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*(Information)*

## COURT OF AUDITORS

## SPECIAL REPORT No 6/2002

**on the audit of the Commission's management of the Community oilseeds support scheme,  
together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)**(2002/C 254/01)*

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**SUMMARY**

I. The Court examined the management of the common market organisation (CMO) applicable to the main oilseeds, i.e. colza, sunflower and soya, and the implementation of the system for oilseeds produced on set-aside land.

II. During the period 1993 to 1999, annual budgetary expenditure on oilseeds was around 2 400 million euro, or approximately 15 % of Community expenditure on arable crops.

III. One of the characteristics of the Community oilseeds market is that production is less than market requirements. Community output (13,5 million tonnes in 2000) represents only 5 % of world production, the United States being the world's main producer.

IV. Until 1991 the CMO provided for production aid which was paid to the industry for crushing Community seed, with a view to ensuring that Community oilseed prices remained higher than the world market prices. In 1991, the Community carried out a radical reform of the CMO and replaced production aid by area-based aid paid directly to the oilseed producers.

V. The Agenda 2000 reform has once again substantially amended the oilseed CMO. After a transitional period oilseeds will receive the same level of aid as cereals and set-aside areas, with effect from the financial year 2002/03. The level of aid will continue to be a function of the historical yield for the region, but will no longer depend on the movement of world prices. The Agenda 2000 reform increased the level of aid for cereals by 17 % and reduced the level of aid for oilseeds by 30 %.

VI. The main findings of the audit are as follows:

- (a) setting greater market equilibrium as an objective, without further explanation, makes it difficult to assess whether the objective has been achieved. Despite its budgetary significance, the 1991 reform was evaluated only in 2000. The results were published by the Commission in November 2001, i.e. one year after Agenda 2000 came into force;
- (b) the fact that the 1991 reform allowed for the use of historical average yields for cereals when calculating aid for oilseeds led to distortions between producers from different regions;
- (c) the annual calculations of aid levels by the Commission did not comply with the regulations in several respects. Each of these errors increased the level of the aid;
- (d) the Commission accepted regionalisation plans that contained overstated historical yields and agreed to grant aid which was in excess of the aid laid down in the Community regulations. The comments made by the Court in its annual report concerning the financial year 1996 have had no effect;
- (e) in two of the Member States visited, the penalties for failing to fulfil the conditions envisaged in the industrial set-aside system were not correctly applied.

VII. The main recommendations arising from the report are:

- (a) the objectives established for the system should be quantified and the implementation of the measures should be assessed regularly;
- (b) the Commission should reassess the support given to crops which may be grown instead of oilseeds;
- (c) the Commission should correct the historical average yields, which are overstated in some regionalisation plans;
- (d) the Commission should consider, in connection with the various comments made by the Court, the possibility of recovering undue aid payments.

## INTRODUCTION

1. In 1991 the common organisation of the market (CMO) for rape and colza seed, sunflower seed and soya beans was reformed. The reform replaced the production aid paid to the crushing industry for processing Community oilseeds by direct payments to farmers. The level of the aid was based on the area used for oilseeds and the historical yield of the region in question. The scheme was applied from the marketing year 1992/93 onwards and its principles remained applicable after the Mac Sharry reform of the common agricultural policy (CAP) in 1992. From 1993 until 1999, EU budget expenditure was some 2 400 million euro per year, down from an average of 3 300 million euro during the period 1988/89 to 1991/92 (see *Illustration 1*). These figures do not include a share of overall set-aside expenditure which could

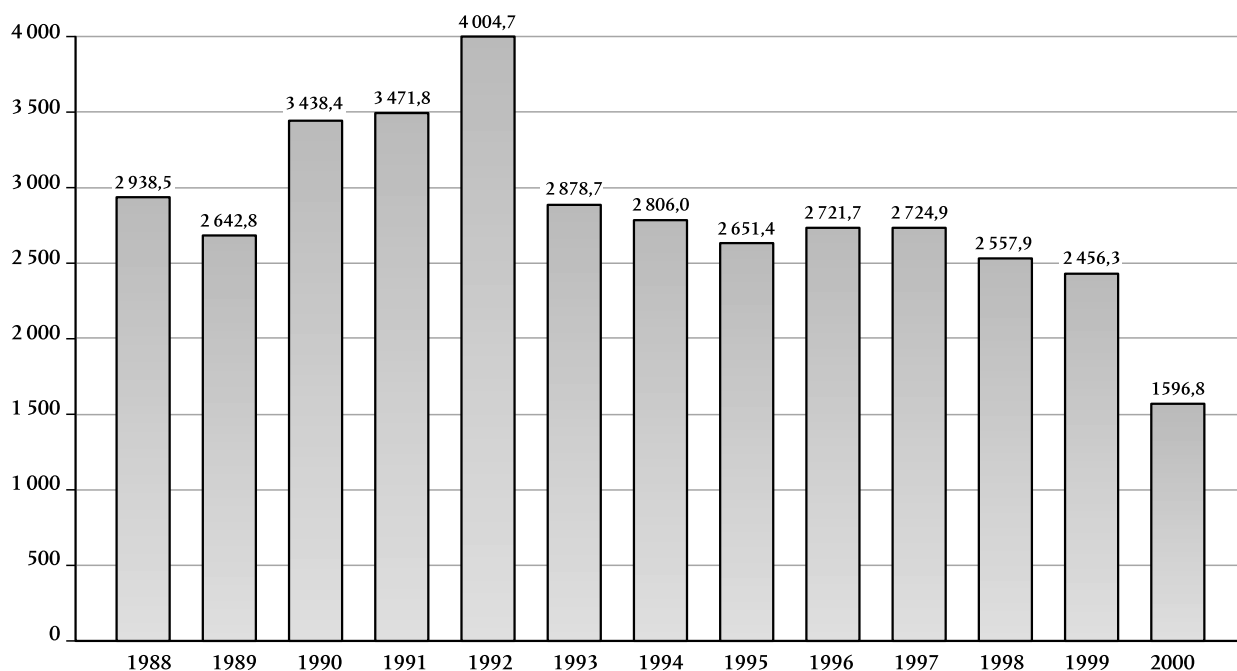
be attributed to oilseeds. This share is estimated by the Court at some 200 million euro per year. The Agenda 2000 reform brings direct aid for oilseeds, cereals and land set-aside into line from the year 2002/03 onwards, eliminating the specific character of the oilseed aid.

2. Audit missions were organised to the Commission and five Member States, namely Germany, Spain, France, Italy and the United Kingdom, which together account for more than 95 % of EU expenditure on the oilseed support scheme. After a short description of the world and EU markets for oilseeds and a brief history of the CMO, this report contains observations on the implementation of the 1991 reform and on the prospects following the Agenda 2000 reform and finally, an analysis of various aspects of oilseed production on set-aside land.

*Illustration 1*

### Community expenditure on oilseeds

(mio EUR)



#### Notes:

- As oilseeds represent about 15 % of the arable crops, amounts shown include 15 % of the total set-aside expenditure.
- The expenditure of 1992 includes the complete expenditure for the marketing year 1991/92 and the advance payment for the marketing year 1992/93.
- The expenditure of 2000 is only the final payment for the marketing year 1999/2000 as from the marketing year 2000/01 onwards, no advance payments are made.

Source: Commission, revenue and expenditure accounts and financial balance sheets.

### THE WORLD AND COMMUNITY MARKET FOR OILSEEDS AND OILSEED PRODUCTS

3. In 2000, world oilseeds production amounted to 291 million tonnes, of which soya beans represent 55 %. The United States is the largest oilseed producer, followed by China, Brazil, Argentina and India. EU oilseed production accounts for 5 % of world production.

4. Between 1993 and 1999, EU oilseed production increased by 55,7 %. This increase resulted from the increased acreage used for

rape seed, production (see Table 1), the development of new varieties generating higher yields and the substitution of sunflower and soya bean with rape seed, which has a higher average yield. Since 1995, rape seed has replaced sunflower as the most grown oilseed crop because of increasing yields and favourable prices. Oilseed production peaked in 1999 at 15,8 million tons cropped on 5,8 million hectares. Despite this increase, EU self-sufficiency rates (except for rape seed) remain low. There are however significant differences between the self-sufficiency rates of the different types of seeds, oils and oilcakes (see Table 2).

