

**JUDGMENT OF THE COURT (Fifth Chamber)**  
12 September 1996 \*

In Joined Cases C-254/94, C-255/94 and C-269/94,

REFERENCES to the Court under Article 177 of the EC Treaty by the Tribunale Amministrativo Regionale del Lazio (Italy) for preliminary rulings in the proceedings pending before that court between

**Fattoria Autonoma Tabacchi**

and

**Ministero dell'Agricoltura e delle Foreste,**

**Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA),**

**Consorzio Nazionale Tabacchicoltori (CNT),**

**Unione Nazionale Tabacchicoltori (UNATA) and**

**Ditta Mario Pittari**

\* Language of the case: Italian.

and between

**Lino Bason and others**

and

**Ministero dell'Agricoltura e delle Foreste,**

**Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA) and**

**Unione Nazionale Tabacchicoltori (UNATA),**

and between

**Associazione Professionale Trasformatori Tabacchi Italiani (APTI) and others**

and

**Ministero dell'Agricoltura e delle Foreste,**

**Consorzio Nazionale Tabacchicoltori (CNT),**

**Unione Nazionale Tabacchicoltori (UNATA) and**

**Ditta Mario Pittari**

on the interpretation of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco (OJ 1992 L 215, p. 70) and on the validity and interpretation of certain provisions of Commission Regulation (EEC) No 3477/92 of 1 December 1992 laying down detailed rules for the application of the raw tobacco quota system for the 1993 and 1994 harvests (OJ 1992 L 351, p. 11),

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida (Rapporteur), C. Gulmann and M. Wathelet, Judges,

Advocate General: M. B. Elmer,  
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Fattoria Autonoma Tabacchi, by Fabio Nisi, of the Perugia Bar;
- Lino Bason and others, by Filippo Satta and Filippo Lattanzi, of the Rome Bar;
- Associazione Professionale Trasformatori Tabacchi Italiani (APTI) and others, by Emilio Cappelli and Paolo De Caterini, of the Rome Bar;
- the Italian Government, representing the Ministero dell'Agricoltura e delle Foreste and the Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA), by Umberto Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Maurizio Fiorilli, Avvocato dello Stato;

— the Commission of the European Communities, by Eugenio de March, Legal Adviser, acting as Agent, assisted by Alberto Dal Ferro, of the Vicenza Bar,

having regard to the Report for the Hearing,

after hearing the oral observations of Fattoria Autonoma Tabacchi, represented by Fabio Nisi; Lino Bason and others, represented by Filippo Satta and Filippo Lattanzi; Associazione Professionale Trasformatori Tabacchi Italiani (APTI) and others, represented by Emilio Cappelli and Paolo De Caterini; the Italian Government, represented by Maurizio Fiorilli; and the Commission, represented by Eugenio de March and Alberto Dal Ferro, at the hearing on 18 January 1996,

after hearing the Opinion of the Advocate General at the sitting on 29 February 1996,

gives the following

### Judgment

- 1 By three orders of 27 January 1994, received at the Court on 16 September 1994 (Cases C-254/94 and C-255/94) and 26 September 1994 (Case C-269/94), the Tribunale Amministrativo Regionale del Lazio (Regional Administrative Court, Lazio) referred to the Court under Article 177 of the EC Treaty a number of questions concerning the interpretation of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco (OJ 1992 L 215, p. 70) and on the validity and interpretation of Commission Regulation (EEC) No 3477/92 of 1 December 1992 laying down detailed rules for the application of the raw tobacco quota system for the 1993 and 1994 harvests (OJ 1992 L 351, p. 11).

- 2 Those questions have arisen in various proceedings between the applicants in the main actions and the Italian authorities concerning the allocation of processing quotas for the 1993 and 1994 harvests under the Community legislation governing the common organization of the market in raw tobacco.

### Legislative framework

- 3 Regulation No 2075/92 substantially amended the Community system governing the market in raw tobacco. In that connection, the second and third recitals in the preamble to Regulation No 2075/92 state that its purpose is, in a market situation in which supply does not correspond to demand, to stabilize the markets and provide a fair standard of living for the agricultural population concerned by means of a quality policy, with the aim of simplifying the market management mechanisms, limiting production in line with the requirements of the market and the demands of the budget, and providing stronger means of control to ensure proper functioning of the management mechanisms, while ensuring the continuation of tobacco growing by traditional producers.
- 4 Article 1 of Regulation No 2075/92 provides that the common market organization which it establishes is to comprise rules on, *inter alia*, a premium system (Title I) and a system of production limitation (Title II).
- 5 With regard, first, to the premium system, the fifth recital in the preamble to Regulation No 2075/92 states that ‘... competition on the tobacco market calls for some support of traditional tobacco producers; ... such support should be based on a premium system allowing the disposal of tobacco in the Community’.

