

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 290 final

Brussels, 16 June 1989

Proposal for a

COUNCIL REGULATION (EEC)

on scrutiny by Member States of transactions forming part of the
system of financing by the Guarantee Section of the European
Agricultural Guidance and Guarantee Fund and repealing
Council Directive 77/435/EEC of 27 June 1977

(presented by the Commission)

**PROPOSAL
FOR A COUNCIL REGULATION**

**on scrutiny by Member States of
transactions forming part of the system of financing by
the Guarantee Section of the European Agricultural Guidance and
Guarantee Fund (*)**

(*) New text in bold type

EXPLANATORY MEMORANDUM

1. This proposal for a regulation provides for an a posteriori system of control of the accounting documents of the firms benefiting from or liable for payments, in the context of financing by the European Agricultural Guidance and Guarantee Fund (EAGGF)-Guarantee Section. It replaces the system of accounting controls based on Directive 77/435/EEC⁽¹⁾.
11. In its special report of 17.10.1984 on the implementation of Directive 77/435/EEC⁽²⁾, the Court of Auditors set out the main weaknesses observed in the Member States and specified to what extent the Commission would be able to contribute to a more satisfactory implementation.
111. The provisions of Directive 77/435/EEC have been examined in the light of experience and it appears necessary to reorganise the system of accounting controls made by national authorities. It appears to be preferable to provide for this new system in a proposal for a regulation taking account of the provisions concerned.
- 1V. The original proposal for an EEC Council Regulation (relating to the control of payments of amounts granted at the time of export of agricultural products) presented to the Council on January 19, 1987⁽³⁾ and, following advice received from the Parliament, modified by the Commission on August 7, 1987⁽⁴⁾, provided for a system of accounting control on the firms who had received refunds on exportation. In this proposition relating to control, only physical and documentary controls have been retained while part of the accounting controls have been removed; these latter controls are therefore provided for in a single legal act which will thus cover all the operations financed by the EAGGF-Guarantee Section.

The new horizontal system of accounting controls is more effective in the fight against fraud and irregularities and provides for community finance participation in certain expenses.
- V. If the need arises the detailed rules for applying the controls can be described later by the Commission (via the procedure of the EAGGF Committee).

(1) O.J. N° L 172 OF 12.7.1977 PAGE 17
(2) O.J. N° C 336 OF 17.12.1984 PAGE 1
(3) O.J. N° C 29 OF 6.2.1987 PAGE 5
(4) O.J. N° C 239 OF 5.9.1987 PAGE 4

PROPOSAL
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on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Council Directive 77/435/EEC of 27 June 1977¹.

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas, under Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the Common Agricultural Policy, as last amended by Regulation (EEC) No 2048/88,² the Member States take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence;

Whereas scrutiny of the commercial documents of undertakings receiving or making payments can be a very effective means of surveillance of transactions forming part of the system of financing by the Guarantee Section of the EAGGF; whereas this scrutiny supplements other inspections already carried out by the Member States; whereas, furthermore, national provisions relating to scrutiny which are more extensive than those provided for in this Regulation are not affected by this Regulation;

1 OJ No L 172, 12.7.1977, p. 17.

2 OJ No L 185, 15.7.1988, p. 1.

Whereas Member States must be encouraged to reinforce the scrutiny of commercial documents of undertakings receiving or making payments which they have carried out in accordance with Directive 77/435/EEC;

Whereas the implementation by Member States of the rules arising from Directive 77/435/EEC has disclosed the need for certain provisions of that Directive to be amended on the basis of experience gained; whereas in view of the nature of the provisions concerned the amendments should be included in a regulation;

Whereas the documents used as a basis for such scrutiny should be determined in such a way as to enable the relevant activities of the undertakings to be fully scrutinized;

Whereas the undertakings to be scrutinized must be selected on the basis of the nature of the transactions carried out on their responsibility and the breakdown of the undertakings receiving or making payments according to their financial importance in the system of financing by the Guarantee Section of the EAGGF;

Whereas, furthermore, it is necessary to provide for a minimum number of inspections of commercial documents; whereas this number must be determined by a method which precludes substantial differences between the Member States by virtue of differences in the structure of their expenditure under the Guarantee Section of the EAGGF; whereas this method may be based on the number of undertakings of a certain importance in the system of financing by the Guarantee Section of the EAGGF;

Whereas the powers of the officials responsible for scrutiny and the obligations on undertakings to make commercial documents available to such officials for a specified period and to supply such information as may be requested by them should be defined; whereas it should also be stipulated that commercial documents may be seized in certain cases;