Table 1

#### Areas used for the production of oilseeds in the Community (1 000 ha)

		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Rapeseed	Germany	950	1 001	1 007	1 058	974	854	914	1 007	1 198	1 078	1 140
	France	719	665	550	671	864	875	988	1 145	1 344	1 188	1 092
	United Kingdom	440	421	417	491	439	415	473	531	422	402	451
	Other	330	215	194	268	577	472	429	412	471	332	320
	<i>Total</i>	2 438	2 302	2 168	2 488	2 854	2 616	2 804	3 095	3 435	2 996	3 003
Sunflower seed	Spain	1 070	1 456	2 141	1 355	1 112	1 098	1 004	1 048	850	839	858
	France	1 069	979	786	986	963	891	875	782	826	729	707
	Italy	146	116	120	224	230	253	230	233	207	217	210
	Other	118	156	195	343	198	188	146	151	139	119	112
	<i>Total</i>	2 402	2 708	3 242	2 907	2 503	2 431	2 255	2 213	2 021	1 904	1 887
Soya bean	France	66	41	57	100	102	86	98	112	98	78	120
	Italy	409	340	185	214	195	223	302	351	246	253	239
	Other	8	17	1	4	16	19	19	26	23	18	21
	<i>Total</i>	484	398	244	318	313	328	419	488	367	349	379
<b>Total</b>	<b>5 324</b>	<b>5 408</b>	<b>5 654</b>	<b>5 713</b>	<b>5 670</b>	<b>5 374</b>	<b>5 478</b>	<b>5 797</b>	<b>5 828</b>	<b>5 275</b>	<b>5 269</b>	

NB: 1991 to 1994: EU-12.

1995 to 2000: EU-15.

Source: Eurostat, New Cronos.

Table 2

#### Self-sufficiency rates in the EU

	1991/92 <sup>(1)</sup>	1992/93 <sup>(1)</sup>	1993/94 <sup>(1)</sup>	1994/95 <sup>(1)</sup>	1995/96	1996/97	1997/98	1998/99	1999/ 2000	2000/01
Rapeseed <sup>(2)</sup>	96 %	103 %	90 %	86 %	91 %	101 %	100 %	99 %	111 %	94 %
Sunflowerseed <sup>(2)</sup>	91 %	87 %	79 %	72 %	61 %	62 %	71 %	62 %	60 %	56 %
Soybean <sup>(2)</sup>	7 %	8 %	5 %	6 %	6 %	6 %	10 %	11 %	9 %	7 %
Rapeseed oil <sup>(2)</sup> <sup>(4)</sup>	139 %	118 %	87 %	122 %	126 %	118 %	122 %	116 %	113 %	96 %
Sunflower oil <sup>(2)</sup> <sup>(4)</sup>	88 %	84 %	79 %	76 %	61 %	70 %	76 %	63 %	58 %	54 %
Soybean oil <sup>(2)</sup> <sup>(4)</sup>	10 %	10 %	7 %	7 %	7 %	9 %	14 %	17 %	14 %	10 %
Vegetable oil <sup>(3)</sup> <sup>(4)</sup>	49 %	44 %	40 %	43 %	45 %	40 %	47 %	44 %	51 %	41 %
Rapeseed cake <sup>(2)</sup> <sup>(4)</sup>	84 %	76 %	71 %	72 %	78 %	80 %	84 %	82 %	79 %	83 %
Sunflower cake <sup>(2)</sup> <sup>(4)</sup>	57 %	60 %	61 %	49 %	37 %	41 %	45 %	39 %	36 %	34 %
Soybean cake <sup>(3)</sup> <sup>(4)</sup>	3 %	4 %	2 %	3 %	3 %	4 %	5 %	5 %	4 %	3 %
Oilcake <sup>(3)</sup> <sup>(4)</sup>	29 %	25 %	23 %	24 %	25 %	24 %	30 %	27 %	29 %	25 %

<sup>(1)</sup> EU-12.

<sup>(2)</sup> Source and further details: Agriculture in the European Union — Statistical and economic information 2000 — European Commission.

<sup>(3)</sup> Source: Calculations based on data from Fediol.

<sup>(4)</sup> These figures express the percentage ratio between oil/cake production from Community planted oilseeds, and total Community consumption of oil/cake.

5. The EU market for oilseeds is an open market with no export subsidies and no or only low import duties. EU prices of oilseeds and oilseed products follow the world market soya bean price.

6. In 1999, almost 31 million tonnes of oilseeds were crushed in the European Union. About half of the oilseeds crushed are imported soya beans. In the EU, there are approximately 75 major production units. The seed-crushing industry is characterised by increasing concentration and forward integration. About 75 % of the EU crushing capacity belongs to four major international groups.

## HISTORY OF THE COMMON ORGANISATION OF THE MARKET (CMO) FOR OILSEEDS

### *The CMO for oilseeds and GATT*

7. A CMO for oils and fats was created in 1966 when the Community market for vegetable oils and fats was characterised by high demand and low overall production. Its primary objective was to ensure producers a fair income. Ninety-eight per cent of the financial support for rape seed, sunflower and soya beans consisted of a production aid paid to the crushing industry per tonne of Community oilseeds crushed. The level of aid was set by the Council with a view to ensuring that Community oilseed prices remained higher than the world market prices.

8. In 1988, the USA requested GATT to establish a panel to examine their complaint that Community production aid discriminated against imports into the EU. The conclusion of the GATT panel, adopted on 25 January 1990, supported the USA's complaint, and this, together with budget considerations, led to the 1991 reform of the EU oilseeds support scheme.

### *The 1991 reform*

9. The 1991 reform abolished the aid payment for the crushing industry and thereafter the prices paid to producers by the crushing industry were aligned with the lower, world-market prices. In order to offset the loss of revenue that this caused for producers, the reform introduced an area subsidy that was paid directly to producers. The principles of the 1991 reform were confirmed by the 1992 reform, which concerned all arable crops and aimed to improve market equilibrium.

10. This aid (called the 'regional reference amount') was based on the historical average yield <sup>(1)</sup> for each region. The Commission

<sup>(1)</sup> The average of the yields obtained in the region over the period 1986 to 1990, by eliminating from the calculation the lowest and highest yields for the period (Article 3(2) of Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ L 181, 1.7.1992, p. 12)).

calculated the amount each year on the basis of the Community reference amount, which the Council initially set at 384 euro per hectare. The amount was determined on the basis of a projected reference price of 163 euro per tonne <sup>(2)</sup> and a historical average yield of 2,36 tonnes per hectare, i.e. the Community average. The Commission's calculation took account of the reference price recorded on the market, so that, in principle, the income per hectare, made up of the proceeds from the sale of the seed and the Community aid, remained unchanged.

### *The Blair House Agreement*

11. The 1991 reform of the EU support scheme for oilseeds did not close the dispute between the Community and the USA. The USA proposed that the original oilseeds panel be reconvened to determine whether the measures taken had brought EU regulations into conformity with the GATT. On 31 March 1992, the panel concluded that the impairment of the Community's tariff concessions on oilseeds remained. As a result, new negotiations started between the Community and the United States which culminated in the Blair House Agreement of 3 December 1992 (see Annex).

12. Under the Blair House Agreement, the Community agreed to limit the oilseeds area benefiting from hectare aid as long as the aid granted for the production of oilseeds was crop-specific <sup>(3)</sup>. The Agreement provides that if the base area is exceeded the Community aid is to be reduced. The Agreement also provides that the by-products from the processing of seed produced for industrial purposes on set-aside land may be earmarked for human or animal consumption, up to an annual amount of one million metric tonnes expressed in soya-bean meal equivalents.

### *The Agenda 2000 reform*

13. One objective of the Agenda 2000 reform was to gradually align area aid for oilseeds with aid for cereals and set-aside in order to eliminate the crop-specific character of the aid, especially in view of points 2 and 4 of the Blair House Agreement (see Annex).

<sup>(2)</sup> In 1995, the projected reference price of 163 euro per tonne was increased to 196,8 euro per tonne following a change in the exchange rates used for calculating aid in national currencies. This increase was neutral in so far as the aid expressed in national currencies was concerned.

<sup>(3)</sup> Limitation to 5 482 000 ha in 1994/95 and to 5 128 000 ha from 1995/96 onwards. This area is reduced in terms of the set-aside rate for arable crops fixed by the Council each year, but the reduction may not be less than 10 %.