- 6 In this connection, Article 3(1) of Regulation No 2075/92 establishes, from the 1993 harvest until the 1997 harvest, a premium system, the amount of the premium being fixed in accordance with Article 4(1).
- 7 The sixth recital in the preamble provides that the premium system can be managed efficiently by means of cultivation contracts between growers and first processors which guarantee stable outlets to the growers and regular supplies to the processor. Payment of the premium by the processor to the producer at the time of delivery of the tobacco covered by the contract, subject to compliance with quality requirements, provides support for the growers while facilitating management of the premium system.
- 8 Article 5(c) of Regulation No 2075/92 accordingly makes the granting of the premium subject to the condition that the producer delivers leaf tobacco to the premises of the first processor under a cultivation contract, which, under the first indent of Article 6(1) of that regulation, must comprise an undertaking by the first processor to pay the premium to the grower in addition to the purchase price.
- 9 With regard, second, to the system of production limitation, the seventh recital in the preamble to Regulation No 2075/92 states that '... in order to limit Community tobacco production and to discourage the production of varieties which are not readily disposed of, a maximum global guarantee threshold should be laid down for the Community and divided annually into specific guarantee thresholds for the respective groups of varieties'.
- 10 In this connection, the first paragraph of Article 8 of Regulation No 2075/92 fixes a maximum global guarantee threshold for the Community at 350 000 tonnes of raw leaf tobacco per harvest. For 1993, however, this threshold was fixed at 370 000 tonnes. The second paragraph of Article 8 requires the Council annually

to fix a specific guarantee threshold for each group of varieties, taking particular account of market conditions and socio-economic and agronomic conditions in the production areas concerned.

- 11 The eighth recital in the preamble to Regulation No 2075/92 states that in order '... to ensure that the guarantee thresholds are observed, a processing quota system must be instituted for a limited period; ... for a transitional period the Member States must allocate, within the guarantee thresholds, processing quotas to the firms concerned, the Community rules laid down for the purpose being applied to ensure fair allocation on the basis of quantities processed in the past, but disregarding any abnormal production levels; ... the necessary measures will be taken to permit the quotas to be allocated to the producers subsequently, under satisfactory conditions; ... Member States possessing the necessary data to allocate quotas to producers on the basis of past performance should be authorized to do so'.

- 12 Article 9 of Regulation No 2075/92 accordingly provides as follows:

'1. To ensure observance of the guarantee thresholds a system of processing quotas is hereby instituted for the harvests of 1993 to 1997.

2. For each harvest, in accordance with the procedure laid down in Article 43(2) of the Treaty, the Council shall allocate among the producer Member States the quantities available for each group of varieties.

3. On the basis of the quantities allocated pursuant to paragraph 2, and without prejudice to the application of paragraph 5, Member States shall distribute processing quotas on a [transitional] basis for the 1993 and 1994 harvests among the first processors in proportion to the average quantities delivered for processing during

the three years preceding the year of the last harvest, broken down by group of varieties. However, production in 1992 and deliveries from this harvest shall not be taken into account. The procedure for allocating processing quotas for the following harvests shall not be affected by this allocation.

First processors who start business after the beginning of the reference period shall obtain a quantity proportional to the average quantity delivered for processing during their period of business.

For first processors which begin business in the year of harvest or during the preceding year, Member States shall reserve 2% of the total quantities available to them by group of varieties. Within this percentage, the said first processors shall obtain a quantity not exceeding 70% of their processing capacity, provided that they offer adequate guarantees as to the efficiency and long-term viability of their business.

4. However, Member States may distribute quotas directly to producers if they dispose of the necessary data on production of all producers for the three harvests preceding the last harvest, in relation to varieties and quantities produced and delivered to a processor.

5. When the quotas are allocated as provided for in paragraphs 3 and 4, no account shall be taken in particular, when calculating the reference production, of any quantities of raw tobacco produced in excess of the maximum guaranteed quantities applicable under Regulation (EEC) No 727/70.



Where appropriate, production shall be taken into account only within the limit of the quota allocated during the years taken into consideration.'

- 13 The Italian Republic elected for the method referred to in Article 9(3), under which quotas are distributed among the first processors and not allocated directly to the producers.
  
- 14 Article 10 of Regulation No 2075/92 provides that: 'A first processor may not conclude cultivation contracts or be reimbursed the amount of the premium for quantities exceeding the quota allocated to him or to the producer.'
  
- 15 Finally, Article 11 of Regulation No 2075/92 provides that: 'Detailed rules for the application of this Title shall be adopted in accordance with the procedure laid down in Article 23. They shall include the adjustments, as provided for in Article 9(5), in the method of distribution of the quotas and the preconditions for applying the quotas at the level of the producers, in particular in relation to their previous situations.'
  
- 16 These detailed rules for the application of the quota system were laid down in Regulation No 3477/92, Article 3 of which provides as follows:

'1. The Member States shall set processing quotas for each processor and each group of varieties as defined in the Annex to Regulation (EEC) No 2075/92 by 15 January 1993 for the 1993 harvest and 15 December 1993 for the 1994 harvest at the latest.

2. The Member States shall determine the data which must appear in quota allocation applications and the deadline by which they must reach the competent authority.
3. No quota shall be allocated to a processor which does not undertake to issue cultivation certificates in accordance with Article 9.'
- 17 According to the eighth recital in the preamble to Regulation No 3477/92, the purpose of the cultivation certificates is to permit producers to change processors from one harvest to another on presentation of that certificate.
- 18 Article 9 of Regulation No 3477/92, which provides for the issue of cultivation certificates, states that:
- '1. For each group of varieties, processors shall issue cultivation certificates, if need be at the request of the interested party, within the limit of their processing quotas to producers located in a production area recognized in accordance with Article 5(a) of Regulation (EEC) No 2075/92, in proportion to the tobacco from the same group of varieties which they deliver in the 1989, 1990 and 1991 harvests. For the purposes of calculating such deliveries in cases where the maximum guaranteed quantities fixed for the 1989, 1990 and/or 1991 harvest are exceeded, the provisions of Article 6 shall apply *mutatis mutandis*. The abovementioned cultivation 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. The Member States shall determine the procedures for the issuing of the cultivation 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.

