

## I

(Information)

## COURT OF AUDITORS

## SPECIAL REPORT No 7/2001

**concerning export refunds — destination and placing on the market, together with the Commission's replies***(pursuant to Article 248(4), second subparagraph, EC)*

(2001/C 314/01)

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#### LIST OF ABBREVIATIONS

DG AGRI	Directorate-General for Agriculture
DG RELEX	Directorate-General for External Relations
EAGGF	European Agricultural Guidance and Guarantee Fund
HZA	German paying agency
Ofival	French paying agency — meat products
OLAF	European Anti-fraud Office
PVE	Dutch paying agency — meat products
UCLAF	Unit for the Coordination of Fraud Prevention
ZA	Austrian paying agency

**SUMMARY**

I. Export refunds cost the EU taxpayer some 5 billion euro each year. The export refund system provides for refund rates for certain products to be differentiated by destination, provided satisfactory evidence (proof of arrival) is presented that the goods have been placed on the market at the declared destination. A variety of documents can be accepted as such evidence, ranging from customs import declarations issued by the country of destination, to bank documents evidencing payment. There are special rules for the issue of documents by international supervisory companies.

II. In the Court's opinion, it is also a requirement that products attracting non-differentiated refunds, i.e. one rate for the same product to all destinations, are placed on the market in a country which is not a member of the EU (non-member country). However, evidence for goods attracting non-differentiated refunds is only required in cases of doubt.

III. Ensuring that proofs of arrival are valid is a complex, time-consuming task and there is always the possibility of an uncertain result. In 1992, the Commission provided a catalogue of model proofs to assist Member States in this task but this has not been updated. There are large disparities between Member States as regards checks carried out on proofs of arrival (see paragraphs 9 to 13).

IV. Whilst the Commission evaluates proofs presented for transactions it has selected for testing under its clearance of accounts procedure, it has not audited the proof of arrival system apart from that identified in paragraph 7. It has nevertheless identified major weaknesses in Member States' checks at the time of export, which have resulted in financial corrections amounting to 188 million euro (see paragraphs 7 and 8).

V. Some Member States have not carried out the required audits of approved supervisory companies. Where such audits have been carried out, serious shortcomings and irregularities have been detected. These have not always been satisfactorily followed up. When approval has been withdrawn in one Member State, the withdrawal has not been effective for other members of the same group of companies approved in other Member States. Approvals were not always withdrawn when they should have been (see paragraphs 17 to 32).

VI. Member States did not issue guidelines to their embassies on checks to be carried out before issuing certificates of unloading. Embassy proofs were, for the most part, issued on the basis of documentary checks. Physical checks at the time of unloading were rarely performed (see paragraphs 35 to 38).

VII. OLAF and DG AGRI have detected or caused to be detected a number of serious irregularities and suspected frauds in some of the most important export refund destinations. Supervisory companies are implicated in some of these irregularities. The Court's audit has uncovered further suspected irregularities and instances where the justification for payment of refunds to certain destinations is questionable (see paragraphs 39 to 80). The suspected irregular payments referred to in this report amount to some 100 million euro. The Commission should ensure that recovery action is initiated in those cases where this has not already been done.

VIII. The Court considers that for those products where export refunds are required it would be preferable to apply one refund rate for each product to all destinations. However, the Court recognises that at the present time for various reasons, including existing trade agreements, this is not possible. In view of the compliance cost burden on administrations and trade alike, and in view of the minimal assurance provided by the system of proofs of arrival, consideration should therefore be given:

- to requiring proofs of arrival only in cases of doubt, or for high risk destinations,
- to intensifying the *a posteriori* checks carried out by Member States on placing on the market to include consultation of shipping and container movement databases and records held by hauliers for all transactions selected for audit (see paragraphs 84 to 86).

## INTRODUCTION

1. Export refunds are paid to exporters of agricultural products to non-member countries. Their purpose is to compensate exporters for the difference between EU internal market prices and those prevailing on the world market. Thereby, they enable exporters to open, or keep open, export markets for EU products <sup>(1)</sup>. They also contribute to maintaining the internal market equilibrium. Payment of export refunds is not justified where the operation is not a normal commercial transaction <sup>(2)</sup>, since it has no real economic purpose and is effected solely to obtain a payment from the Community <sup>(3)</sup>.