14. After a transitional period of two marketing years (2000/01 and 2001/02), the aid will be identical for cereals, oilseeds and set-aside land and will be uncoupled from the world price. The harmonisation of the level of aid has produced an increase in aid of over 17 % for cereals and a decrease in aid of around one third for oilseeds when compared with 1999/2000 (- 28 % when compared with the average aid paid during the period 1995/96 to 1999/2000). The increase in the cereals aid was the compensation for the simultaneous reduction of the intervention price from 119,19 euro/tonne in 1999 to 101,31 euro/tonne in 2002.

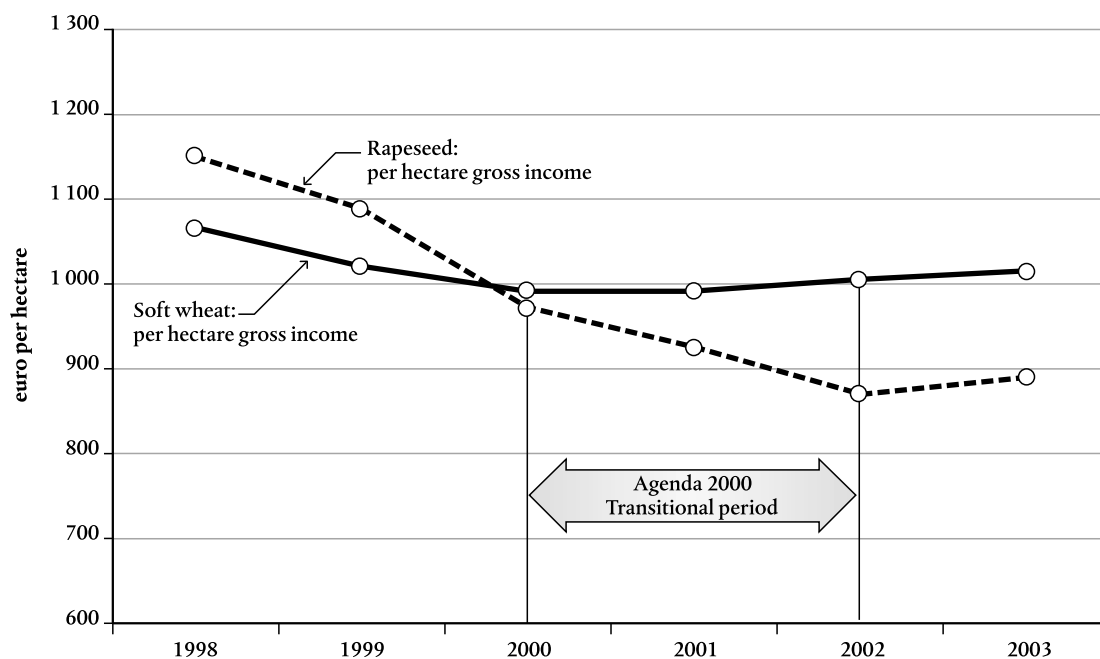
15. The Agenda 2000 reform has adhered to the principle introduced by the 1991 reform, namely, that the aid is a function of

the historical average yield for the region in question. It has nevertheless taken away from the Member States the option of using historical average yields for oilseeds to calculate aid. As from 2002, aid for oilseeds will be calculated on the basis of historical average yields for cereals.

16. Based on Commission price forecasts, the average EU gross revenue per hectare for cereals (e.g. soft wheat) is expected to remain more or less stable after the Agenda 2000 reform while the average EU gross revenue for rapeseed will fall (see *Illustration 2*). Moreover, world market prices for oilseeds decreased after the Commission made its price forecast for the Agenda 2000 reform.

*Illustration 2*

**Prospects for the evolution of farmers' gross incomes per hectare for soft wheat and rapeseed**



Source: Commission, Prospects for agricultural markets — 2000 to 2007.

## OBSERVATIONS REGARDING THE CMO FOR OILSEEDS FROM 1992/93 UNTIL 1999/2000

17. The observations concerning the period 1992/93 to 1999/2000, with the exception of those contained in paragraphs 32 and 33, do not apply to the system introduced by the Agenda 2000 reform.

### *Absence of clear and quantified objectives and late evaluation of the support scheme*

18. The Financial Regulation applicable to the general budget of the European Communities stipulates that for budget appropriations quantified objectives must be identified and the progress of their realisation monitored <sup>(1)</sup>.

19. When adopting the 1992 reform the Council fixed two objectives: ensure better market balances and compensate the loss of income caused by the reduction of the institutional prices. As the aim of greater market equilibrium was not defined in any detail, it was difficult to evaluate it. As regards compensation for the loss of income (see paragraph 9), the Commission did not evaluate the support scheme as it existed between 1992 and 1999 until November 2001, despite the significant amounts involved (approximately 2 400 million euro per year), when the Agenda 2000 changes were already being implemented.

20. The Council regulation adopting the Agenda 2000 reform requires the Commission to submit to the Council within two years a report on changes in the oilseeds market and, where appropriate, to propose amendments to the regulation <sup>(2)</sup>.

### *Diversity of regionalisation plans due to the options available to the Member States*

21. The regional reference amount could be calculated, as the Member State chose, on the basis of historical average yields for either oilseeds or cereals. For each region mentioned in its regionalisation plan the Member State stated, on the basis of appropriate objective criteria, which formula was to be used.

<sup>(1)</sup> Article 2 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ L 356, 31.12.1977, p. 1).

<sup>(2)</sup> See Article 10(10) of Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support scheme for producers of certain arable crops (OJ L 160, 26.6.1999, p. 1).

22. In order to set the historical average yields for calculating the regional reference amounts each Member State drew up a regionalisation plan. For each production region the Member State provided detailed data relating to the areas and yields of cereals and oilseeds produced in the region over the five-year period 1986/87 to 1990/91 <sup>(3)</sup>. A historical average yield for cereals, and for oilseeds where possible, had to be calculated separately for each region. In every case the regionalisation plan was to ensure that the average yield for the period for the Member State in question was respected.

23. The Commission was to examine the regionalisation plans presented by the Member States and ensure that each plan was based on appropriate objective criteria and was consistent with available historical data <sup>(4)</sup>. The Commission could object to plans which were not consistent with the aforementioned criteria, especially as regards the average yield in the Member State in question.

24. There are three types of regionalisation plan: eight Member States (Austria, Denmark, Finland, Germany, Greece, Ireland, Luxembourg and the United Kingdom) elected to use the historical yields for oilseeds; four Member States (France, the Netherlands, Portugal and Spain) opted to take the historical yields for cereals as their base; three Member States (Belgium, Italy and Sweden) presented regionalisation plans which contained a mixture of historical yields for oilseeds and for cereals. The number of production areas in a single Member State varies from one to 255. Aware of the risks intrinsic to the considerable room for manoeuvre created by regionalisation, the Council has limited the payments per Member State <sup>(5)</sup>.

### *Unequal treatment of farmers in different Member States*

25. The possibility given by the Council Regulation to Member States of choosing between historical cereal or historical oilseed yields (see paragraph 21) has created unequal treatment of farmers in different Member States. In France and Spain, where historical cereal yields were used, the hectare aid was respectively 21,8 % and 25,1 % higher compared to the hectare aid based on historical oilseed yields. The impact on the EU budget for the period 1992/93 to 1999/2000 is estimated by the Court at 1 245 million euro for France and 729 million euro for Spain <sup>(6)</sup>.

<sup>(3)</sup> Article 3(2) of Regulation (EEC) No 1765/92.

<sup>(4)</sup> Article 3(4) of Regulation (EEC) No 1765/92.

<sup>(5)</sup> Article 1(4) of Council Regulation (EEC) No 231/94 of 24 January 1994 amending Regulation (EEC) No 1765/92 (OJ L 30, 3.2.1994, p. 2).

<sup>(6)</sup> The impact is estimated by comparing the actual expenditure with the theoretical expenditure if the hectare aid in France and Spain were based on historical oilseed yields.