They may lay down minimum quantities (not exceeding 500 kilograms) for the issue of cultivation certificates.

3. Where a producer shows proof that his production has been abnormally low during a given harvest as a result of exceptional circumstances, 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 cultivation certificate. The reference quantity of the relevant processing undertaking shall be adjusted accordingly. The Member States shall notify the Commission of any decisions they intend to take.

...

6. Cultivation certificates shall be issued by 1 March of the year of harvest at the latest.'

19 Finally, Article 10 of Regulation No 3477/92 provides as follows:

'1. Each producer shall deliver tobacco from any given group of varieties to a single processing undertaking only. Where he obtains a cultivation certificate from several processors to which he delivered tobacco from the 1989, 1990 and 1991 harvests and from the same group of varieties, the quantities shall be aggregated within the processing undertaking to which he delivered tobacco from the 1991 harvest. If the producer has delivered tobacco to several processors during the harvest, he shall indicate the undertaking from which he wishes to receive the cultivation certificate.

However, producer groups which are producers for the purposes of the third indent of Article 2 may deliver their production to several processors.

2. Producers may conclude cultivation contracts with a processing undertaking other than that which issued the cultivation certificate, on presentation of the latter.

3. The Member State shall transfer quotas between processors where the application of this Article so requires.'

### The main proceedings

20 According to the order for reference, the Fattoria Autonoma Tabacchi (hereinafter 'the Fattoria'), the applicant in the main proceedings in Case C-254/94, is an association whose aim is to promote and facilitate the cultivation by its members of tobacco, the processing of which it undertakes. It complains that the Italian authorities allocated to it a tobacco processing quota, increased by an amount for a natural disaster, which was appreciably lower than that to which it believes it is entitled.

21 According to the Fattoria, the harm which it has suffered has arisen mainly and directly from Regulation No 3477/92, which it claims to be contrary to Regulation No 2075/92, and in part from Circular No 368/G of 1 March 1993 of the Italian Ministry of Agriculture and Forests concerning the application of Regulations No 2075/92 and No 3477/92 (hereinafter 'the Circular'), pursuant to which the measure for allocating the processing quota was taken. It should be noted that the

Circular was preceded by a statement of the Commission's position, contained in Memorandum No VI/003136 of 20 January 1993 in response to a query from the Italian Department of Agriculture and Forests.

- 22 Mr Bason and others, who are tobacco producers and the applicants in the main proceedings in Case C-255/94, claim that they have suffered harm by reason of the allocation of quotas considerably lower than those to which they believe they are entitled. They also submit that the harm that they have suffered ensued from the invalidity of the Community legislation and from the Circular's defective implementation of that legislation at national level.
- 23 Finally, the grounds of application relied on by the Associazione Professionale Trasformatori Tabacchi Italiani (APTI) and others, the applicants in the main proceedings in Case C-269/94, which are involved in tobacco processing in Italy, also relate to Regulation No 3477/92 and to the Circular.
- 24 The national court making the references finds that the validity of Regulation No 3477/92 is in issue and also that the complexity of the Community arrangements for this particular sector leaves reasonable doubts as to the correct application of the relevant provisions of Community law.
- 25 The national court therefore considers it essential, in order to dispel all doubt about the interpretation and validity of Regulation No 3477/92, to obtain a decision from the Court, since it takes the view that it cannot properly rely on the Commission's position, as set out in the abovementioned Memorandum of 20 January 1993, which the applicants in the main proceedings claim to be incompatible with the Treaty and with the provisions of Regulation No 2075/92.

In those circumstances, the national court decided to stay the proceedings and submit the following questions to the Court:

Cases C-254/94 and C-269/94 (common questions):

1. Are Articles 3(3), 9 and 10 of Commission Regulation (EEC) No 3477/92 and, in particular, the rule that no quota is to be allocated to a processor which does not undertake to issue cultivation certificates in accordance with Article 9, the introduction of those certificates and the option for processors to conclude cultivation contracts and obtain reimbursement of premiums in respect of quantities greater than the processing quotas allocated to them, compatible with the principles underlying the reform of the sector as set out in Council Regulation (EEC) No 2075/92, and in particular with the prohibition in Article 10 of that regulation, or do they in fact "completely undermine the objectives and strategy" on the basis of which the Council launched the first stage of the reform of the common organization of the market in raw tobacco?

2. Independently of the first question, are the administrative requirements incumbent upon the processors under Commission Regulation (EEC) No 3477/92 in connection with the issue of cultivation certificates compatible with the principle of proportionality, which requires that burdens imposed on individuals be proportionate to the aims to be achieved, or do they constitute a "needless administrative complication" which conflicts with that fundamental principle of Community law?

3. If the first two questions are answered in the affirmative, may Article 9(3) of Commission Regulation (EEC) No 3477/92 be interpreted as permitting Member States to establish appropriate reserves of the different groups of varieties, for allocation on a percentage basis between the undertakings concerned, in accordance with the mechanism established by Circular No 368/G of 1 March 1993 (point 8, p. 9) of the Ministry of Agriculture and Forests?