Whereas it is necessary to organize cooperation among the Member States on account of the international structure of agricultural trade and with a view to the completion of the internal market; whereas it is also necessary for a centralized documentation system concerning undertakings receiving or making payments established in third countries to be set up at Community level;

Whereas, while it is the responsibility of the Member States in the first instance to adopt their scrutiny programmes, it is necessary that these programmes be approved by the Commission so that it can assume its supervisory and coordinating role and to ensure that the programmes are adopted on the basis of appropriate criteria; whereas scrutiny can thus be concentrated on sectors or undertakings where the risk of fraud is high;

Whereas the departments carrying out scrutiny pursuant to this Regulation must be organized independently of the departments carrying out scrutiny prior to payment;

Whereas it is essential that each Member State establish a special department responsible for monitoring the application of this Regulation and for coordinating the general surveillance of scrutiny carried out in accordance with this Regulation; whereas the officials belonging to that department may make inspections of undertakings in accordance with this Regulation;

Whereas encouragement for reinforcing the departments responsible for the application of this Regulation should be provided in the form of a temporary, degressive Community contribution towards the expenditure incurred by Member States in engaging extra staff and towards the costs of training staff and equipping the departments;

Whereas an estimate should be made of the amount of the Community financing required for implementing this measure; whereas such amount forms part of the financial forecast attached to the Interinstitutional Agreement of 29 June 1988;¹ whereas the appropriations actually available will be determined under the budgetary procedure in compliance with that agreement;

Whereas information collected during the scrutiny of commercial documents must be protected by professional secrecy;

¹ OJ No L 185, 15.7.1988, Page 33.

Whereas arrangements should be made for an exchange of information at Community level so that the results of the application of this Regulation can be used to greater effect,

HAS ADOPTED THIS REGULATION:

ARTICLE 1

1. This Regulation relates to scrutiny of the commercial documents of undertakings receiving or making payments, hereinafter called "undertakings", in order to ascertain that transactions forming part of the system of financing by the Guarantee Section of the EAGGF have actually been carried out and have been executed correctly.
2. For the purposes of this Regulation "commercial documents" means all books, registers, vouchers and supporting documents, accounts and correspondence relating to the undertaking's business activity, in so far as these documents relate directly or indirectly to the transactions referred to in paragraph 1.

ARTICLE 2

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings. The scope and frequency of such scrutiny shall be determined by the competent authorities of the Member States in the light of the nature of the transactions to be scrutinized. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities under the system of financing by the Guarantee Section of the EAGGF in view of the financial importance of the undertakings in that system.

2. The scrutiny referred to in paragraph 1 shall apply each year to a number of undertakings which may not be less than half the undertakings whose receipts or payments, or the sum thereof, under the system of financing by the Guarantee Section of the EAGGF, amounted to more than ECU 60 000 for the year preceding that of the scrutiny.

It shall be compulsory for undertakings the sum of whose receipts or payments amounted to more than ECU 100 000 and which were not scrutinized in accordance with this Regulation during the preceding scrutiny period to be scrutinized.

Undertakings the sum of whose receipts or payments amounted to less than ECU 10 000 shall be scrutinized in accordance with this Regulation only for specific reasons to be indicated by the Member States in their annual programme as referred to in Article 10 of this Regulation.

3. In appropriate cases the scrutiny provided for in paragraph 1 shall be applied also to undertakings having a direct or indirect link with the undertakings referred to in Article 1 of this Regulation or with the transactions concerned.
4. The scrutiny period shall run from 1 July to 30 June of the following year.

Scrutiny shall cover at least the year preceding the scrutiny period; it may be extended to cover the three-year period preceding the scrutiny period.

5. The systematic scrutiny carried out pursuant to this Regulation shall not prejudice the inspections undertaken pursuant to Article 6 of Regulation (EEC) No 283/72 or those undertaken pursuant to Article 9 of Regulation (EEC) No 729/70.

ARTICLE 3

Where undertakings are required to keep particular book records of stock in accordance with Community or national provisions, inspection of these records shall, in appropriate cases, include a comparison with the commercial documents and, where appropriate, the actual quantities in stock.

ARTICLE 4

Undertakings shall keep the commercial documents referred to in Articles 1(2) and 3 for at least three calendar years, starting from the end of the calendar year in which they were drawn up.