**Regional reference amounts leading to additional budgetary expenditure**

26. Council Regulation (EEC) No 1765/92 <sup>(1)</sup> provides for the Commission to calculate the regional reference amounts on the basis of the Community reference amount as follows:

- (a) the observed reference price is substituted for the projected reference price; no account shall be taken of price variations within 8 % of the projected reference price;
- (b) for each production region the aid is adjusted according to the historical yields for oilseeds or cereals indicated in the regionalisation plan;
- (c) where appropriate, the calculation takes into account any reductions applied as a result of the maximum guaranteed area being exceeded during the current or the previous year.

27. EU regulations stipulate that the Commission shall calculate the observed reference price. This price has to be based on prices and offers on representative Community markets. Seven Member States periodically report to the Commission the prices on their markets for colza and rape seed, sunflower seed and bulk soya beans. As prices collected by the Member States are in some cases provided by interested parties such as crushing companies, the reliability of such data is questionable. The Court's audit of the calculation of the observed reference prices and the regional reference amounts leads to the following observations, of which the Commission was aware, though it did not take any steps to change things.

- (a) The final regional reference amount was to be determined by the Commission before 30 January in each marketing year. Consequently, the calculation of the observed reference price and the weighting coefficients did not take into account the prices of February to June although 30 % to 40 % of the harvest is contracted in that period. The prices of these months were not even taken into account for the calculation of the observed reference price of the following marketing year <sup>(2)</sup>. For France for example, the average market price for the marketing years 1993/94 until 1998/99 in those months was 1,91 % higher than in the other months due to storage costs. Omitting the higher prices leads to fixing higher aids. The Court estimates the resulting additional costs to the EU bud-

get at a total of 130 million euro for the marketing years 1993/94 to 1999/2000 <sup>(3)</sup>.

- (b) In its annual aid adjustment calculation, the Commission rounded the difference between the observed reference price and the projected reference price to the lower percentage point, although this was not provided for by the regulation <sup>(1)</sup>. This rounding increased Community expenditure by 95 million euro between 1992/93 and 1999/2000 <sup>(4)</sup>.
- (c) Additionally, in its annual aid calculation, the Commission systematically used a formula that was different from the formula in the Council regulation adopting the new regime in 1992. The use of a different formula increased the aid. The additional cost to the EU budget between 1992/93 and 1999/2000 amounts to 90 million euro <sup>(5)</sup>.
- (d) The Commission could not produce evidence to show that, during missions to Member States, either itself or the Member States, at any time, checked price quotations to verify if they represented real prices for delivery to a centre of demand, e.g. a crusher. In Italy for instance, the prices sent to the Commission were prices quoted on the four major commodity exchanges. The prices quoted on the Italian commodity exchanges are prices paid to farmers. They do not include additional costs for transport and collection borne by the crushing industry. Following a mission to Italy the Commission decided to make a correction for the transport costs. No correction was made for the collection costs, which vary between 10 euro and 13 euro per tonne. This amount explains the differences observed between prices communicated by Italy and the other Member States. The Italian prices have a weighting of 19 % for determining the observed reference price as calculated by the Commission. Consequently, the observed reference price as calculated by the Commission was too low. The additional charge to the EU budget for 1997/98 and 1998/99 can be estimated at 51,8 million euro <sup>(6)</sup>.

<sup>(3)</sup> The overcompensation is estimated by comparing the actual expenditure with the theoretical expenditure if the observed reference price was calculated on the basis of 12 months, i.e. from July to June. For the first year of application (1992/93), data for a 12-month period were not available.

<sup>(4)</sup> The increase of expenditure is calculated by comparing the actual expenditure with the theoretical expenditure if the difference expressed as a percentage between the observed and the projected reference price was not rounded.

<sup>(5)</sup> The additional cost is calculated by comparing the actual expenditure with the theoretical expenditure if the observed reference price was substituted in the initial calculation of the Community reference amount. The calculation made by the Commission corrected the hectare aid for the difference expressed as a percentage between the observed and the historical reference price.

<sup>(6)</sup> The additional charge is estimated by comparing the actual expenditure with the theoretical expenditure if the collection costs were added to the market prices communicated by Italy.

<sup>(1)</sup> Article 5(1) of Regulation (EEC) No 1765/92.

<sup>(2)</sup> A ruling by the Court of Justice of 7 March 2002 (C-328/00) confirms the Commission's discretionary powers in applying the calculation method to a reference period of seven months. This ruling concerns only the legality of the Commission's decision; it does not cover the sound financial management aspect.

28. As the additional expenditure mentioned in paragraph 27 is the result of decisions by the Commission, recovering funds from the Member States or from beneficiaries is no longer possible, given the legal principles of the protection of legitimate expectations and legal certainty.

### **Regionalisation plans containing overstated historical yields**

29. In its annual report concerning the financial year 1996 <sup>(1)</sup>, the Court examined the yields mentioned in some of the regionalisation plans. It had observed overstated average yields in the German regionalisation plan for oilseeds <sup>(2)</sup> and in the French and Spanish regionalisation plans for cereals <sup>(3)</sup>. The Commission did not require the Member States concerned to correct their regionalisation plans. In consequence the latter continued to be applied, resulting in greater Community expenditure than specified in the Community regulations.

30. Historical average yields were overstated in two other regionalisation plans:

- (a) for the establishment of the Portuguese regionalisation plan, Council Regulation (EEC) No 1765/92 refers to the data provided by Portugal under Regulation (EEC) No 3653/90 <sup>(4)</sup>. Analysis of these data gives a weighted average yield of 2,5 t/ha. The Commission authorised Portugal to use a weighted average yield of 2,9 t/ha, which is equivalent to an increase of 16 % over the yield defined by the regulations;
- (b) the Italian regionalisation plan also contains overstated yields. Over the reference period 1986 to 1990 approximately 20 % of the oilseed produced in Italy was, in fact, from areas of land that produced two crops per year, first cereals and then soya beans. For the purpose of calculating historical average oilseed yields, the Italian authorities took account of total oilseed production, including production from areas yielding two crops a year. However, total oilseed production was then expressed as a ratio of the total area less the area that produced two crops per year. On that basis, the Italian authorities reported to the Commission a weighted average yield of 3,74 tonnes per hectare for oilseed. However, the real average yield for oilseeds in the period 1986 to 1990 was only 3,07 t/ha <sup>(5)</sup>. When informed of this method of calculation, the Commission told the Italian authorities that it would challenge neither the method itself nor the results produced by it.

<sup>(1)</sup> OJ C 348, 18.11.1997, p. 70.

<sup>(2)</sup> Paragraph 3.23 of the annual report concerning the financial year 1996.

<sup>(3)</sup> Paragraph 3.22 of the annual report concerning the financial year 1996.

<sup>(4)</sup> Council Regulation (EEC) No 3650/90 of 11 December 1990 on measures to strengthen the application of the common quality standards for fruit and vegetables in Portugal (OJ L 362, 27.12.1990, p. 22).

<sup>(5)</sup> Source: Eurostat — 'New Cronos' statistics.

31. The Court estimates that the total financial impact of the observations set out in paragraphs 29 and 30 was a charge to the Community budget of 729,3 million euro of expenditure over the period 1993 to 1999, i.e. 474,7 million euro for oilseeds and 254,6 million euro for cereals <sup>(6)</sup>. As this expenditure is the result of regionalisation plans accepted by the Commission, it can no longer be recovered from the Member States or from beneficiaries in view of the legal principles cited in paragraph 28.

32. The Agenda 2000 reform still provides for regionalisation plans containing yields which are higher than historical average yields:

- (a) for Spain and Italy the Council allowed average yields of 2,9 and 3,9 tonnes/hectare <sup>(7)</sup>, compared with the historical cereal yields of 2,513 and 3,78 tonnes/hectare. The Council's decision thereby had the effect of increasing the real historical average yields by 15,4 % and 3,2 %;
- (b) in Portugal's case <sup>(8)</sup>, the Commission re-authorised the average yield of 2,9 tonnes/hectare, instead of 2,5 tonnes/hectare (see paragraph 30(a)).

33. Furthermore, the Court's previous observations <sup>(9)</sup> about the regionalisation plan for cereals in Germany will also be applicable to oilseeds from the 2002/03 year onwards, and those concerning France's regionalisation plan continue to apply for all arable crops (see paragraph 29). The resulting increased payments are greater than those specified in the Community regulations.