2. For some products, such as beef and cheese, rates of refund vary according to the destination (differentiated refunds) and the exporter's entitlement to the refund is therefore dependent on the submission of proof that the goods have been placed on the market in the declared destination (proofs of arrival) <sup>(4)</sup>. For other product groups there is a single rate of refund for all destinations for each individual product (non-differentiated refunds). Except in cases of doubt, exporters are not required to submit proofs of arrival for non-differentiated transactions. In the Court's opinion, it is, nevertheless, a requirement that products attracting non-differentiated refunds are imported into a non-member country within 12 months of the date of export <sup>(5)</sup>.

3. Accredited agencies in Member States are responsible for making payments to exporters. The control of the legality and regularity of export refund claims is, in the first instance, the responsibility of Member State authorities.

<sup>(1)</sup> Observations submitted by the Commission in ECJ cases C-125/75 and C-89/93.

<sup>(2)</sup> Excluding food aid.

<sup>(3)</sup> Commission Regulation (EC) No 800/1999, recital 24 (OJ L 102, 17.4.1999).

<sup>(4)</sup> Article 16 of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999).

<sup>(5)</sup> Article 20(1)(c)(i) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999).

## THE COURT'S AUDIT

4. This report deals with the placing of goods on the market in non-member countries. It examines the Commission's management of this requirement including the justification for differentiated refunds; the problems created by such a system; and Member States *a priori* checks on the validity of proofs of arrival <sup>(6)</sup>.

5. The observations in this report are based on evaluation of Member States' systems for acceptance of proofs of arrival; evaluation of proofs of arrival; consultation of shipping and container movement databases and information on imports held by non-member countries; and, examination of information at OLAF concerning export refund destination irregularities. The period of reference for transaction testing was the 1998 EAGGF year. However, some of the cases described in the report relate to other EAGGF years.

## FINANCIAL BACKGROUND

6. In the 1998 EAGGF year, refunds totalled some 4 800 million euro (some 12,4 % of the EAGGF budget). *Table 1* shows the distribution of payments by measure; *Table 2* by exporting Member State; and *Table 3* principal destination. Payments of some 900 million euro were differentiated by destination. *Table 4* shows the principal destinations for these payments.

<sup>(6)</sup> These are checks carried out by paying agencies on proofs of arrival submitted by the exporters prior to the release of the guarantee. They also include the system of approval of supervisory companies for the purpose of issuing certificates of unloading and release for consumption.

Table 1  
Distribution of export refund payments by measure — 1998 EAGGF year

(Mio EUR)				
No of budget heading	Measure	Outturn 1998	Percentage of total	Cumulative
2 0 0 0-2 0 0 3	Refunds on milk and milk products	1 427	30	30
1 1 0	Refunds on sugar and isoglucose	1 265	26	56
2 1 0	Refunds on beef/veal	774	16	72
3 0 1 0-3 0 1 9	Refunds on certain goods obtained by processing agricultural products	544	11	83
1 0 0 0-1 0 0 3	Refunds on cereals	429	9	92
2 3 1 0-2 3 1 1	Refunds on eggs and poultrymeat	91	2	94
2 3 0 0	Refunds on pigmeat	74	2	95
1 5 0 0-1 5 1 0	Refunds on fresh fruit and vegetables	58	1	97
1 8 5 0	Refunds on rice	50	1	98
1 6 0	Refunds on products of the vine-growing sector	41	1	99
3 1 1 0-3 1 1 9	Refunds in connection with food aid	35	1	99
1 2 0	Refunds on olive oil	25	1	100
3 0 0	Refunds on cereals exported in the form of certain spirituous beverages	12	0	100
	<b>Total</b>	<b>4 826</b>		

NB: The amounts are rounded.  
Source: Budget outturn 1998.

Table 2

Distribution of export refund payments by exporting Member State — 1998 EAGGF year

(Mio EUR)			
Member State	Export refunds	Percentage of total	Cumulative percentage
France	1 355	28	28
Germany	652	13	41
Netherlands	630	13	54
Belgium	411	8	62
Italy	367	7	70
Ireland	343	7	77
Denmark	339	7	84
United Kingdom	318	6	90
Spain	179	4	94
Finland	115	2	96
Austria	62	1	97
Sweden	58	1	99
Greece	45	1	99
Portugal	27	1	100
Luxembourg	0	0	100
<b>Total <sup>(1)</sup></b>	<b>4 902</b>	<b>100</b>	<b>100</b>

<sup>(1)</sup> Raw data, before reconciliation with Table 104 ('EAGGF-Guarantee section expenditure and forecasts' — transmitted by each Member State to the Commission).

