

COMMISSION REGULATION (EEC) No 85/93**of 19 January 1993****concerning control agencies in the 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 laying down special measures in respect of the market in raw tobacco⁽¹⁾, and in particular Article 20 (8) thereof,

Whereas, under Article 20 (2) of Regulation (EEC) No 2075/92, each Member State producing more than a minimal quantity is to set up an agency for the purpose of carrying out certain checks and other duties in connection with the tobacco production aid scheme; whereas the agency must be in a position to carry out the tasks specified in that Regulation; whereas each agency must therefore possess the minimum powers required to discharge those tasks;

Whereas, in order to guarantee the correct and effective application of the rules in the sector, Article 20 (3) of Regulation (EEC) No 2075/92 specifies that the agency shall be given full powers by the Member State concerned to carry out its tasks; whereas to this end each Member State concerned must confer on the agency's inspectors powers to demand such information and make such verifications as are necessary for accomplishment of the agency's tasks;

Whereas the supervision of the application of Community rules requires the verification of the characteristics of tobacco; whereas it is therefore necessary to allow the inspectors to take samples of tobacco stored by persons subject to supervision;

Whereas in the interest of improving the efficacy of inspections provision should be made for control units operating within each agency;

Whereas the Member States concerned must take all measures necessary to safeguard the rights of persons subject to control whose interests may be affected thereby;

Whereas the agency will carry out its work in the framework of a work schedule and budget drawn up by the Member State concerned acting on a proposal from the agency and after consulting the Commission; whereas the minimum content of the schedule and size of the budget, and also the procedure to be followed for their establishment and possible adjustment, should therefore be laid down;

Whereas, under Article 20 (4), second subparagraph, of Regulation (EEC) No 2075/92, the Commission shall

regularly monitor the work of the agencies; whereas a procedure should consequently be laid down by which the Commission and the Member State concerned will be kept informed of the progress of such work;

Whereas, in order for the Commission to supervise the operation and the activities of the agencies properly it is advisable to provide for the possibility of the latter's being represented in the agencies and for the laying-down of detailed provisions for such participation;

Whereas the Community will contribute to the actual expenditure of the agencies; whereas procedures for this financing operation should therefore be laid down, together with procedures for any verification work in connection with it;

Whereas Article 20 (4), third subparagraph, of Regulation (EEC) No 2075/92 provides that the agency shall submit to the Member State and the Commission regular reports on the work which it has carried out; whereas time limits for the submission of these reports should be fixed;

Whereas it is appropriate to provide for special measures for 1993 because of the time necessary for the setting-up of control agencies in Member States which produce tobacco;

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. The control agencies referred to in Article 20 (2) of Regulation (EEC) No 2075/92 shall be set up by each Member State concerned no later than 30 April 1993.

2. In order to ensure the correct application of Community rules in the tobacco sector, the agencies shall, in accordance with the work programme referred to in Article 3, in particular:

- (a) carry out full checks on all deliveries of tobacco to firms undertaking first processing;
- (b) draw up the control certificate referred to in Article 12 of Commission Regulation (EEC) No 3478/92⁽²⁾;
- (c) carry out frequent and unannounced inspections of firms undertaking first processing;

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 70.

⁽²⁾ OJ No L 351, 2. 12. 1992, p. 17.

(d) propose where appropriate the application of any administrative or legal penalties as a result of these controls.

3. The Member State, acting either on its own initiative or at the request of the Commission, may require the agency to carry out:

- (a) any other control required by Community rules in the sector;
- (b) specific investigations in the sector.

4. The Member State shall take the necessary action to follow up the findings of the agency as soon as possible.

Article 2

1. Each agency shall be granted the legal powers required in order to carry out its duties in accordance with the law of the Member State.

2. Each agency shall, within the framework of the work schedule and budget referred to in Article 20 (4) of Regulation (EEC) No 2075/92, be given autonomy as regards the recruitment of staff and the planning of its work, and all expenditure arising therefrom.