### **PRODUCTION OF INDUSTRIAL CROPS ON SET-ASIDE LAND**

#### ***The obligation to set aside arable land***

34. In 1992, the Community introduced the obligation for producers to set aside a fixed percentage of their arable land in order to qualify for compensatory payments <sup>(10)</sup>. For this obligation,

<sup>(6)</sup> The financial impact of overestimated historical yields is calculated in the following way: the difference between the average of the historical yields and the average of the yields selected in the regionalisation plan is expressed as a percentage of the latter average. This percentage is applied to total budgetary expenditure for 1993 to 1999. The result of this calculation is 474,7 million euro for oilseeds and 254,6 million euro for cereals.

<sup>(7)</sup> Article 3(5) of Regulation (EC) No 1251/1999.

<sup>(8)</sup> Council Regulation (EEC) No 3653/90.

<sup>(9)</sup> Paragraph 3.22(a) of the Court's annual report concerning the financial year 1996. The Court pointed out that, contrary to the rules, the average yield in the new *Länder* was not equal to the average of the yields in the old *Länder* but was 0,04 t/ha greater.

<sup>(10)</sup> Article 7 of Regulation (EEC) No 1765/92.

farmers are compensated with Community area aid. The obligation applies to all arable land. The minimum set-aside rate was initially set at 15 % and is re-examined every year to take account of production and market developments. Since its introduction, it has varied between 5 % and 15 %.

35. In 1992, the Community also introduced the 'industrial set-aside system'. The latter consists of the possibility of using set-aside land to produce materials used in the manufacture, in the Community, of products which are not primarily intended for human or animal consumption, on condition that effective control systems are implemented <sup>(1)</sup>. During the period 1992 to 1999, some 7 % to 18 % of oilseeds were produced on set-aside land.

### ***A difficult system to control***

36. The Commission laid down the procedures for implementing industrial set-aside <sup>(2)</sup>. In order to ensure that seed is used for industrial purposes the industrial set-aside system is subject to heavy administrative constraints, for both traders and the control administration. The primary raw material grown on set-aside land must be the subject of a contract between the producer and either the collector or the processor. The contract must specify, amongst other things, the area in question, the forecast yield and the amount of security provided. A copy of the contract must be sent to the control administration and the latter verifies areas and crops. Delivery and receipt of the harvest must be notified to the administration. The producer is under an obligation to deliver all the raw material harvested and the collector or the first processor has an obligation to accept it and guarantee the use within the Community of an equivalent quantity of the raw material in the manufacture of non-food products.

37. The collector or the first processor must provide a guarantee calculated on the basis of an amount of 250 euro/hectare. For each raw material the security is released pro rata in line with the quantity processed, provided that the competent national authority of the collector or the first processor has obtained proof that the authorised final destination has been reached.

38. In those Member States visited where controls are centralised (Germany, France and the United Kingdom), a total workforce of 65 persons is employed to inspect the use of the seed by collectors and processors.

<sup>(1)</sup> Until 2001/02, industrial set-aside areas received aid for fallowing. As from the marketing year 2002/03, the rates of aid for fallowing and arable crops will be identical.

<sup>(2)</sup> The conditions governing industrial set-aside for the period to which the Court's audit relates are set out in Commission Regulation (EEC) No 334/93 of 15 February 1993 (OJ L 38,16.2.1993) which was repealed by Commission Regulation (EC) No 1586/97 of 29 July 1997 (OJ L 215, 7.8.1997, p. 3).

### ***A system entailing high potential penalties***

39. In order to ensure that all the grain produced on the set-aside land is delivered to the collector or the first processor, the regulations provide that the national authorities shall set representative yields every year. These representative yields are the minimum yields that must actually be obtained. They must be fixed before 31 July for colza and soya and before 31 August for sunflowers, i.e. approximately one month before the harvest. After those dates the contracts may no longer be cancelled; a shortfall of up to a maximum of 10 % of the representative yield may be permitted, but only in duly justified cases.

40. If producers do not succeed in supplying the required quantity, they are deemed not to have fulfilled their obligations in regard to the land under industrial set-aside, except in case of force majeure. In that case the penalties provided for in the regulation laying down procedures for implementing the integrated administration and control system (IACS) applicable to certain Community aid schemes <sup>(3)</sup> apply. Where the representative yield is not achieved, the area eligible for set-aside and the amount of aid are reduced <sup>(4)</sup>. In the case of a shortfall of 3 % or less, the aid is reduced proportionately. In the case of a shortfall of more than 3 % but less than 20 %, the amount of aid is reduced by twice the percentage of the shortfall. Shortfalls above 20 % lead to cancellation of the aid for set-aside. Where, following a proportional reduction, the area recognised as set-aside no longer reaches the rate for compulsory set-aside, the aid for all the arable crops is likewise reduced proportionately.

### ***Shortcomings in the management by the Commission***

41. The Community regulations of July 1997 do not specify how the representative yields are to be determined. In April 1998 the Commission issued an explanatory note, in which it proposed a non-binding approach for determining these yields. In two (Germany and Italy) of the five Member States visited, however, the authorities responsible for calculating the representative yields did not know of the existence of this note.

42. The explanatory note did not set any standard quality to be used for compliance with representative yields. In Germany, the real mass is converted into a standard mass, that is to say, it is calculated by taking an impurity level of 2 % and a moisture level of 9 %. In the other four Member States visited, the representative yield checks were carried out on the basis of the actual weight,

<sup>(3)</sup> Article 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ L 391, 31.12.1992, p. 36).

<sup>(4)</sup> Article 5(4) of Commission Regulation (EC) No 1586/97.

regardless of the levels of impurity and moisture. In the course of its audit, the Court found impurity levels of up to 20 % and moisture levels of up to 32 %. Determining the representative yields without setting these two parameters entails the risk of enabling producers to achieve the minimum amounts through artificially high moisture and impurity levels.

### **Shortcomings in management by the Member States**

43. Comparison of the national systems revealed that some national authorities were prepared to bend the system by setting relatively low representative yields. For example, examination of the representative yields fixed for the Spanish provinces of Cordoba and Seville for non-irrigated crops of sunflowers in 2000 showed that the average of these yields was only 60 % of the total yield obtained in the two provinces in question on non-set-aside land. These two provinces account for 26 % of the total area used for sunflower seed production in Spain. In Catalonia, the Court found that the competent authorities had fixed representative yields definitively, also at a very low level.

44. The obligation to process the raw materials into finished non-food products in the Community territory is one of the conditions for farming set-aside land. In Spain the Court found that a total amount of 2 248 tonnes of sunflower oil had been exported to Turkey. The Spanish authorities irregularly released the part of the security relating to this quantity of oil (1,25 million euro). The security should have been seized and paid into the Community budget. The exported oil represented 23 % of the Spanish industrial set-aside for the year in question (1998).

45. Where a producer could not manage to supply a quantity that was at least equivalent to the representative yield, the Italian authorities only applied a proportional reduction in the area covered by the contract, whatever the level of shortfall.

46. In Spain, the Court examined a sample of 49 contracts representing a total area of 1 125 hectares. In 11 cases, representing a total area of 231 hectares, the quantities delivered revealed shortfalls of above 3 %. Rather than imposing a penalty equal to double the shortfall, the Spanish authorities applied the reduction proportionately, and in only five cases. Community aid totalling 29 000 euro was therefore paid out without good reason.

47. In Italy, systematic failure to apply the specified penalties in cases of shortfalls in excess of 3 % of the representative yield led, in total, to undue payments for 86 hectares of set-aside for the years 1997 to 1999. In addition, the Court examined a sample of

19 cases which did not achieve minimum yields. In 15 of these cases, accounting for a total area of 793 ha, the minimum fallowing rate was no longer achieved, once it had been reduced proportionately. In eight of these cases, the Italian authorities had not applied the proportional reduction to the aid for the other arable crops, resulting in unjustified expenditure of 61 000 euro.

## **CONCLUSION AND RECOMMENDATIONS**

### ***Conclusion concerning the design of the measure***

#### **Absence of detailed objectives**

48. One of the objectives set by the 1991 reform was to guarantee greater market equilibrium. However, the Commission has not given further details about this objective so as to make it operational. Consequently, it has proved difficult to carry out the assessment required by the Financial Regulation to establish whether the objective has been achieved (see paragraphs 18 and 19).