Case C-254/94 (fourth question):

'4. Is Ministerial Circular No 368/G of 1 March 1993 compatible with the third indent of Article 2 and with Article 21 of Commission Regulation (EEC) No 3477/92 in so far as it does not allow the issue of a single cultivation certificate and/or a single production quota to "producer groups" and, in particular, to a *società semplice* (association), which has no legal personality and was founded with the aim of promoting and facilitating the cultivation of tobacco by its members, whilst at the same time undertaking the first processing of that tobacco on its own premises and which annually decides how much land should be given over to the cultivation of tobacco, dividing it between its members on condition that they render to the association all the tobacco produced?'

Case C-255/94:

'1. Is the introduction of the "cultivation certificates" provided for by Article 9 of Regulation No 3477/92 incompatible with the principles on which Regulation No 2075/92 is based and with the objectives and strategy of the Council in the first phase of the reform of the common organization of the market in tobacco, inasmuch as it constitutes a covert means of anticipating the introduction of production quotas (which are envisaged in the first stage as merely an exception, in Article 9(4) of Regulation No 2075/92), thus making it more difficult, if not impossible, to adapt quality to suit market requirements?'

2. Are Article 10 of, and the eighth recital in the preamble to, Council Regulation No 2075/92 to be interpreted as meaning that the processing quotas allocated to undertakings carrying out the initial processing or to producers are to be invariable, and if so is the statement regarding the relevant Commission regulation in

Memorandum No VI/003136 that processing quotas may be increased or decreased according to the preferences of individual producers compatible with that principle?

3. Independently of the first question, do the cultivation certificates provided for in Regulation No 3477/92 constitute a "needless administrative complication" which conflicts with the Community law principle of proportionality requiring an appropriate balance to be achieved between the administrative burdens imposed on the individual and the aims pursued by the Community institutions?

4. Is it not a significant departure from the Community rules (in particular from Article 3(3) of Regulation No 3477/92) for "appropriate reserves, in sections representing each group of varieties" to be provided for in point 8, p. 3, G, of Ministerial Circular No 368/G of 1 March 1993, based on the national "levelling" of the percentage quantity of reserves, an approach which prevents the adjustment of the total reference quantity to take account of production losses suffered by individual producers as a result of natural disasters?

5. Is there also, in essence, a circumvention of, and a failure to implement, the Community rules contained in Articles 9(1) and 10(1) of Regulation No 3477/92 in the provision made in the ministerial circular referred to a number of times (Annex 4, p. 9) for initially dividing processing undertakings into seven groups, each with a different method of calculating the average of the three-year reference period, so that, for the same quantity and type of tobacco produced, the producer's production quota varies depending on its choice of processing undertaking for the last three-year period?'

27 It should be noted at the outset that it is not for the Court, within the context of Article 177 of the Treaty, to determine whether national provisions are compatible with the Treaty. However, the Court may provide the national court with all the



criteria for the interpretation of Community law which may enable it to assess whether those provisions are so compatible in order to give judgment in the proceedings before it (see, in particular, the judgment in Case 6/64 *Costa v ENEL* [1964] ECR 585). It is therefore along those lines that the replies should be made to the various questions as to whether the Circular is compatible with the common organization of the market in the raw tobacco sector, as laid down in Regulations No 2075/92 and No 3477/92.

- 28 It is, however, first necessary to examine the questions concerning the validity of the system of cultivation certificates introduced by Regulation No 3477/92 before going on to address the questions relating to the interpretation of the applicable Community rules.

**The validity of the system of cultivation certificates, more specifically the validity of Articles 3, 9 and 10 of Regulation No 3477/92 (first question in Cases C-254/94, C-255/94 and C-269/94, second question in Cases C-254/94, C-255/94 and C-269/94, and third question in Case C-255/94)**

- 29 By these questions, the national court first inquires about the compatibility of Articles 3(3), 9 and 10 of Regulation No 3477/92 with Regulation No 2075/92, and in particular with the principles underlying the reform of the common organization of the market in raw tobacco which it introduces, as well as with the provisions of Article 10 thereof. Secondly, the national court is asking whether Article 9 of Regulation No 3477/92 may be invalid on the ground that it fails to comply with the principle of proportionality.
- 30 The applicants in the main proceedings take the view that Articles 3(3), 9 and 10 of Regulation No 3477/92 are invalid on the ground that they fail to take account of both the spirit of Regulation No 2075/92 and Article 10 thereof. They also take the view that Article 9 of Regulation No 3477/92 infringes the principle of proportionality.

*A — The alleged breach of Regulation No 2075/92*

— The alleged failure to comply with the principles of the common organization of the market established by Regulation No 2075/92

- 31 The applicants in the main proceedings take the view that, instead of working out the details of the principles which the Council enunciated in Regulation No 2075/92, Regulation No 3477/92 introduced new changes which run contrary to the rationale of the transitional scheme and actually anticipate the introduction of the definitive system having as its main feature the direct allocation of production quotas to growers who are free to offer them to the processing undertaking of their choice.
- 32 The applicants claim that Regulation No 3477/92 places at the centre of the system which it introduces a document not referred to by Regulation No 2075/92, namely cultivation certificates, which are actual documents representing quantities and specified varieties of tobacco entitled to financially assisted processing and which may be used by producers holding them in relation to any processing undertaking which has a processing quota, even if it is not the same undertaking as that which issued the certificates in question. The applicants contend that the certification arrangements are really disguised production quotas.
- 33 Furthermore, they claim, the transitional phase (1993 to 1997) would have made sense if it had served not only to limit tobacco production but also to reorganize and redirect production towards varieties less injurious to health and more popular on the market. The allocation of cultivation certificates on the basis of deliveries made during 1989 to 1991 had in reality the effect of freezing the previous decisions relating to cultivation by giving each producer the right to continue to produce the same varieties as those previously grown and by consequently making it more difficult, if not impossible, to reconvert to varieties more in keeping with the needs of the market.