3. The number of staff attached to the agency, their level of training and experience, the resources made available to them and the manner in which the agency's departments are organized shall be such as to permit the duties assigned to it to be carried out. More specifically, personnel responsible for controls shall have the necessary technical knowledge and experience to enable them to carry out the checks specified in paragraph 4, in particular as regards the assessment of agronomic data, technical checks on production and processing and the scrutiny of economic data and stock records and accounts.

4. The officials shall, for the purpose of carrying out the duties assigned to them in accordance with Article 20 (4) of Regulation (EEC) No 2075/92, be given appropriate powers by the Member State concerned to obtain any information or evidence and carry out any checks which may be necessary as part of the inspection of producers, producers' organizations, processors and any other persons covered by the rules for the sector, and in particular the right to take samples of tobacco held by natural or legal persons being inspected.

5. Each agency shall set up an internal audit unit which shall make unannounced checks on the work of the other units, and in particular ensure that control certificates are being issued properly.

6. Each Member State shall take whatever measures are necessary to safeguard the rights vested by its national legal order in those natural and legal persons who are subject to control.

7. Each Member State shall recognize the officials' findings as having conclusive force under its national legal order.

Article 3

1. From 1993 onwards the agency shall propose a work schedule and a budget estimate in respect of each year. The work schedule shall ensure that the natural and legal persons covered by the control arrangements afford a representative selection. The programme of controls shall be drawn up on the basis of a risk-analysis of the sectors and regions of production.

2. The work schedule shall include:

- (a) an outline of the control work that the agency plans to carry out;
- (b) a list of any other work to be carried out at the request of the Member State or the Commission pursuant to Article 1 (3);
- (c) details of proposed staff-training;
- (d) a list of the officials responsible for liaising with the Commission.

The agency shall, moreover, indicate the estimated number of man-days required in respect of each area of activity in the work schedule and a timetable for the work.

3. The agency's budget shall include the following headings, each of which must be dealt with in a sufficiently detailed manner:

- 1. list of posts;
- 2. expenditure on staff;
- 3. administrative expenditure;
- 4. expenditure on individual projects;
- 5. spending on investment;
- 6. other expenditure;
- 7. income from the Member State concerned;
- 8. contribution by the Community, under Article 20 (5) of Regulation (EEC) No 2075/92;
- 9. other income.

4. The agency shall, for the purposes of drawing up the draft work schedule and budget estimate, take into account the frequency of checks required by Community legislation, the experience gained in previous years and, without prejudice to the responsibilities of the Member State concerned, any observations or comments made by the Commission before the draft is prepared.

Article 4

1. Not later than 15 August each year, the agency shall submit its draft work schedule and budget estimate to the Member State concerned. The latter shall, on the basis of the draft, draw up the work schedule and budget estimate and shall submit them to the Commission not later than 15 September each year.

The Commission may, within 30 days and without prejudice to the responsibilities of the Member State concerned, request the latter to introduce any change in the budget and the work schedule that the Commission considers advisable for the purposes of the satisfactory operation of Community provisions in the tobacco sector.

2. The agency's definitive work schedule and budget shall be adopted by the Member State concerned not later than 31 October each year and shall be forwarded to the Commission forthwith.

3. Subject to Commission approval and provided that the overall amount entered in the budget does not increase as a result, the Member State may, with a view to making the checks more effective, amend the agency's work schedule and budget during the year.

4. Should an exceptional situation arise in which there is a risk of fraud seriously endangering the proper operation of Community rules in the tobacco sector, the agency shall inform the Member State in question and the Commission. In such a case, the agency may modify its plan and the control work after having obtained the agreement of the Member State in question. That Member State shall inform the Commission without delay.

If, during a particular year, the agency is asked by the Member State or the Commission to carry out specific investigations, the work schedule and the budget shall be amended accordingly. The procedure laid down in paragraphs 1 and 2 shall apply *mutatis mutandis* to the introduction of such amendments.