NB: The amounts are rounded.

Source: Export refund data supplied by Member States EAGGF year 1998.

Table 3

Total export refund payments by principal destination — 1998 EAGGF year

(Mio EUR)			
Destination	Refunds	Percentage of total	Cumulative percentage
Russia	591	12,1	12,1
Algeria	344	7,0	19,1
Saudi Arabia	270	5,5	24,6
Egypt	237	4,8	29,5
Syria	148	3,0	32,5
Iran	144	2,9	35,4
USA	134	2,7	38,2
Lebanon	130	2,6	40,8
Israel	118	2,4	43,2
United Arab Emirates	100	2,0	45,2
Japan	97	2,0	47,2
Iraq	84	1,7	48,9
Norway	74	1,5	50,4
Switzerland	72	1,5	51,9
Libya	59	1,2	53,1
Morocco	58	1,2	54,3
Mexico	55	1,1	55,4
Other	2 188	44,6	100,0

Source: Member States' export refund data EAGGF year 1998.

Table 4

**Differentiated export refund payments by destination — 1998  
EAGGF year**

Destination	Payments	Percentage of total	(Mio EUR)
			Cumulative percentage
Russia	299	32	32
Egypt	138	15	47
Lebanon	70	8	55
Iran	63	7	61
Saudi Arabia	62	7	68
USA	35	4	72
Japan	26	3	75
Algeria	23	2	77
Morocco	15	2	79
South Africa	11	1	80
United Arab Emirates	10	1	81
Tunisia	10	1	82
Israel	9	1	83
Croatia	8	1	84
Angola	8	1	85
Other	142	15	100
<b>Total <sup>(1)</sup></b>	<b>929</b>	<b>100</b>	<b>100</b>

<sup>(1)</sup> Raw data, before reconciliation with Table 104 ('EAGGF-Guarantee section expenditure and forecasts' — transmitted by each Member State to the Commission.

Source: Export refund data supplied by Member States EAGGF year 1998.

**CLEARANCE OF ACCOUNTS AUDITS**

7. During the course of its audits of the regularity of export refund payments the Commission has always evaluated the proofs of arrival presented for selected transactions. Having identified Germany as the principal user of supervisory company certificates, it has also initiated a specific investigation in respect of certificates of unloading presented by supervisory companies in that Member State (see paragraphs 29 and 30). Prior to the Court's audit, it had not, however, specifically audited the system for evidencing the placing of goods on the market in declared non-member destinations.

8. The Commission's clearance of accounts systems audits have principally been directed at the quality and incidence of physical controls of exported products. These audits have identified major weaknesses in the physical checks of the descriptions and quantities of products exported with refunds. As a result, significant financial corrections have been imposed, the latest of which have been set at 5 % of export refund expenditure for Belgium, Denmark, Germany, Greece, France, Italy and the United Kingdom, amounting in total to 188 million euro.

**QUALITY OF CHECKS ON PROOFS OF ARRIVAL**

9. Apart from the differences in the administrative requirements for different product sectors reflecting their specific characteristics, the requirement for presenting proofs of arrival creates a disproportionate administrative burden in relation to the amounts

involved. For example, refunds of 1 million euro were paid for a non-differentiated export of bulk sugar on the basis of a single customs endorsement that the goods had left the Community customs territory, whereas transport documents and proofs of arrival were required in addition for the export of a container of beef for which refunds of some 15 000 euro had been paid.

10. A variety of documents may be accepted as proofs of arrival <sup>(1)</sup>. The preferred documents are customs import declarations or certificates of importation issued by approved supervisory companies (primary proofs). If these are unobtainable, other documents, some of which are not accountable <sup>(2)</sup>, ranging from certificates of unloading to bank documents evidencing payment for the goods in question, may be accepted (secondary proofs).

