

REGULATION No 26

applying certain rules of competition to production of and trade in agricultural products

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

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 Parliament;

Whereas by virtue of Article 42 of the Treaty one of the matters to be decided under the common agricultural policy is whether the rules on competition laid down in the Treaty are to apply to production of and trade in agricultural products, and accordingly the provisions hereinafter contained will have to be supplemented in the light of developments in that policy;

Whereas the proposals submitted by the Commission for the formulation and implementation of the common agricultural policy show that certain rules on competition must forthwith be made applicable to production of and trade in agricultural products in order to eliminate practices contrary to the principles of the common market and prejudicial to attainment of the objectives set out in Article 39 of the Treaty and in order to provide a basis for the future establishment of a system of competition adapted to the development of the common agricultural policy;

Whereas the rules on competition relating to the agreements, decisions and practices referred to in Article 85 of the Treaty and to the abuse of dominant positions must be applied to production of and trade in agricultural products, in so far as their application does not impede the functioning of national organisations of agricultural markets or jeopardise attainment of the objectives of the common agricultural policy;

Whereas special attention is warranted in the case of farmers' organisations which are particularly concerned with the joint production or marketing of

agricultural products or the use of joint facilities, unless such joint action excludes competition or jeopardises attainment of the objectives of Article 39 of the Treaty;

Whereas, in order both to avoid compromising the development of a common agricultural policy and to ensure certainty in the law and non-discriminatory treatment of the undertakings concerned, the Commission must have sole power, subject to review by the Court of Justice, to determine whether the conditions provided for in the two preceding recitals are fulfilled as regards the agreements, decisions and practices referred to in Article 85 of the Treaty;

Whereas, in order to enable the specific provisions of the Treaty regarding agriculture, and in particular those of Article 39 thereof, to be taken into consideration, the Commission must, in questions of dumping, assess all the causes of the practices complained of and in particular the price level at which products from other sources are imported into the market in question; whereas it must, in the light of its assessment, make recommendations and authorise protective measures as provided in Article 91 (1) of the Treaty;

Whereas, in order to implement, as part of the development of the common agricultural policy, the rules on aids for production of or trade in agricultural products, the Commission should be in a position to draw up a list of existing, new or proposed aids, to make appropriate observations to the Member States and to propose suitable measures to them;

HAS ADOPTED THIS REGULATION:

Article 1

From the entry into force of this Regulation, Articles 85 to 90 of the Treaty and provisions made in implementation thereof shall, subject to Article 2 below, apply to all agreements, decisions and practices referred to in Articles 85 (1) and 86 of the Treaty which relate to production of or trade in the products listed in Annex II to the Treaty;

Article 2

1. Article 85 (1) of the Treaty shall not apply to such of the agreements, decisions and practices referred to in the preceding Article as form an integral part of a national market organisation or are necessary for attainment of the objectives set out in Article 39 of the Treaty. In particular, it shall not apply to agreements, decisions and practices of farmers, farmers' associations, or associations of such associations belonging to a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products, and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 39 of the Treaty are jeopardised.

2. After consulting the Member States and hearing the undertakings or associations of undertakings concerned and any other natural or legal person that it considers appropriate, the Commission shall have sole power, subject to review by the Court of Justice, to determine, by decision which shall be published, which agreements, decisions and practices fulfil the conditions specified in paragraph 1.

3. The Commission shall undertake such determination either on its own initiative or at the request of a competent authority of a Member State or of an interested undertaking or association of undertakings.

4. The publication shall state the names of the parties and the main content of the decision; it shall

have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 3

1. Without prejudice to Article 46 of the Treaty, Article 91 (1) thereof shall apply to trade in the products listed in Annex II to the Treaty.

2. With due regard for the provisions of the Treaty relating to agriculture, and in particular those of Article 39, the Commission shall assess all the causes of the practices complained of, in particular the price level at which products from other sources are imported into the market in question.

In the light of its assessment, it shall make recommendations and authorise protective measures as provided in Article 91 (1) of the Treaty.

Article 4

The provisions of Article 93 (1) and of the first sentence of Article 93 (3) of the Treaty shall apply to aids granted for production of or trade in the products listed in Annex II to the Treaty.

Article 5

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*, with the exception of Articles 1 to 3, which shall enter into force on 1 July 1962.

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

Done at Brussels, 4 April 1962.

For the Council

The President

M. COUVE de MURVILLE