ARTICLE 5

1. The persons responsible for the undertakings shall ensure that all commercial documents and additional information requested are supplied to the officials responsible for the scrutiny or to the persons empowered for that purpose.
2. The officials responsible for the scrutiny or the persons empowered for that purpose may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

ARTICLE 6

1. National provisions relating to seizure of commercial documents shall apply in any case which might constitute an irregularity to the detriment of the EAGGF on the part of an undertaking undergoing scrutiny.
2. Member States shall adopt appropriate measures to penalize natural or legal persons who fail to fulfil their obligations under this Regulation.

ARTICLE 7

1. Member States shall assist each other for the purposes of the scrutiny provided for in Articles 2 and 3 where an undertaking is established in a Member State other than that in which payment of the amount in question has or should have been made or received.
2. During the first quarter of the year following the year of payment, Member States shall send a list of the undertakings referred to in paragraph 1 to each Member State in which such an undertaking is established; the list shall contain all the details necessary to enable the Member State of destination to identify the undertakings. A copy of each list shall be sent to the Commission.
3. During the first quarter of the year following the year of payment, Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.

ARTICLE 8

1. Information collected in the course of scrutiny as provided for in this Regulation shall be protected by professional secrecy. It may not be communicated to any persons other than those who, by reason of their duties in the Member States or in the institutions of the Communities, are required to have knowledge thereof for the purposes of performing those duties.
2. This Article shall not prejudice national provisions relating to legal proceedings.

ARTICLE 9

1. Before 1 November following the scrutiny period Member States shall send the Commission a detailed report on the application of this Regulation.
2. The report must set out any difficulties encountered and put forward, where appropriate, suggestions for improvements.
3. The Member States and the Commission shall have regular exchanges of views on the application of this Regulation.

ARTICLE 10

1. Member States shall draw up forward programmes for scrutinies to be carried out pursuant to Article 2 of this Regulation during the subsequent scrutiny period.
2. Each year, before 15 March, the Member States shall send the Commission their programme as referred to in paragraph 1 and shall specify:
 - the number of undertakings to be scrutinized and their breakdown by sector on the basis of the amounts relating to them;
 - the criteria adopted for drawing up the programme.
3. The forward programmes referred to in paragraph 1 must be approved by the Commission, which shall send its requests for amendments, if any, to the Member State concerned before 15 May.

4. Programmes may be the subject of subsequent amendments rendered necessary during the execution of the programme. Amendments shall be notified to the Commission as quickly as possible. Within two months from the receipt of such notification, the Commission shall make known its approval of the amended programme or its requests for changes to the Member State concerned.

ARTICLE 11

1. Each Member State shall set up a special department responsible for monitoring the application of this Regulation and for,
 - the performance of the scrutiny provided for herein by officials employed directly by that special department, or
 - the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.

Member States may also provide that scrutinies to be carried out pursuant to this Regulation are allocated between the special department and other national departments, provided that the former is responsible for their coordination and general surveillance.

2. The department or departments responsible for the application of this Regulation must be organized in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny carried out prior to payment.
3. In order to ensure that this Regulation is properly applied the special department referred to in paragraph 1 shall take all the measures necessary.

4. The special department shall be responsible in addition for:

- training the national officials responsible for carrying out the scrutiny referred to in this Regulation, to enable them to acquire sufficient knowledge for performing their duties;
- administering the scrutiny reports and any other documents relating to the scrutinies carried out and provided for under this Regulation.

5. The department shall be entrusted by the Member State concerned with all the powers necessary to perform the tasks referred to in paragraphs 3 and 4.

It shall consist of a sufficient number of officials who are suitably trained to carry out those tasks.

ARTICLE 12

The Community shall contribute towards the expenditure actually incurred by Member States in remunerating personnel recruited as from 1 January 1990 and intended to be employed only:

- on the staff of the special department referred to in Article 11 (1) or
- on the staff of other national departments, provided that such personnel is employed solely in performing the scrutiny provided for in this Regulation.

The Community financial contribution shall be at the rate of 50% for the first three years and 25% for the fourth and fifth years, for a period of five years starting from 1 January 1990, up to an overall amount of

- ECU 500 000 for the first three years and ECU 250 000 for the fourth and fifth years in the case of the Federal Republic of Germany, Spain, France, Italy and the United Kingdom;
- ECU 250 000 for the first three years and ECU 125 000 for the fourth and fifth years in the case of Belgium, Denmark, Greece, Ireland, the Netherlands and Portugal, and
- ECU 50 000 for the first three years and ECU 25 000 for the fourth and fifth years in the case of Luxembourg.

For the purposes of this Regulation "remuneration" means the salaries after tax, of the officials responsible for the application of this Regulation and the travel costs necessitated by the performance of their duties.