34 According to the applicants in the main proceedings, the Commission, in those circumstances, departed from the transitional scheme set in place by the Council, which was exclusively directed at processing quotas. The breach of the very spirit of Regulation No 2075/92 is, they contend, manifest.

35 That argument must be rejected.

36 It follows from Article 9 of Regulation No 2075/92 that, in order to ensure observance of the guarantee thresholds dealt with in Article 8 of that regulation, the Community legislature provided for the introduction, for a limited period, of a system of processing quotas which Member States are required to distribute on a transitional basis for the 1993 and 1994 harvests among first processors, unless they dispose of the necessary and accurate data relating to tobacco production, in which case they may distribute quotas directly to producers.

37 As the Commission has correctly pointed out, the quota system established by Article 9 of Regulation No 2075/92 is designed to establish accurately the level of Community production for various categories of tobacco, as well as the position of each producer and each processing undertaking, with a view to preparing the definitive system based on direct allocation of quotas to producers.

38 In this connection, Article 11 of Regulation No 2075/92 authorized the Commission to adopt, in accordance with the 'Management Committee' procedure described in Article 23 of the regulation, the detailed rules necessary for establishing the quota system, stating in particular that those rules must include the preconditions for applying the quotas at the level of the producers.

- 39 As the Commission has correctly emphasized, the obligation on a processing undertaking to issue cultivation certificates evidencing the delivery of raw tobacco by the producer, both at the qualitative and the quantitative level, to a processing undertaking during the 1989, 1990 and 1991 harvests, fully meets the Community legislature's concern, mentioned in paragraph 37 above, to enable the national and Community authorities to obtain that information through an effective and transparent system designed to prevent fraudulent transactions, while allowing producers to change processing undertakings from one harvest to the next and allowing those undertakings to turn to different producers.
- 40 In that context, the right of producers to conclude cultivation contracts with an undertaking other than that which issued the cultivation certificate, as granted by Article 10 of Regulation No 3477/92, meets one of the fundamental objectives of Community intervention, recalled in particular in the second and fifth recitals in the preamble to Regulation No 2075/92, according to which the rules in dispute are intended, in accordance with Article 39 of the EC Treaty, to ensure a fair standard of living for tobacco producers.
- 41 By allowing a producer to change his processing undertaking from one year to the next, Article 10 of Regulation No 3477/92 enables that producer to avoid being in a position of dependence *vis-à-vis* the processing undertaking which issued the certificate in question and which, were it not for such a possibility, could determine the purchase price of the tobacco without having to take account of competition from other undertakings.
- 42 With regard to Article 3(3) of Regulation No 3477/92, which is also mentioned by the national court making the references, suffice it to note that the connection which this provision establishes between allocation of the processing quota and the processing undertaking's obligation to issue cultivation certificates to producers is an indispensable condition for the proper operation of the system of application envisaged by the regulation.

43 It is also necessary to reject the argument that the issue of cultivation certificates on the basis of deliveries relating to the 1989, 1990 and 1991 harvests had the effect of freezing the cultivation choices made previously by the growers and thus of preventing the realignment sought by Regulation No 2075/92 towards varieties that are more popular and less injurious to health, particularly in so far as it is precisely Regulation No 2075/92 which, in Article 9, states that the quota is to be calculated on the basis of deliveries made during the reference period from 1989 to 1991.

44 Finally, with regard to the argument that the contested scheme improperly anticipates the definitive organization of the market based on the direct grant of quotas to producers, it suffices to point out that this rests on the mistaken premiss that the transitional regime would, according to the wishes of the Council, be essentially directed towards a system of quotas to be allocated to processing undertakings alone. Regulation No 2075/92 itself provides, in Article 9(4), that, if they dispose of the necessary data, Member States may, from the start of the transitional period, distribute quotas directly to producers.

45 It follows that the alleged infringement of the principles of the common organization of the market established by Regulation No 2075/92 has not been proven.

— The alleged breach of Article 10 of Regulation No 2075/92

46 The applicants in the main proceedings submit that the possibility under Regulation No 3477/92 for the quota allocated to an undertaking which processes raw tobacco to be subject to increases or decreases depending on the choices made from one harvest to the next by each producer holding a cultivation certificate is manifestly incompatible with Article 10 of Regulation No 2075/92, which

prohibits a processor from concluding cultivation contracts and being reimbursed the amount of the premium for 'quantities exceeding the quota allocated to him'.

47 That argument must be rejected.

48 Contrary to what the applicants in the main proceedings claim, there is nothing to justify the conclusion that the expression 'quota allocated to him' in Article 10 of Regulation No 2075/92 precludes the system of cultivation certificates in so far as it may result in an alteration of the quota allocated to processing undertakings depending on the choice made by producers holding such certificates.