#### **Unequal treatment of farmers in different Member States**

49. The 1991 reform offered Member States the option of using either historical oilseed yields or historical cereals yields to calculate the aid for oilseeds. This led to unequal treatment of producers located in different Member States. According to a Court estimate, this choice led, amongst other things, to around 2 000 million euro of additional budgetary expenditure between 1992 and 1999 in those Member States which had opted for historical cereal yields (see paragraph 25).

#### **The Agenda 2000 reform acts as a disincentive to growing oilseeds rather than cereals**

50. The Agenda 2000 reform set direct aid at the same level for cereals, oilseeds and fallow. It thus took a first step towards equal treatment for all arable crops and had rendered inapplicable certain constraints laid down in the Blair House Agreement. However, it favours cereal cultivation over oilseeds by retaining the system of intervention and payment of export refunds. According to estimates by the Commission, the average income per hectare generated by oilseeds can be expected to fall, whereas the average income generated by cereals should remain stable (see paragraph 16).

### **Conclusion concerning implementation of the measure**

#### **Late evaluation**

51. The second objective set by the Council at the time of the 1991 reform was to offset the loss of income resulting from the reduction of institutional prices by means of a compensatory payment to producers. This objective was specific enough to be subject to periodic evaluation, as required by the Financial Regulation.

52. Even though Community expenditure on the oilseed support scheme amounted to approximately 2 400 million euro a year for the period 1993 to 1999, the Commission did not assess the efficiency and effectiveness of the support scheme until November 2001, when the Agenda 2000 changes were already being implemented (see paragraph 19).

#### **Commission annual calculations led to additional budgetary expenditure**

53. Additional budgetary expenditure arising from the Commission's calculation of the observed reference prices and the regional reference amounts is estimated by the Court at 366 million euro for the period 1992/93 to 1999/2000 (see paragraph 27).

#### **Regionalisation plans containing overstated yields**

54. The level of the Community aid depends on the historical average yields shown in the regionalisation plans drawn up by the Member States. The German, Spanish, French, Italian and Portuguese regionalisation plans which the Commission formally approved contain overstated yields that resulted in expenditure of 729,3 million euro for the period 1993 to 1999, which was greater than the expenditure specified in the Community regulations (see paragraph 31).

55. The Agenda 2000 reform continues to use regionalisation plans with increased yields leading to additional expenditure (see paragraphs 32 and 33).

#### **Irrecoverable expenditure**

56. The additional expenditure charged to the European Union's budget and cited in paragraphs 53 and 54 is estimated to total approximately 1 100 million euro for the period 1993 to 1999. As this expenditure resulted from decisions taken by the Commission, it cannot legally be recovered (see paragraphs 28 and 31). This is also true of certain types of expenditure cited in paragraphs 32 and 33.

### **High potential penalties and shortcomings in the implementation of the industrial set-aside scheme in the Member States**

57. The industrial set-aside scheme is difficult to control (see paragraphs 36 to 38) but is essential for guaranteeing the remaining commitments of the Blair House Agreement. The penalties applicable in cases where representative yields are not complied with represent a considerable risk for beneficiaries of Community aid (see paragraphs 39 and 40).

58. The problem areas that were found and which had an impact on the budget are: the acceptance of seed with very high impurity and moisture levels (see paragraph 42), artificially low representative yields (see paragraph 43), incorrect application of the Community provisions on penalties (see paragraphs 46 and 47). After a delay of two years, the Commission has issued an explanatory note explaining the procedure for setting the representative yields, but without specifying the maximum impurity and moisture levels (see paragraphs 41 and 42).

59. In Spain, the Court noted a case of irregularity involving 1,25 million euro (paragraph 44).

#### **Recommendations**

60. The Court recommends:

- (a) that clear and quantified objectives be defined;
- (b) that the Commission should reassess the support given to products which may be grown instead of oilseeds;
- (c) that the Commission assess regionalisation plans applying sound financial management criteria in order to clarify and simplify legislation on regionalisation and in order to provide a fair treatment to final beneficiaries in different Member States;
- (d) that consideration be given to the advisability of adjusting historical average yields which are overstated in certain regionalisation plans (see paragraphs 32 and 33);
- (e) consideration of the extent to which the Community may recover undue aid payments:
  - of an amount still to be determined that was the result of not applying in Spain and Italy the prescribed penalties for non-compliance with the representative yield applicable to industrial crops (see paragraphs 46 and 47),
  - of 1,25 million euro due to the fact that, in Spain, a security was released even though the provisions of the regulations were not complied with (see paragraph 44).

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 17 and 18 July 2002.

*For the Court of Auditors*

Juan Manuel FABRA VALLÉS

*President*

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## ANNEX

**BLAIR HOUSE AGREEMENT****Memorandum of Understanding between the European Economic Community and the United States of America on oil seeds under GATT (OJ L 147, 18.6.1993, p. 26)**

1. European Community (Community) legislation for producers of rape and colza seeds, sunflower seeds, and soya beans is set out in Council Regulation (EEC) No 1765/92.

2. The Community shall implement the following additional adjustments to the benefits accruing to European producers under this programme in respect of crop-specific oil seeds payments.

3.

(a) The Community shall not engage in any market support expenditure in respect of rape and colza seeds, sunflower seeds and soya beans except in accordance with the terms and conditions provided pursuant to the Regulation specified in paragraph 1.

(b) The Community shall exclude from the benefits of the regime, the cultivation of 'confectionery sunflower seed' with effect from sowings for harvest in 1994.

4. The Community shall introduce a separate base area (SBA) for producers benefiting from the crop specific oil seeds payments system which shall respect the following principles:

- progressive implementation to affect those crops planted for harvest in 1994 and subsequent years,
- in recognition of the Treaties of Accession, full implementation for Spain and Portugal will commence in 1995/96.

5. The SBA system shall have the following components:

- a Community oil seeds base area shall be established for which crop specific oilseeds payments are made (the figures for EU-12 are set out in Annex),
- for a particular marketing year the applicable EU-12 oilseeds base area shall be reduced to reflect the annual set aside rate for arable crops fixed by the Council. In no year, however, shall the reduction be less than 10 % of the base.

6. In respect of any marketing year (without prejudice to the provisions of the corrective mechanism specified in Article 5(1)(d) of Regulation (EEC) No 1765/92 crop specific oil seeds payments shall be subject to the following additional discipline:

- for every 1 % of area planted benefiting from crop-specific oil seeds payments in excess of the Community oil seed base area (after reduction in conformity with paragraph 5), the compensatory payments to such oil seed producers shall be reduced by 1 %,
- any such decreases in compensatory payments applied to area planted above the SBA shall be applied in the same marketing year,
- in addition, the percentage decrease in the adjusted compensatory payment shall be carried forward to the following marketing year,
- however, in any year in which there is no decrease required in the compensatory payment (i.e. area planted is equal to or below the SBA (after reduction in conformity with paragraph 5), the compensatory payment in that year may return to the level of the base reference amount,
- subsequent adjustments in the compensatory payment shall be applied in the manner described above.

7. Should the by-products made available as a result of the cultivation of oil seeds on land set aside for the manufacture within the Community of products not primarily intended for human or animal consumption exceed one million metric tonnes annually expressed in soya bean meal equivalents, the Community shall take appropriate corrective action within the framework of the CAP reform.

8. The Community shall grant a tariff-rate quota for imports of 500 000 metric tonnes of corn into Portugal, beginning in the marketing year 1993/94. The within quota tariff rate shall be bound at such levels so as to ensure that the quota shall be filled.

9. The Community shall incorporate the commitments set forth in paragraphs 1 to 8 herein in the Community schedule of domestic support commitments to be annexed to the Uruguay Round Protocol to the GATT.

10. The United States agrees to forego any further compensation claim for impairment of the bindings. If either party considers this Agreement has been breached, the Parties agree to undertake binding arbitration in the GATT on the issues of breach, damage and remedy.

*Annex*

**EU-12 oil seed separate base area system <sup>(1)</sup>**

(Soya beans, rape and colza seeds and sunflower seeds)

Country/oilseed	Reference year <sup>(1)</sup>	
	1994/95	1995/96 and subsequent years <sup>(2)</sup>
	Hectares	
Spain Sunflower seed	1 411 000	—
Portugal Sunflower seed	122 000	—
EU-12 Other	3 966 000	—
Total	—	5 128 000

<sup>(1)</sup> The term 1994/95 refers to the Community marketing year, i.e. oil seeds (both winter and spring sown) for harvest in 1994.

