first processing and market preparation of leaf tobacco of the Community crop of the following calendar year;

(b) for each Community-produced variety;

(c) for a reference quality corresponding to the average quality of baled tobacco obtained by the first processing and market preparation of leaf tobacco of the reference quality for which the norm price of the same variety is fixed.

4. Tobacco producers and associations of producers can apply for intervention only in respect of baled tobacco for which a premium has not been granted.

If intervention for baled tobacco is requested by natural or legal persons other than producers or associations of producers, such persons must prove that no premium has been granted for the tobacco in question and that the price paid to the producers or associations of producers is at least equal to the intervention price for leaf tobacco.

5. Subject to the provisions of paragraph 4, the intervention agencies nominated by Member States are obliged to buy in baled tobacco offered to them of the varieties for which a derived intervention price is fixed.

6. Under conditions to be laid down in pursuance of paragraphs 8 and 9, intervention agencies shall buy in tobacco of the reference quality at the derived intervention price, adjusted, where appropriate, by the scale of price increases and reductions provided for in paragraph 7.

7. A scale of price increases and reductions shall be fixed for each variety so that the intervention price can be adjusted when quality does not correspond to the reference quality. This scale shall be established

on the basis of commercial practice and objective criteria.

8. The prices mentioned in this Article and the reference qualities to which they relate shall be fixed before 1 August each year in accordance with the procedure laid down in Article 43 (2) of the Treaty.

9. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules governing the buying in of baled tobacco by intervention agencies.

10. Detailed rules for the application of this Article, in particular the fixing of scales of price increases and reductions, the procedures and conditions under which intervention agencies take over and the procedures for verifying the origin of products offered for intervention, shall be adopted in accordance with the procedure laid down in Article 17.

Article 7

1. Intervention agencies shall undertake the first processing and market preparation of the leaf tobacco which they have bought in under the provisions of Article 5.

Under conditions to be laid down in pursuance of paragraphs 3 and 4, they may conclude contracts for first processing and market preparation and for storage.

2. Disposal of the tobacco bought in by intervention agencies under the provisions of Articles 5 and 6 shall take the form of sales by public auction or by tender.

It shall take place in such a way as to avoid any disturbance of the market and to ensure equal access to goods and equal treatment of purchasers.

In particular, such disposal must not prevent the sale of the maximum amount of the Community crop through commercial channels under the provisions of Articles 3 and 4.

3. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules governing the disposal of tobacco held by the intervention agencies.

4. Detailed rules for the application of this Article, and in particular the procedure and conditions under which disposal by the intervention agencies may take place, shall be determined in accordance with the procedure laid down in Article 17.

TITLE II

Trade with third countries

Article 8

Save as otherwise provided in this Regulation or where derogation therefrom is decided by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, the following shall be prohibited in trade with third countries:

- (a) the levying of any charge having effect equivalent to a customs duty;
- (b) the application of any quantitative restriction or measure having equivalent effect.

Article 9

1. To the extent necessary to enable the products referred to in Article 1 to be exported at world market prices, the difference between those prices and prices within the Community may be covered by an export refund.

Save in exceptional cases, to be decided in accordance with the procedure laid down in Article 17, the amount of the refund, which may be varied according to use or destination, shall be determined within the limits of the incidence of the Common Customs Tariff duty, calculated on the basis of average offer prices in third countries.

2. The refund shall be the same for the whole Community.

The refund shall be granted on application by the party concerned.

Refunds shall be fixed at regular intervals in accordance with the procedure laid down in Article 17. Where necessary, the Commission may, at the request of a Member State or on its own initiative, alter the refunds in the intervening period.

3. The amount of the refund on export of the products specified in Article 1 shall be the amount which applies on the day of export.

4. The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt general rules for the granting of export refunds and criteria for fixing their amount.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 17.

Article 10

1. If by reason of imports or exports the Community market in the products specified in Article 1, experiences or is threatened with serious disturbances which may endanger the objectives set out in Article 39 of the Treaty, appropriate measures may be applied in trade with third countries until such disturbance or threat of disturbance has ceased.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt detailed rules for the application of this paragraph and define the cases in which and the limits within which Member States may take protective measures.

2. If the situation mentioned in paragraph 1 arises, the Commission shall, at the request of a Member State or on its own initiative, decide upon the necessary measures; the measures shall be communicated to the Member States and shall be immediately applicable. If the Commission receives a request from a Member State, it shall take a decision thereon within twenty-four hours following receipt of the request.

3. The measures decided upon by the Commission may be referred to the Council by any Member State within three working days following the day on which they were communicated. The Council shall meet without delay. It may amend or repeal the measures in questions in accordance with the voting procedure laid down in Article 43 (2) of the Treaty.

TITLE III

General provisions

Article 11

Save as otherwise provided in this Regulation, Articles 92, 93 and 94 of the Treaty shall apply to the production of and trade in the products specified in Article 1.