ARTICLE 13

The Community shall contribute towards the expenditure incurred by Member States in training the staff of the departments responsible for the application of this Regulation at the rate of 50% for the first three years and 25% for the fourth and fifth years, for a period of five years with effect from 1 January 1990, up to an overall amount of:

- ECU 100 000 for the first three years and ECU 50 000 for the fourth and fifth years in the case of the Federal Republic of Germany, Spain, France, Italy and the United Kingdom;
- ECU 50 000 for the first three years and ECU 25 000 for the fourth and fifth years in the case of Belgium, Denmark, Greece, Ireland, the Netherlands and Portugal, and
- ECU 10 000 for the first three years and ECU 5 000 for the fourth and fifth years in the case of Luxembourg;

ARTICLE 14

The Community shall contribute towards the expenditure actually incurred by the Member States in respect of the purchase of data processing and office equipment required by the departments responsible for the application of this Regulation, at the rate of % up to a maximum amount of:

- ECU 100 000 for the Federal Republic of Germany, Spain, France, Italy and the United Kingdom;
- ECU 60 000 for Belgium, Denmark, Greece, Ireland, the Netherlands and Portugal, and
- ECU 20 000 for Luxembourg;

ARTICLE 15

1. The maximum amount of Community expenditure deemed necessary for carrying out the measure introduced by this Regulation shall be ECU 5.74 million for the first year, ECU 4.86 million for the second and third years and ECU 2.43 million for the fourth and fifth years.
2. The amount of the appropriations available each year shall be determined by the budget.

ARTICLE 16

The annual amount of expenditure borne by the Community shall be fixed by the Commission on the basis of data provided by the Member States.

ARTICLE 17

Detailed rules for the application of this Regulation shall be adopted where necessary, in accordance with the procedure laid down in Article 13 of Regulation (EEC) No 729/70.

ARTICLE 18

Article 9 of Regulation (EEC) No 729/70 shall apply to the scrutiny of specific expenditure financed by the Community under this Regulation.

ARTICLE 19

Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organized under this Regulation and to the data processing systems referred to in Article 14.

ARTICLE 20

1. Directive 77/435/EEC is hereby repealed.
2. In all Community Instruments where reference is made to Directive 77/435/EEC, such reference shall be deemed to refer to the corresponding articles of this Regulation.

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

Done at Brussels,

For the Council

FINANCIAL STATEMENT

Date : 1.6.1989

1. BUDGET HEADING : 298 APPROPRIATIONS : 70 Mio ECU (including 6 Mio for Directive 77/435)

2. TITLE : Proposal for an EEC Council Regulation relating to controls by Member States of the transactions relating to the financing system of the EAGGF guarantee section, repealing Council Directive (EEC) n°77/435 of 27 June 1977.

3. LEGAL BASIS : Article 43 of the Treaty.

4. AIMS OF PROJECT :
New system of accounting controls for firms benefiting or responsible for payments under the EAGGF-Guarantee system; reinforcement of the fight against fraud and irregularity.

5. FINANCIAL IMPLICATIONS 5.0 EXPENDITURE - CHARGED TO THE EC BUDGET (1) - NATIONAL BUDGET	PERIOD OF 12 MONTHS	CURRENT FINANCIAL YEAR (89)	FOLLOWING FINANCIAL YEAR (90)
		5.74 Mio Ecu Maximum	NONE

5.0.1 ESTIMATED EXPENDITURE	1991	1992	1993	1994
	4.86 Mio Ecu maximum	4.86 Mio Ecu maximum	2.43 Mio Ecu maximum	2.43 Mio Ecu maximum

5.2 METHOD OF CALCULATION
Maximum budgetary effects 1990-1994 : SEE ANNEXE

6.1 WILL FUTURE BUDGET APPROPRIATIONS ENTERED IN THE RELEVANT CHAPTER OF THE CURRENT BUDGET ?

6.2 WILL THERE BE TRANSFER BETWEEN CHAPTERS OF THE CURRENT BUDGET ?

6.3 WILL FUTURE BUDGET APPROPRIATIONS BE NECESSARY ?

OBSERVATIONS :
(1) The reinforcement of controls could have a preventive effect on fraud and irregularity and lead to the discovery of irregularities for which unduly amounts could be recovered.
(2) The national expenses for the payment of extra staff and for personnel training will necessarily increase

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PROPOSITION DE MODIFICATION DE LA DIRECTIVE 77/435/CEE

Effets budgétaires maximaux pendant les 5 premières années

1) **Calcul de base**

a) 2 groupes d'Etats membres

- groupe A : RFA, Espagne, France, Italie, Royaume-Uni
- groupe B : Belgique, Danemark, Grèce, Irlande, Pays-Bas et Portugal

et le Luxembourg.