49 As the Advocate General notes at point 49 of his Opinion, that phrase refers to the quota allocated to the processor on the basis of the quantities processed over the reference period, taking account of any amendments as a result of quota transfers effected in accordance with Article 10(3) of Regulation No 3477/92, resulting from the freedom, to which every producer must be entitled, to choose the undertaking to which he intends to deliver tobacco of the same group of varieties.

50 In those circumstances, the flexibility of the processing quota according to the choices made by a producer in accordance with Article 10(2) of Regulation No 3477/92 is not contrary to Article 10 of Regulation No 2075/92, which, as the Commission stressed during the hearing, merely specifies that no cultivation contract can be concluded, and consequently no premium paid, outside the limits of the quota allocated.

51 It follows from all of the foregoing that none of the alleged breaches of Regulation No 2075/92 has been established.

*B — The alleged infringement of the principle of proportionality*

52 The applicants in the main proceedings submit that, by setting out specifically the detailed rules for applying the transitional system, the regulation went beyond what was necessary to guarantee, in accordance with the sixth recital in the preamble to Regulation No 3477/92, a fair and non-discriminatory distribution of processing quotas among the producers who delivered tobacco to them over the reference periods.

53 According to the applicants, through the institution of the system of cultivation certificates producers became the real protagonists in the management of guarantee thresholds, by confining to a marginal role processing undertakings for which there remained only administrative charges. Thus, they claim, the cultivation certificates constitute an administrative complication which resulted in costly charges for processing undertakings, which were required to institute a complex accounting system without any benefit in return. The Circular evidences the needless complexity of the procedure instituted under Italian law. Thus, amongst other things, processing undertakings are required to establish a database for relevant information and to provide the Azienda di Stato per gli Interventi nel Mercato Agricolo (AIMA — the Italian Agricultural Market Intervention Agency) with information regarding applications on a magnetic medium arranged in accordance with the technical specifications, a copy of the applications presented by the producers and the relevant documentation, as well as a table summarizing the contents of the magnetic medium.

54 That argument must be rejected.

- 55 The Court has held that the principle of proportionality, which is one of the general principles of law, requires that measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, in particular, the judgment of 29 February 1996 in Joined Cases C-296/93 *France v Commission* and C-307/93 *Ireland v Commission* [1996] ECR I-795, paragraph 30).
- 56 However, as far as judicial review of those conditions is concerned, it must be stated that in matters relating to the common agricultural policy the Community legislature has a discretion which corresponds to the political responsibilities which Articles 40 and 43 of the EC Treaty place upon it (see, in particular, the judgment in Case 179/84 *Bozzetti v Invernizzi* [1985] ECR 2301, paragraph 30). Thus, in examining whether such a discretionary power has been lawfully exercised, judicial review must be confined to determining whether it is vitiated by a manifest error or misuse of powers or whether the authority in question clearly exceeded the bounds of its discretion.
- 57 As explained in paragraphs 39 to 41 of this judgment, the cultivation certificates, besides allowing producers to change, from one harvest to the next, the undertaking to which they deliver the raw tobacco which they produce, also provide the competent authorities with the information which is vital for establishing within the raw tobacco sector a policy allowing the market to escape from the situation of serious imbalance between supply and demand on that market, while preventing fraud through the transparency which this system entails.
- 58 It has not been contended that these objectives might be attained by other means the effects of which would be manifestly less onerous than those resulting from the introduction of the cultivation certificates. Nor has it been argued that the objective of ensuring an equal and fair distribution of processing quotas among producers who delivered tobacco during the reference periods could be achieved



by any means other than those described in Article 9 of Regulation No 3477/92, which provides that such distribution is to be made in proportion to deliveries during the 1989, 1990 and 1991 harvests.

59 Furthermore, contrary to the arguments put forward by the applicants in the main proceedings, the administrative burden which the system of cultivation certificates imposes on processing undertakings is largely offset by the advantages which the system affords them.

60 As the Commission rightly points out, while the issue of cultivation certificates does involve some administrative work for a processing undertaking, that undertaking benefits at the same time from the inflow of money intended for payment of the premium to the producers with whom it has concluded cultivation contracts.

61 Finally, as the Italian Government and the Commission have also appositely pointed out, the information which the undertaking must provide simply involves compiling accounting and contractual documents which the undertaking already possesses and which, moreover, it uses when applying for the allocation of a processing quota.

62 It follows that the system of cultivation certificates established by Regulation No 3477/92 allows the designated objectives to be attained without the resultant disadvantages being manifestly disproportionate to the objectives pursued. Consequently, the alleged infringement of the principle of proportionality has likewise not been established.

63 In those circumstances, the answer to be given must be that examination of the questions raised has disclosed no factor of such a kind as to affect the validity of Articles 3(3), 9 and 10 of Regulation No 3477/92.