11. In October 1992, DG AGRI distributed the results of a study covering the documents used as proofs of arrival by 58 non-member countries. Because of the constant changes to importation documents in non-member countries and the increasing use of computerised customs clearance procedures, this document rapidly became obsolete. At the moment, each paying agency bears the entire responsibility for evaluating the validity of the proofs of arrival which it receives. Apart from OLAF's initiative in the case of Russia (see paragraphs 43 to 47), there is no harmonisation and no operational procedure for the evaluation of the validity and regularity of primary and secondary proofs of arrival. Thus, for the same destination, the same type of proof of arrival may be accepted by one Member State and rejected by another according to each Member State's requirements.

12. The management and control systems for proofs of arrival differ from Member State to Member State and from paying agency to paying agency. Some paying agencies, such as the HZA-Hamburg Jonas in Germany, ZA Salzburg in Austria, Ofival in France and PVE in the Netherlands have a separate office responsible for collecting, analysing, checking and archiving the various proofs of arrival at destination which are attached to the applications for payment of refunds. These paying agencies have also designed a monitoring system which enables comparative studies to be made of the stamps, the signatures and the existence of the customs offices in the countries of destination. Nevertheless, the paying agencies in France and in the Netherlands do not exchange their information on the proofs of arrival. In Belgium, Greece, Spain and Finland, the paying agencies do not have an efficient system ensuring identification and monitoring of the proofs of arrival at destination.

13. Given the lack of coordination, the duplication in verification of proofs and the inconsistency in acceptance of proofs, the Commission should be responsible for coordinating verifications with non-member countries and for maintaining and updating the files of model proofs of arrival which Member States' paying agencies may accept.

<sup>(1)</sup> Article 16 of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999).

<sup>(2)</sup> An accountable document is, for example, one which is recorded in an accounting system and against which a debt is settled.

## THE EFFECT OF THE PROOF OF ARRIVAL SYSTEM ON RELEASE OF GUARANTEES

14. Refunds are payable in advance on condition that a guarantee is lodged. The guarantee is released when all required documents, including proofs of arrival have been presented and accepted.

15. The numbers of cases of non-released securities and corresponding amounts for the various Member States are shown in Table 5. Most of the open cases fall between 1995 and 1998, but some date back to 1990.

Table 5

### Outstanding guarantees — Advance payments and prefinanced goods

(Mio EUR)

Member State	No of cases	Value	Date
France/Ofival	2 103	123,0	10.6.1999
Italy	298	30,4	31.12.1998
Denmark	6 317	26,0	30.6.1998
Germany	1 697	17,8	16.11.1998
Spain	146	9,4	16.12.1998
Austria	31	0,8	21.12.1999

Source: Paying agency records.

16. The delays in release of the guarantees were variously justified as being old cases still before the national courts (all Member States listed in Table 5); the non-reliability of Russian customs documents (Denmark and Germany); the introduction of new computer systems combined with a high turnover of staff (Denmark); the separation of administrative tasks (Spain); or staff shortages (Italy). The system is further complicated in France where the management of guarantees is split between Customs and paying agencies. However, the number of non-discharged guarantees is also attributable to the complexities of the system of proofs of arrival.

## APPROVAL AND CONTROL OF SUPERVISORY COMPANIES

17. Supervisory agencies have to be approved for the issue of certificates of arrival by Member State authorities. The approvals are for three years at a time. The basis for approval of these agencies was laid out in a DG AGRI working paper in 1994 <sup>(1)</sup>. The

working paper also provides for control and verification procedures to be followed by the agencies for the issue of certificates and it defines Member States' responsibilities for controlling the performance of the agencies. The Annex contains a summary of the main requirements. Since 1999, provisions for the approval of supervisory companies have been incorporated in the basic export refund regulation. The only sanction foreseen for companies who fail to fulfil approval conditions or who issue irregular certificates is the withdrawal of the approval. When approval is withdrawn it should apply in all Member States. There are currently 28 supervisory companies approved by Member States, 15 of the approved companies belong to just four groups.

18. The issue of proofs of arrival, for which a charge of about 250 euro per document is made, may form only a minor part of the business services provided by supervisory companies to their clients. There is therefore the risk of a confusion of interest. In one case a supervisory company complied with the request from its client to certify the bill of lading weight only (United Kingdom). In another case a supervisory company, approved in the Netherlands, stopped issuing proofs because it wanted to keep its reputation clean.