b) Rémunération (art.12) :

Calcul à partir de :

- pour A : 1.000.000 ECU
- pour B : 500.000 ECU
- pour Luxembourg : 100.000 ECU

pour les trois premières années le maximum a été obtenu en multipliant ces montants avec 50 %, pour les deux dernières avec 25 %.

c) Frais de formation (art.13) :

Calcul à partir de (20% des rémunérations sous a)):

- pour A : 200.000 ECU
- pour B : 100.000 ECU
- pour Luxembourg : 20.000 ECU

pour les trois premières années le maximum a été obtenu en multipliant ces montants avec 50 %, pour les deux dernières avec 25 %.

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2) Calcul par annéeAnnée 1 - 1990 (50 % + frais d'installation à 100%)

a) pour rémunérations (art.12)

500.000 X 5	=	2.500.000
250.000 X 6	=	1.500.000
50.000 X 1	=	50.000

 4.050.000 ECU

b) pour formation (art.13)

100.000 X 5	=	500.000
50.000 X 6	=	300.000
10.000 X 1	=	10.000

 810.000 ECU

c) pour matériel informatique et bureautique (art.14)

100.000 X 5	=	500.000
60.000 X 6	=	360.000
20.000 X 1	=	20.000

 880.000 ECU

TOTAL = **5.740.000 ECU**
Année 2 et Année 3 1991-1992 (50 %)

a) pour rémunérations (art.12)

500.000 X 5	=	2.500.000
250.000 X 6	=	1.500.000
50.000 X 1	=	50.000

 4.050.000 ECU

b) pour formation (art.13)

100.000 X 5	=	500.000
50.000 X 6	=	300.000
10.000 X 1	=	10.000

 810.000 ECU
TOTAL (par année) : 4.860.000 ECU

Année 4 et Année 5 1993-1994 (25 %)

a) pour rémunération (art.12)

250.000 X 5	-	1.250.000
125.000 x 6	-	750.000
25.000 X 1	-	25.000
		<hr/>
		2.025.000 ECU

b) pour formation (art.13)

50.000 X 5	-	250.000
25.000 X 6	-	150.000
5.000 X 1	-	5.000
		<hr/>
		405.000 ECU

TOTAL(par année) = 2.430.000 ECU

3) Effet budgétaire total (maximun) pour tout le projet pendant les cinq années :

Année 1 (1990):	5.740.000 ECU
Année 2 (1991):	4.860.000 ECU
Année 3 (1992):	4.860.000 ECU
Année 4 (1993):	2.430.000 ECU
Année 5 (1994):	2.430.000 ECU

TOTAL 20.320.000 ECU

Fiche d'Impact sur les PME et l'emploi du projet de proposition de règlement du Conseil relatif aux contrôles, par les Etats membres, des opérations faisant partie du système de financement par le FEOGA - section "Garantie", abrogeant la directive du Conseil n° 77/435/CEE du 27 juin 1977

1. OBLIGATIONS ADMINISTRATIVES DECOULANT DE L'APPLICATION DE LA LEGISLATION SUR LES ENTREPRISES :

Le projet prévoit un nouveau système de contrôles comptables a posteriori qui ne devrait pas entraîner d'obligations administratives nouvelles pour les entreprises.

2. AVANTAGES POUR L'ENTREPRISE

Eventuellement des PME peuvent participer à l'organisation des cours de formation (art. 13 de la proposition) et à l'installation de matériel informatique et bureautique (art. 14 de la proposition).

3. INCONVENIENTS POUR L'ENTREPRISE (coûts supplémentaires)

Non

4. EFFETS SUR L'EMPLOI

Nuis sur les emplois des entreprises

5. Y A-T-IL EU CONCERTATION PREALABLE AVEC LES PARTENAIRES SOCIAUX ?

Non

6. Y A-T-IL UNE APPROCHE ALTERNATIVE MOINS CONTRAIGNANTE ?

Le nouveau système de contrôle, visé sous 1 ne devrait pas entraîner de nouvelles contraintes pour les entreprises.



Commission of the European Communities

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16.6.1989

Office for Official Publications of the European Communities
L - 2985 Luxembourg

Series: DOCUMENTS

1989 — 22 pp. — Format: 21.0 × 29.7 cm

EN

ISSN 0254-1475

ISBN 92-77-51091-9

Catalogue number: CB-CO-89-253-EN-C

COM(89) 290 final

DOCUMENTS

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Catalogue number: CB-CO-89-253-EN-C

ISBN 92-77-51091-9



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