<sup>(2)</sup> It is understood that, should the membership of the Community be expanded, this agreement will be amended to reflect an increase in the separate base area in an amount no more than the average level of production area of the acceding Member in the three years immediately preceding such accession.

<sup>(1)</sup> Figures to be reduced to reflect the annual set-aside rate for arable crops.



## THE COMMISSION'S REPLIES

### SUMMARY

#### VI.

(a) The 1992 reform of the CAP is evaluated progressively, sector by sector. In the case of arable crops the following evaluations have already been completed: durum wheat (1999), oilseeds (2001), starch and starch products (2002), set-aside (2002). Other sectors are included in the programme of evaluation activities planned by the Directorate-General.

(b) Because the CAP reform in 1992 led to a marked decline in the price of sunflowers and soya beans, the Council and Parliament amended the Commission's proposal in order explicitly to give the Member States the possibility of choosing between historical 'oilseeds' and 'cereals' yields.

The Commission does not agree with the Court's conclusions on the cases relating to the method of calculating aid, referred to in paragraph 27(a), (b) and (d). It believes that it did comply with the rules laid down by the Council. Consequently it cannot share the Court's conclusion regarding the extra cost to the budget calculated on the basis of the alleged incorrect application of the rules. The system criticised by the Court was replaced by Agenda 2000.

(d) The Commission believes that the regionalisation plans were drawn up in accordance with the rules in force. It does not intend to ask the Member States to amend them, particularly since they are an integral part of the Agenda 2000 reform.

(e) The Commission is aware of the cases cited by the Court and is currently considering what action should be taken under the clearance of accounts procedure.

#### VII.

(a) The implementation of agricultural measures is subject to evaluation every six years, under the provisions of the Financial Regulation. A summary of the activities carried out is given in document SEC(2002) 24 'Report to the Council on the evaluation activities of DG Agriculture 1997 to 2001'. In the case of forecasts, the programme of evaluation activities forms part of the annual management plan and includes a multi-year plan which is revised and completed in detail annually.

The objective of market equilibrium is a familiar concept, the exact nature of which changes according to the state of the market (equilibrium between demand and supply).

(b) The question of reassessing the support given to products that could be cultivated instead of oilseeds will be examined in the mid-term review.

(c) The Commission does not intend to ask the Member States concerned to change their regionalisation plans, because after discussions at Council level these plans were included in Agenda 2000.

(d) The cases concerning the industrial set-aside scheme are under consideration as part of the clearance-of-accounts procedure.

### HISTORY OF THE COMMON ORGANISATION OF THE MARKET (CMO) FOR OILSEEDS

16. The comments and the illustration relating to income per hectare <sup>(1)</sup> apply only to the years 1998 to 2003. Aid to oilseeds is gradually being brought into line with aid to cereals, at a time when prices are relatively low, with the result that income per hectare for oilseeds is falling. However, in the medium and long term, given sustained demand, the price of rapeseed and sunflower on the Community market should rise and help to increase producers' incomes.

<sup>(1)</sup> Income per hectare: aid per hectare + producer price \* profit.

**OBSERVATIONS REGARDING THE CMO FOR OILSEEDS FROM 1992/93 UNTIL 1999/2000**

19. The implementation of agricultural measures is subject to evaluation every six years, under the provisions of the Financial Regulation. A summary of the activities carried out is given in document SEC(2002) 24 'Report to the Council on the evaluation activities of DG Agriculture 1997 to 2001'. In the case of forecasts, the programme of evaluation activities forms part of the annual management plan and includes a multi-year plan which is revised and completed in detail annually.

The evaluation looked at changes in the relative profitability of oilseeds and competing crops before and after the reform. With only a few exceptions, direct aid offset the fall in the price of oilseeds. The evaluator concluded that producers' income had been safeguarded.

25. Because the CAP reform in 1992 led to a marked decline in the price of sunflowers and soya beans, the Council and Parliament amended the Commission's proposal in order explicitly to give the Member States the possibility of choosing between historical 'oilseeds' and 'cereals' yields.

The possibility of choosing between the historical cereal or oilseed yields allowed for the different regional growing conditions of the Member States during the respective reference period. To base the oilseeds payment on 'oilseeds' yields was more advantageous in regions where rapeseed, the most high-yielding oilseed, was grown, whereas for soya and sunflower a cereal based aid is in general a better compensation, as these crops have lower yields than rapeseed. In order not to disadvantage producers in the regions mainly growing soya and sunflower, the Council and Parliament decided to leave the choice to the Member States. The budgetary cost is a consequence of a clear policy decision by the Council, and the Commission has acted in conformity with the rules laid down by the Council.

The alignment of the area payments decided by Agenda 2000 provides only for the use of the historical cereal yield to introduce a non-crop specific payment for oilseeds.

The evaluation (see point 19) also looked at the impact of the regionalisation plans on production per region, from the point of view of the objective of market equilibrium. It found that the plans had allowed the attainment of regional objectives for the location of cultivation in relation to the location of demand for the products.

27. The Commission does not agree with the Court's conclusions on the cases relating to the method of calculating aid, referred to in point 27(a), (b) and (d). It believes that it did comply with the rules laid down by the Council. Consequently it cannot share the Court's conclusion regarding the extra cost to the budget calculated on the basis of the alleged incorrect application of the rules. The system criticised by the Court was replaced by Agenda 2000.

(a) The Council decided to fix the definitive amount before the end of January in order to pay producers on time. The calculation method used prices close to the harvest of the crop and the beginning of the marketing year covering up to 70 % of the crop sales. Later prices were not known to the Commission at the time the aid had to be fixed. Besides, prices from the months February to June are less influential for producers' incomes, because most producers sell their crops soon after harvest, and later price increases, calculated by the Court at a level of 1,91 % do not even cover the storage costs. So this element does not add anything to the farmer's revenue. The Commission indirectly took price increases later in the marketing year into account because the possibility of granting producers a marketing bonus, provided for in Article 11(5) of Regulation (EC) No 1765/92, was never used.

- (b) The calculation method was established to allow a correction in the case of a higher or a lower observed reference price than the provisional one. At the time the calculation method was established, it was impossible to predict whether prices would rise or fall. The calculation method used would have led to lower aid increases in the event of lower market prices, as was the case in the first year of application.
- (c) The formula used by the Commission, was presented to the Council during the adoption procedure.
- (d) The Commission saw no need to question the prices communicated by the Member States' ministries, especially as one official publication (*ZMP Ölsaaten Spezialinformation*) covered prices from three Member States, which were used alongside the prices communicated by the Member States concerned without any significant differences between the two sources. A mission to Italy was undertaken to verify transport costs in Italy and to calculate a supplement according to Regulation (EC) No 3405/93 after the Italian prices had been excluded in the previous years because they did not include transport costs. In years where the Italian prices were not in line with the prices communicated by other Member States they were excluded from the calculation. Only in 1997/98 would a different result have been reached.

However, the Commission takes note of the Court's observations and considers that to a large extent they reflect difficulties inherent in the deficiency payments support system. These problems have been resolved with the Agenda 2000 reform which provides for aid aligned with that for cereals.

28. The Commission has acted in conformity with the rules laid down by the Council.

29 to 31. The Council Regulation allows regionalisation and, indeed, the use of different choices of reference years (average five years minus best and worst) for yields and areas at a regional level. Moreover, not all data is necessarily available and precise to the extent implied by the Court (e.g. spring oilseed rape in Germany). Thus there is no precise or automatic mathematical link between the reference yield and the yields taken up in the regionalisation plan. That this is so is implicitly recognised in Regulation (EC) No 1765/92 itself, Article 3(4) of which states that the Commission may refuse a plan that is not compatible with historical data or the reference yield. Were it possible to make the precise mathematical link which the Court assumes, the Council text would surely oblige the Commission to reject any plan which does not correspond to a precise, automatic mathematical calculation of the yields.

The Commission does not intend to ask the Member States concerned to change their regionalisation plans, because after discussions at Council level these plans were included in Agenda 2000.