19. Belgium, Greece, Spain, France, Finland, and the United Kingdom approved supervisory companies without prior audit to ensure that the conditions of approval laid out in the guidelines were fulfilled. Greece, France and the United Kingdom have rectified this when renewing approvals.

20. Only Germany had checked supervisory companies' methods for the issue of proofs on the spot in two non-member countries.

21. Belgium, Greece, the Netherlands and Finland have not audited the regularity of refund claims supported by supervisory company certificates against the underlying documentation held by those companies.

22. Belgium, Denmark, Germany, Spain, Finland and the United Kingdom could not readily identify claims supported by supervisory company certificates and therefore could not select claims for audit from the population of refund payments. Instead, certificates were selected for testing from the supervisory companies' own records without assurance that such records were complete.

<sup>(1)</sup> VI/2705/93 Rev. 7 26.10.1994.

23. There were no requests from one Member State to another to audit certificates which it had accepted and which had been issued by a supervisory company approved in another Member State <sup>(1)</sup>.

24. Suspected irregularities detected during the course of Member States' audits of supervisory companies were not followed up with a view to recovery (Belgium, Netherlands, United Kingdom).

25. Approvals were withdrawn for companies by the United Kingdom for inadequate records; by Italy for suspected complicity in an irregularity; and in Germany (see paragraph 29) and Greece for issue of irregular certificates.

26. When approval was withdrawn by one Member State, the approvals of associated companies within the same group were not withdrawn by other Member States, even though all members of the group use the same methods, personnel and information in non-member countries. Any failure to carry out the required checks at the destination would therefore apply equally to all approved associated companies. The Commission should therefore be directly responsible for approval of supervisory companies in order to ensure uniform treatment.

27. Even though the Dutch authorities established that a supervisory company had issued certificates without the necessary checks having been carried out at the time of unloading and customs clearance of the goods in non-member countries, they did not withdraw the approval of the company in question or initiate recovery action.

28. One approved company was implicated in the issue of irregular proofs of arrival in Jordan (see paragraphs 40 to 42).

29. At the initiative of the Commission's clearance of accounts unit, Germany checked all proofs of arrival relating to export of cattle and beef issued by supervisory companies. These checks identified irregular proofs of arrival for refund claims amounting to 72,1 million euro (17 % of the refunds paid between 1994 and 1996) and doubtful proofs for a further 175,5 million euro (40 %) <sup>(2)</sup>. Recovery orders, all of which are under appeal, have been issued for 60,4 million euro, covering the irregular proofs of arrival and inadequate transport documents. Based on the German report and several bilateral discussions, the Commission has imposed a financial correction of 25 %, some 20,8 million euro <sup>(3)</sup>, because of the grave systems weaknesses identified.

30. At the date of the audit, there had been no follow-up investigations in other Member States of certificates issued by the supervisory companies concerned in the German investigation. Companies belonging to the same group were also approved in eight other Member States. In addition to this, Spain, Italy, the Netherlands, Austria and Finland had accepted proofs issued by supervisory companies in Germany. Only Austria has quantified the refunds concerned which amount to some 3,7 million euro. The Commission should initiate investigations of all certificates issued by the companies concerned and accepted in other Member States.

31. Since 1996, OLAF investigations have uncovered irregularities of some 10,6 million euro involving proofs of arrival issued by supervisory companies approved in Germany, Italy and the Netherlands. This amount mainly concerns exports of beef and poultry to Jordan and wine to the former Yugoslav Republic of Macedonia.

32. In view of the irregularities, the absence of necessary checks and lack of follow-up action identified in paragraphs 17 to 31, little reliance can be placed on proofs of arrival presented by supervisory companies.

#### **COORDINATION OF THE PROCEDURES FOR APPROVAL OF SUPERVISORY COMPANIES FOR EXPORT REFUNDS AND FOOD AID**

33. In 1993, the Commission (DG RELEX) created a special approval procedure for control and supervisory companies which are candidates for the task of monitoring food aid programmes. Exports of agricultural products carried out within the framework of these programmes also allow the operators to take advantage of export refunds.