Article 12

Provisions which, in respect of products specified in Article 1, grant to certain natural or legal persons, or which restrict to nationals of one Member State the exclusive right to cultivate tobacco, to subject it to the various operations of first processing, including fermentation, to market it, and in particular to sow, plant out, harvest, prepare it for marketing, transport, store, sell or purchase it, shall be incompatible with this Regulation.

Article 13

1. Where, for a variety or a group of varieties, the quantities taken over by the intervention agencies exceed, for a particular crop, a stated percentage of the production, and in any case a stated quantity, the Council shall examine the situation on the basis of a report which the Commission shall submit to it at the end of the marketing year and not later than 30 April of the calendar year following that of the crop.

2. The percentages and quantities mentioned in paragraph 1 shall be fixed before 1 June 1970 by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission.

3. Following the examination provided for in paragraph 1 the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, shall adopt before 1 August measures to be applied to the crop of the following calendar year, by which a better balance may be established between production and demand and stocks may be reduced.

4. If the price mechanism does not suffice to steer production in the desired direction, the Council shall adopt special measures for the varieties where marketing difficulties are the essential cause of the situation mentioned in paragraph 1.

5. These special measures may include, for each of the varieties in question:

- the lowering of the intervention price level;
- exclusion of some or all of the qualities of tobacco of the variety in question from intervention buying.

6. If Community production of all the varieties of tobacco for which it has been decided to grant a premium exceeds a stated percentage of the average production of those same varieties during the three previous crop years, the Commission shall submit to the Council a report analysing the ascertained causes and the foreseeable consequences of this development. It shall propose to the Council suitable measures which may include a reduction of norm prices involving a corresponding reduction in the amount of the premium for the varieties which are most heavily supported and the volume of whose production has increased most, in particular in conjunction with an increase in the area cultivated.

The percentages specified in the first subparagraph shall be fixed before 1 June 1970 by the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission.

7. The Council, acting before 1 August in accordance with the procedure laid down in Article 43 (2) of the Treaty and within the framework of the procedure laid down in Article 2 for fixing prices for the crop of the following calendar year, shall adopt the measures which it considers necessary to deal with a situation of the kind described in paragraph 6.

8. In connection with the reports specified in paragraphs 1 and 6, the Commission shall submit to the Council an assessment of the foreseeable consequences on employment and the standard of living of the producers concerned of each of the measures which it proposes to take. In view of the special nature of the problems which may arise in the tobacco sector, a programme of aids not tied to products shall where circumstances require it be proposed to the Council, which shall consider it in accordance with the procedure referred to in paragraph 7.

Article 14

1. The provisions of the Regulation on the financing of the common agricultural policy shall apply to the market in the products specified in Article 1 from the date on which the system established by this Regulation applies.

2. From the date on which the system established by this Regulation applies, Article 40 (4) of the Treaty and the provisions adopted for the implementation of that Article shall apply, so far as concerns the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, to the French overseas departments in respect of the markets in the products specified in Article 1.

Article 15

Member States and the Commission shall communicate to each other the information necessary for implementing this Regulation. Rules for the communication and distribution of such information, which shall include statistics on imports and exports, shall be adopted in accordance with the procedure laid down in Article 17.

Article 16

1. A Management Committee for Tobacco (hereinafter called the 'Committee') shall be established, consisting of representatives of Member States and presided over by a representative of the Commission.

2. Within the Committee the votes of Member States shall be weighted in accordance with Article 148 (2) of the Treaty. The Chairman shall not vote.

Article 17

1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be taken. The Committee shall deliver its Opinion on such measures within a time-limit to be set by the Chairman according to the urgency of the questions under consideration. An Opinion shall be adopted by a majority of twelve votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event, the Commission may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty, may take a different decision within one month.

Article 18

The Committee may consider any other question referred to it by its Chairman either on his own initiative or at the request of the representative of a Member State.

Article 19

This Regulation shall be so applied that appropriate account is taken, at the same time, of the objectives set out in Articles 39 and 110 of the Treaty.

Article 20

1. The price system laid down in Articles 2 to 7 shall apply for the first time to the 1970 crop.

2. The norm prices for the first year shall be fixed so that the intervention prices are at a level which ensures for producers, for each variety, prices at least equal to the prices obtained on average for the 1967, 1968 and 1969 crops, increased, where appropriate, by the incidence of the aids granted during the same period.

3. The Council shall, in accordance with the procedures indicated in Articles 2 to 7:

— fix, before 1 June 1970, the norm prices, the intervention prices and the amount of the premiums applicable to the 1970 crop;

- adopt, before 1 June 1970, general rules governing buying in by intervention agencies;
- before 1 November 1970:
 - adopt general rules governing the disposal of tobacco held by the intervention agencies;
 - adopt general rules for the granting of export refunds;
 - adopt detailed rules for the application of Article 10 (1).

Article 21

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

The Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may adopt transitional provisions laying down conditions for the application of certain provisions of this Regulation.

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

Done at Luxembourg, 21 April 1970.

For the Council

The President

P. HARMEL