**The third question in Cases C-254/94 and C-269/94 and the fourth question in Case C-255/94**

- 64 By these questions the national court is essentially asking whether Article 9(3) of Regulation No 3477/92 precludes the constitution, in advance and according to a system of flat-rate calculation, of reserves of the different groups of tobacco varieties for allocation among producers who have suffered a drop in production as a result of exceptional circumstances, without taking full account of the losses actually suffered by individual producers.
- 65 The applicants submit that this question concerns the compatibility with the Community rules of the system instituted by the Circular for determining additional quotas in the event of exceptional circumstances, based on the flat-rate determination of a reserve quantity expressed as a percentage, fixed on a national scale for each group of varieties grown and then applied to each individual case irrespective of the actual fall in production suffered by each producer. In their view, the actual wording of the rule laid down in Article 9(3) of Regulation No 3477/92, fairness and common sense suggest an interpretation that requires national authorities to determine the additional quota on the basis of criteria that take account of the actual reduction suffered by the grower.
- 66 They also argue that if the quota must be proportionate to production in the years 1989, 1990 and 1991 and if the quantity to be taken into consideration in the event of an abnormally low harvest falls to be determined by the Member State, a proper interpretation of the Community rules ought to have led to a determination, in the first place, of the quantities harvested by individual producers liable to be supplemented because of natural disaster and to a calculation, in the second place, of the average production during the reference period. The applicants claim that the opposite occurs in Italy.

67 Under Article 9(3) of Regulation No 3477/92, when a producer shows proof that his production has been abnormally low during a given harvest as a result of exceptional circumstances, the Member State in question is required to calculate, at the request of the producer concerned, the quantity to be taken into consideration for that harvest in making out his cultivation certificate. The Member States are required to notify the Commission of any decisions they intend to take in this regard.

68 As the Advocate General states at points 56 to 59 of his Opinion, it is clear from Article 9(3) that when such a reduction relates to one of the harvests to be taken into consideration for the purpose of fixing the cultivation certificate, the Member State in question must first allocate an additional reference quantity for that harvest and then calculate the production average, thus corrected, during the reference period. Subject to this proviso, the Member States have a considerable margin of discretion when giving effect to that provision, with the result that neither the advance establishment of reserve quotas calculated in relation to the quantities of the different types of tobacco produced and taking account of the fact that certain types are more susceptible than others to natural disasters, nor the allocation of those quotas among the producers affected according to a system which does not necessarily result in an allocation corresponding exactly to the loss incurred by the producer cannot, in principle, be regarded as being contrary to Article 9(3) of Regulation No 3477/92, provided, however, that such a system operates in accordance with objective criteria.

69 In those circumstances, the answer to be given must be that Article 9(3) of Regulation No 3477/92 does not preclude the establishment, in advance and according to a system of flat-rate calculation, of reserves varying according to the varieties of tobacco, which are intended for distribution among producers who have suffered a fall in production as a result of exceptional circumstances, without taking full account of the losses actually suffered by individual producers.

**The fourth question in Case C-254/94**

- 70 By this question, the national court asks essentially whether the third indent of Article 2, in conjunction with Article 21, of Regulation No 3477/92 precludes national rules which do not allow a single cultivation certificate or a single production quota to be given to a producer group founded with the aim of promoting and facilitating the cultivation of tobacco by its members, while at the same time undertaking the first processing of tobacco on its own premises.
- 71 The applicant in the main proceedings states that, in view of its operational and structural characteristics, there cannot be any doubt that it is a 'producer' within the definition set out in the third indent of Article 2 of Regulation No 3477/92 and that it should therefore be able to rely on Article 21 of that regulation. Consequently, it ought to have been entitled to a single quota or production certificate to be calculated on the basis of the sum of the quotas or production certificates which, in theory alone, ought to have been allocated to its members.
- 72 The Court observes that the third indent of Article 2 of Regulation No 3477/92 defines a producer as 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 his or the group's own name and on his or its own account, under a cultivation contract concluded by him or in his name. That definition does not exclude groups which, as in the main proceedings, also process raw tobacco.
- 73 Article 21 of Regulation No 3477/92 provides that where a cultivation certificate covers such a producer group which is also a producer of tobacco in accordance with the third indent of Article 2, the Member State concerned must ensure that the quantity is distributed fairly between all members of the group; however, with

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

74 It follows from this latter provision that a producer group within the meaning of Article 2 of Regulation No 3477/92 must be entitled to a single quota or cultivation certificate, in which case the Member State concerned must also ensure that the amount at issue is, in principle, distributed fairly among all the group members.

75 It should be added that, as the Commission has correctly pointed out, the issue of a single quota or certificate must not, however, have the result of restricting the freedom of producers in a group to choose the undertaking to which they intend to deliver their tobacco, which would be the case if, during a change in the processing undertaking, the persons concerned were to suffer a loss in respect of the amounts allocated. Such a consequence would prevent the free play of competition among processing undertakings and would therefore run counter to one of the objectives pursued by the common organization of the market, namely to ensure a fair standard of living for tobacco producers.

76 In view of the foregoing, the answer to be given must be that the third indent of Article 2, in conjunction with Article 21, of Regulation No 3477/92 precludes national rules not allowing a single cultivation certificate or a single production quota to be given to a producer group founded with the aim of promoting and facilitating the cultivation of tobacco by its members, while at the same time undertaking the first processing of tobacco on its own premises.