34. From 1993 to 2000, the various public tendering procedures launched by the Commission to select monitoring companies did not impose any obligation on the supervisory companies to obtain, in advance, the approval stipulated in the Community regulations concerning export refunds. The lack of co-ordination between the Commission's various departments (DG AGRI and DG RELEX) and of harmonisation in the approval procedures relating to control and supervisory agencies has led to non-approved companies issuing proofs of arrival at destination which were subsequently used to take advantage of export refunds.

<sup>(1)</sup> As a result of the Court's observations, Austria has initiated cross-checks for a random selection of such proofs.

<sup>(2)</sup> Paragraph 9 of the Summary Report on the financial clearance of the EAGGF Guarantee Section of 16 October 2000.

<sup>(3)</sup> Commission Decision 2001/137/EC (OJ L 50, 21.2.2001).



## RELIABILITY OF PROOFS OF ARRIVAL ISSUED BY MEMBER STATES' EMBASSIES

35. Member States' embassies may certify a primary proof as being a true copy of the original. They may also issue secondary proofs in the form of certificates of unloading <sup>(1)</sup>. These proofs should certify that the products have left the port area, or at least have not been reloaded for re-exportation. Regulatory conditions, similar to those for approval of supervisory companies, and issuing of certificates of unloading do not apply to embassies. It is however implicit that in order to issue a certificate of unloading the embassy should either carry out the same checks as those required of supervisory companies i.e. physical checks at the time of unloading <sup>(2)</sup> or, in duly justified exceptional cases where physical checks could not have been carried out, *a posteriori* checks on the basis of documentation such as that recording unloading and customs clearance. They should also maintain a file for each certificate issued. As a result of the Court's observations the Commission has pointed out to Member States that Member States' embassies should carry out the same checks as supervisory companies <sup>(3)</sup>.

36. Denmark <sup>(4)</sup>, France <sup>(5)</sup> and Ireland <sup>(6)</sup>, (see paragraphs 48 to 53) the principal Member States using embassies to provide secondary proofs, and Germany, the Netherlands and Spain, who also accepted embassy proofs to a lesser extent, did not have guidelines for embassies on checks to be carried out before issuing such proofs. In practice, the majority of such proofs have been issued as a result of *a posteriori* documentary checks which, by analogy with the conditions applying to supervisory companies, should only be done in duly justified exceptional cases. Examples were also found of failure to maintain files and of certificates issued on the basis of documentation provided by the exporter (Denmark) <sup>(7)</sup>.

<sup>(1)</sup> Article 16(1)(a) and (2)(b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999).

<sup>(2)</sup> Denmark has replied to the Court's observations, stating that it sees no justification for embassy officials to carry out physical checks at the time of unloading.

<sup>(3)</sup> Meeting of Trade Mechanisms Committee of 12 September 2000.

<sup>(4)</sup> As a result of the Court's observations, the Danish Ministry of Foreign Affairs has stated that it will ensure that its 'Quality handbook for the promotion of exports' is updated and that embassies will scrupulously adhere to guidelines for the issue of proofs of arrival.

<sup>(5)</sup> As a result of the Court's observations, the French authorities have announced that, from February 2000, embassy proofs will only be accepted as a last resort.

<sup>(6)</sup> There is a trader notice concerning documents to be presented to the Irish Embassy in Egypt in order to obtain the required certificates. These certificates are intended to be endorsements of primary proofs, but in practice are used as secondary proofs as the net weights taken into account are those on the embassy certificates and not those on the Egyptian import documents.

<sup>(7)</sup> In these cases the goods were subject to unauthorised reloading in Denmark without customs control, even though the goods were in sealed containers consigned directly from Spain to Russia. There is also conflicting information on one of the export declarations. As a result of the Court's observations, Spain has initiated an investigation into exports to Russia by the company involved.

37. Because the precise source of proofs of arrival is not recorded in paying agency databases, it was not possible to establish the total value of refunds involved. In France, during 1997 and 1998, 1 584 refund claims were supported by embassy certificates of unloading. Denmark could not establish the value of claims involved because they could not be identified by computer. In Ireland, the majority of export refund claims for beef to Egypt were supported by embassy certificates. In the 1999 EAGGF year, these would have amounted to some 120 million euro.