Article 5

1. In order that Commission officials may, as laid down in the second subparagraph of Article 20 (4) of Regulation (EEC) No 2085/92, monitor the work carried out by the agency, the agency shall, not later than the fifteenth day of each month, submit to the Member State concerned and the Commission the work schedule for the following month. The agency shall, as soon as possible, also notify the Commission and the Member State concerned of any change in the implementation of the monthly work schedule.

2. The agency shall, not later than 30 days after the end of each quarter, submit to the Member State and Commission a summary report on the work carried out by the agency, together with a financial statement showing the cash-flow situation and the expenditure incurred in respect of each budget chapter, and a statement of administrative or legal penalties proposed as a result of inspections carried out during that quarter.

3. Representatives of the Commission, of the Member State concerned and of the agency shall meet at least quarterly to consider the work carried out by the agency and the work which it intends to carry out in the future,

the results of that work and the general operation of the agency.

4. The Commission may take part in the deliberations of the body managing the agency. For that purpose the agency shall send the Commission by telex or fax, not later than 15 days before the date of each meeting of its supervisory or managing body, the date of that meeting, the agenda and any documents to be discussed there. The Commission representative may not vote.

Article 6

1. The Member State concerned shall, not later than 31 May each year, transmit to the Commission the revenue and expenditure account for the preceding year accompanied by a report from the governmental authority responsible for supervision of the agency.

2. Not later than six months after the date referred to in paragraph 1 the Commission shall take a decision on the amount representing the agency's actual expenditure that is to be granted to the producer Member States in respect of the year in question. The said amount, less the advance payments referred to in paragraph 4 and in Article 8 (3), shall be paid once it is established that the agency has performed the work assigned to it.

3. For the purpose of scrutiny of the revenue and expenditure account, Commission officials shall be entitled to have access to the agencies' financial records and supporting documents.

4. The amount representing the agency's operating expenditure during a year shall be agreed by the Commission and the Member State concerned on the basis of the agency's budget estimate. The Commission may, however, alter the monthly instalments in the light of the agency's rate of spending as calculated on the basis of the figures in the quarterly reports referred to in Article 5 (2).

Article 7

The agency shall send the reports referred to in the third subparagraph of Article 20 (4) of Regulation (EEC) No 2075/92 within thirty days of the end of each quarter.

Article 8

1. The draft work schedule and the budget estimate for 1993 shall be drawn up by the Member States concerned in accordance with Article 3 (2) and (3) and shall be forwarded to the Commission not later than 30 April 1993.

The draft work schedule shall include the agency's staff-recruitment plan for the year concerned.

The proposed activities of the agency, including control work, must be consonant with the recruitment plan and with the training programme scheduled.

Member States shall on the same occasion transmit to the Commission the proposed statute for the agency. This must include a staff recruitment procedure that provides sufficient guarantees that the aims set out in Article 2 (3) will be achieved.

Within 30 days the Commission may request the Member State, without prejudice to the responsibilities of the latter, to make any change in the budget or schedule which it considers appropriate and shall submit its comments, if any, on the statute.

2. The work schedule and budget for 1993 shall be adopted by the Member State concerned not later than 31 May 1993.

3. After receiving the 1993 draft work schedule and budget estimate the Commission may, on the basis of the latter and in order to facilitate the setting-up of the agency, advance to the Member States the amount representing the cost of setting up the agency.

Article 9

Until such time as the agency is in a position to perform all the duties and checks assigned to it, the Member States concerned shall carry out the checks laid down by Community rules in accordance with existing procedures.

Article 10

Member States shall inform the Commission of the measures taken in accordance with this Regulation.

Article 11

This Regulation shall enter into force on the seventh day following the day of 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, 19 January 1993.

For the Commission

René STEICHEN

Member of the Commission