31. The Commission has acted in conformity with the rules laid down by the Council.

32 and 33. The historical reference yields resulting from application of the CAP reform in 1992 formed the basis for the Agenda 2000 discussions in the Council and Parliament and therefore indirectly form part of the Council decision.

#### **PRODUCTION OF INDUSTRIAL CROPS ON SET-ASIDE LAND**

41. The Regulation allows Member States to calculate yield either on an individual basis for the farms concerned or on a local basis. In the latter case Member States may choose the locations to be used for calculating yield. These may — but do not necessarily have to — correspond to the regions defined in their regionalisation plan drawn up in accordance with Regulation (EC) No 1251/1999.

The interpretative note distributed on several occasions provides the Member States with an acceptable framework for determining representative yields for non-food crops. However, the procedures and control measures actually applied in specific local situations are entirely the responsibility of the Member States.

42. The Commission would reiterate that non-food crops cultivated on set-aside land qualify for payments on the grounds of set-aside, not cultivation. All of the crop grown on set-aside land must be sent for non-food processing.

Monitoring could be tightened up by requiring the Member States to introduce minimum rates of impurities and moisture content associated with representative yield. However:

- with the exception of cereals intervention, there are no Community rules for setting quality standards, given that the aid is by its nature a flat-rate amount per hectare. The introduction of other criteria would make the system even more cumbersome, which might discourage use of the measure,
- the number of products qualifying for the non-food system is very large,
- the aim of checking minimum quantities supplied is to prevent part of the non-food oilseed production being sold on the food market. Since the development of biofuel production, which would still be subsidised under the new proposals for Commission directives on promoting the use of biofuels, there is no significant difference between the prices for non-food oilseeds and edible oilseeds.

43. In the case referred to in Catalonia for the marketing years 1998 and 1999, the main reasons for these corrections were the serious shortcomings in the control measures introduced under the IACS in the Autonomous Communities. The very low yields of industrial set-aside in Catalonia were specifically criticised among the shortcomings mentioned.

The Commission is aware of the shortcomings found in Andalusia. It will take appropriate measures under the clearance of accounts procedure (see paragraph 46).

44. This point will be investigated in accordance with the clearance of accounts procedure. Where necessary financial corrections will be applied.

45. See paragraph 47.

46. The Commission departments monitored the shortcomings described by the Court during previous missions. Flat-rate financial corrections have thus already been applied for the marketing years 1996 and 1997 (for Catalonia, see paragraph 43). The main reasons for these corrections were the serious shortcomings in the control measures introduced under the IACS in the Autonomous Communities. The very low yields of industrial set-aside in Andalusia were specifically criticised among the shortcomings mentioned.

According to the Spanish authorities an investigation has been launched to recover amounts wrongly paid for the marketing year 1998 in Andalusia. An inquiry by the authorities of the Autonomous Community into the situation relating to the 1999 and 2000 harvests concluded that the problems no longer existed. The Commission will ensure appropriate monitoring.

47. In 2000 the Commission identified problems in applying penalties and was considering applying, as part of the clearance-of-accounts procedure, a flat-rate correction to expenditure declared by Italy for the marketing years 1999 and 2000, largely because the Italian authorities do not systematically apply the reductions and

penalties provided for in the Regulation. The Commission therefore believes that the cases cited by the Court are covered by the flat-rate financial correction applied to Italy under the clearance of accounts procedure.

## CONCLUSION AND RECOMMENDATIONS

48. The objective of market equilibrium is a familiar concept, the exact nature of which changes according to the state of the market. Moreover, in the context of Agenda 2000, with the non-specific nature of aid per hectare which makes it possible to dispense with the maximum surface area set by the Blair House Agreement for oilseeds, it is not appropriate to set a quantitative objective. In the case of oilseeds, the questions in the evaluation focused on how effective the measures were in supplying the market. The evaluator used an assessment criterion appropriate to each specific situation of supply and demand, product by product.

49. First of all it should be recalled that the Council and Parliament amended the Commission's proposal explicitly to give the Member States the choice between historical 'oilseeds' or 'cereals' yields. This possibility of choosing between the historical cereal or oilseed yields made allowance for the different regional growing conditions of the Member States during the respective reference period. To base the oilseeds payment on 'oilseeds' yields was advantageous in regions where rapeseed, the most high-yielding oilseed, was grown, while for soya beans and sunflowers a 'cereals'-based aid was higher. In establishing their regionalisation plans Member States are responsible for their choice. The alignment of the area payments decided by Agenda 2000 provides only for the use of the historical cereal yield to introduce a non-crop specific payment for oilseeds.

50. The alignment of the oilseeds aid with the cereals aid allows producers to react to market signals and climatic conditions and to make their choice independently of the level of aid. The Commission is not of the opinion that after the alignment of oilseeds aid with cereals aid oilseeds area for each marketing year will be below the 1999 level. Oilseeds play an important role in crop rotation, and farmers' crop decisions will depend on the trend in prices for both oilseeds and cereals. Oilseed areas would increase if market prices for cereals were close to the level of the intervention price. The Commission's conclusion on the evolution of revenues is based on the assumption that prices of wheat will stay well above the intervention price and no refunds have to be granted due to positive development on the world market. Oilseed areas increased already in the period 2000 to 2002 in some regions e.g. in the new German *Länder*. Only with non-specific oilseeds aid will Community production be able to develop above the Blair House limit.

In Agenda 2000, the alignment of oilseeds aid with cereals aid is accompanied by a reduction in the intervention price for cereals, which restricts the effects obtained in the ex post simulation. The forecasts produced by the Commission suggest an increase in European production of oilseeds in the medium and long term, thanks to an increase in prices and yields.

51 and 52. In 2000, the Commission awarded a contract for an evaluation of European oilseeds policy for the period 1993 to 1999 to an independent consultancy. This report was finished in September 2001 and has been available on the DG AGRI website since November 2001. This detailed evaluation was carried out only recently because the oilseeds sector had to be viewed in conjunction with the cereals sector, where the CAP reform of 1992 has only applied fully since 1995.

53. The Court of Auditors makes four comments on the method of calculation used by the Commission to determine the level of aids and concludes from this that extra costs were incurred for the Community budget. The Commission believes that it complied with the rules laid down by the Council, as testified in its replies to paragraph 27(a), (b) and (d). Corrective measures were not, therefore, required. The system criticised by the Court of Auditors was replaced by Agenda 2000.

54 and 55. The Commission does not intend to ask the Member States concerned to change their regionalisation plans, because after discussions at Council level these plans formed a key element in the conclusion of Agenda 2000. The Commission acted in conformity with the rules laid down by the Council and therefore sees no ground for financial recoveries.

55. The historical reference yields resulting from application of the CAP reform in 1992 formed the basis for the Agenda 2000 discussions in the Council and Parliament and therefore indirectly form part of the Council decision.

56. The Commission has acted in conformity with the rules laid down by the Council.

58. The supply of seeds with a very high level of impurities and moisture content does not in itself constitute a failing of the non-food scheme with an impact on the budget. All of the crop harvested has to be delivered.

There would be a failing if the quantity delivered were fraudulently altered by artificially increasing the moisture content or level of impurities with a view to using part of the crop for other purposes.

The Commission believes that in the current situation, where the prices of oilseeds intended for the food and non-food markets are more or the same, the imposition of additional control measures relating to minimum levels of impurity and moisture content would be hard to justify in terms of cost-effectiveness (see reply to paragraph 42).

59. This point will be investigated in accordance with the clearance-of-accounts procedure. Where necessary financial corrections will be applied.

60.

- (a) The objective of market equilibrium is a familiar concept, the exact nature of which changes according to the state of the market (equilibrium between demand and supply).
- (b) The question of reassessing the support given to products that could be cultivated instead of oilseeds will be examined in the mid-term review of Agenda 2000.
- (c) From 2002 onwards oilseeds payments are aligned with cereals payment and there is a fixed aid based on cereals yields only in all Member States. This will simplify the regionalisation plans.
- (d) The Commission does not intend to ask the Member States concerned to change their regionalisation plans, because after discussions at Council level these plans were included in Agenda 2000.
- (e) As indicated at paragraphs 46 and 47, the Commission believes that the amounts wrongly paid have largely been recovered under the clearance-of-accounts procedure or by the Member States concerned themselves. It should be noted also that the amounts involved are relatively small.

This point will be investigated in accordance with the clearance-of-accounts procedure.

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