**The fifth question in Case C-255/94**

- 77 By this question, the national court is asking in substance whether Articles 9(1) and 10(1) of Regulation No 3477/92 must be interpreted as meaning that processing undertakings may be divided into seven distinct groups, to which different rules are to be applied for calculating the three-year reference period according to the period during which they began operating, and in such a way that different rules for calculating the processing quota are applied to producers depending on the undertaking to which they delivered during the reference period.
- 78 The applicants in the main proceedings submit that, by establishing the method for calculating the amount of tobacco delivered by the producer to the processing undertaking for the purpose of issuing the cultivation certificates, the Circular provided for a prior division of processing undertakings into seven distinct groups, each subject to a different method for calculating the reference quantities to be used when fixing the processing quotas. Since the production quota for 1993 is determined according to the same formula as that used to calculate the reference quantity allocated to the undertaking to which the producer delivered during the reference period, this system has the consequence that producers who produced the same amount of tobacco belonging to the same group of varieties will have applied to them, in an entirely arbitrary manner, a system for calculating production quotas which differs depending on whether they supplied that tobacco to one particular processing undertaking rather than to another.
- 79 The applicants also contend that the Circular has the result that undertakings which did not begin operating until 1991 have applied to them a method of calculation for determining the processing quota based solely on production for 1991, which places at a disadvantage those undertakings which had been engaged in processing during the three years of the reference period.
- 80 That argument cannot be accepted.

- 81 It should be noted first of all, as the Commission has correctly pointed out, that Articles 9 and 10 of Regulation No 3477/92, to which the national court's question refers, neither add to nor subtract from the rules for calculating the processing quotas dealt with in Article 9 of Regulation No 2075/92 but are designed only to regulate the consequences thereof. Thus, the processing quota obtained by the calculation made under Article 9(3) of Regulation No 2075/92 is then distributed, in accordance with Article 9(1) of Regulation No 3477/92, by the processing undertaking, within the limits of its quota, among producers in proportion to their deliveries of tobacco during the three harvests of 1989, 1990 and 1991.
- 82 Article 9(3) of Regulation No 2075/92 distinguishes three situations. First, undertakings which processed tobacco during the three years of the reference period are allocated a reference quantity equal to the average of the quantities processed during those three years (first subparagraph). Second, undertakings which started processing only after the beginning of the reference period are entitled to a quantity proportional to the average quantity delivered for processing during that period (second subparagraph). Third, undertakings which begin operating during the year of harvest or during the preceding year are to obtain a quantity determined in accordance with the third subparagraph of Article 9(3).
- 83 As the Advocate General shows at points 73 and 74 of his Opinion, it would be unfair for a processing undertaking which began operations after the start of the reference period to have the amount which it processed during the reference period divided by three, as if it had been engaged in processing tobacco during the three reference years, so that Regulation No 2075/92 provided in such a case for the fixing of a quota proportional to the average of the quantities delivered during the period in which it operated. Admittedly, producers who delivered in 1991 to a processing undertaking which began operating only in 1990 will be allocated a higher quota than those who delivered to an undertaking which had already been processing in 1989, a year in which there was a poor harvest, by reason of the fact that the first undertaking will have a higher processing quota than the second. It is, however, precisely in such a case that Article 9(3) of Regulation No 3477/92 allows

an additional quota to be allocated to growers whose production was abnormally low by reason of exceptional circumstances, with consequent adaptation of the reference quantity allocated to the processing undertaking in question.

84 Furthermore, although it cannot be ruled out that, within the three categories of processing undertakings as defined in the three subparagraphs of Article 9(3) of Regulation No 2075/92, a Member State may make sub-divisions, that provision nonetheless requires that the processing quota of those different undertakings should be calculated in accordance with whichever of the three methods provided for under Article 9(3) of Regulation No 2075/92 is applicable to the category within which it comes.

85 In those circumstances, the answer to the question must be that Article 9(3) of Regulation No 2075/92 must be interpreted as meaning that processing undertakings may be divided into seven distinct groups, on condition that the processing quota is determined according to the rules of calculation prescribed for the group to which the sub-category in question belongs. Article 9(1) of Regulation No 3477/92 must be interpreted as meaning that producers may have different rules for calculating the processing quota applied to them depending on the processing undertaking to which they delivered during the reference period.

### Costs

86 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decision on costs is a matter for that court.



On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Tribunale Amministrativo Regionale del Lazio by orders of 27 January 1994, hereby rules:

1. Examination of the questions raised has disclosed no factor of such a kind as to affect the validity of Articles 3(3), 9 and 10 of Commission Regulation (EEC) No 3477/92 of 1 December 1992 laying down detailed rules for the application of the raw tobacco quota system for the 1993 and 1994 harvests.
2. Article 9(3) of Regulation No 3477/92 does not preclude the establishment, in advance and according to a system of flat-rate calculation, of reserves varying according to the varieties of tobacco, which are intended for distribution among producers who have suffered a fall in production as a result of exceptional circumstances, without taking full account of the losses actually suffered by individual producers.
3. The third indent of Article 2, in conjunction with Article 21, of Regulation No 3477/92 precludes national rules not allowing a single cultivation certificate or a single production quota to be given to a producer group founded with the aim of promoting and facilitating the cultivation of tobacco by its members, while at the same time undertaking the first processing of tobacco on its own premises.

4. Article 9(3) of Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organization of the market in raw tobacco must be interpreted as meaning that processing undertakings may be divided into seven distinct groups, on condition that the processing quota is determined according to the rules of calculation prescribed for the group to which the sub-category in question belongs. Article 9(1) of Regulation No 3477/92 must be interpreted as meaning that producers may have different rules for calculating the processing quota applied to them depending on the processing undertaking to which they delivered during the reference period.

Edward

Puissochet

Moitinho de Almeida

Gulmann

Wathelet

Delivered in open court in Luxembourg on 12 September 1996.

R. Grass

D. A. O. Edward

Registrar

President of the Fifth Chamber