38. The absence of guidelines on checks to be carried out and the absence of physical checks constitute serious weaknesses in the procedures for the issue of secondary proofs of arrival by embassies. The validity of such proofs thus far issued must therefore be considered questionable.

## TYPES OF PROBLEMS AND/OR IRREGULARITIES WHICH HAVE BEEN DETECTED IN EXPORTS TO SPECIFIC DESTINATIONS

39. The following paragraphs illustrate the unreliability of the system of proofs of arrival and question the justification for refunds, or differentiated refunds to certain destinations.

### *Jordan — circumvention of UN embargo on supplies to Iraq*

40. Having identified a significant increase in exports of beef, veal and poultry to Jordan in the years following 1991, UCLAF carried out an investigation with German and Dutch officials in Jordan in 1998 which confirmed irregularities designed to circumvent the UN trade embargo against Iraq. Refunds were not payable for exports to Iraq unless the exporter had obtained prior UN authorisation for the export in question. Large quantities of meat and poultry declared through Jordanian Customs were suspected as not being intended for domestic consumption there (41 244 tonnes involving refunds of some 80 million euro). In most of the transactions examined the final destination was Iraq. To circumvent the embargo, the operators used forged or incomplete Jordanian documentation.

41. As a result of the investigation, in July 1998 UCLAF requested Member States involved in the exports to Jordan to recover export refunds unduly paid. At that stage transactions were already discharged and guarantees released. Subsequently:

- (a) Germany issued recovery notifications in 1999, totalling 23 million euro, all of which have been appealed and the cases are pending;
- (b) Italy issued recovery notifications for some 6 million euro in 1999 all of which have been appealed and the cases are pending. One beneficiary, notified for recovery of some 980 000 euro, has already been declared bankrupt;
- (c) in January 2000, the Netherlands informed the Court that export refunds of 9 million euro, including penalties, are to be recovered. As of January 2001 these cases were before the national commercial court and consideration was being given to requesting alternative proofs from the exporters. Action in respect of a further quantity of 1 546 tonnes of beef and poultry is still outstanding;
- (d) France took no recovery measures in respect of a batch of 500 tonnes of beef and poultrymeat shipped to Aqaba/Free Zone on 24 September 1993 because, according to French law, this operation is statute-barred. It should be noted that, in October 1993, Ofival received a letter from a Jordanian company describing in exact detail the conditions under which the goods exported to Jordan were diverted to Iraq with the help of forged proofs of arrival. The paying agency promptly launched an inquiry through the Councillor to the French Embassy in Jordan and informed the operators of the risks in connection with exports to this destination. As no particular anomaly was discovered, Ofival did not consider it worthwhile to inform the national investigation services or the Commission;
- (e) Ireland proved for 2 690 tonnes that the goods were legally exported to Iraq with UN authorisation but there are still 510 tonnes which have not yet been accounted for;
- (f) Denmark has not commenced recovery action in respect of 144 tonnes of beef and 113 tonnes of poultry because the Dutch authorities have not provided details of the shipments which were from Dutch ports;
- (g) as of December 2000, Belgium had not informed OLAF of any recovery action in respect of 748 tonnes of beef and 1 064 tonnes of poultry.

42. Member States' follow-up action is unsatisfactory. Furthermore, OLAF does not have the powers to ensure a strict and timely follow-up of its findings by Member States.

### **Russia — falsified import declarations**

43. In the 1998 EAGGF year refunds on exports to Russia amounted to some 591 million euro. During that year, it became apparent that Russian import declarations, used as proofs of

arrival for export refund claims, were being falsified. OLAF established an ongoing contact with the Russian Customs service in an effort to validate import declarations referred by paying agencies in Member States. Initially lists of valid codes for Russian Customs offices, which appear on the import declarations, were obtained. These were used as a first check of the validity of the import declarations but were not circulated to all paying agencies.

44. In the period June 1999 to August 2000, Member States referred 699 Russian import declarations to OLAF where there were doubts as to their validity. As at August 2000, OLAF had received replies from the Russian Customs service on their checks of the validity of 424 import declarations. The replies indicated that:

- 90 cases (21,2 %) were genuine,
- 10 cases (2,4 %) were too old to check,
- 324 cases (76,4 %) were irregular.

45. It should be stressed that just because the Russian import declarations were found to be false does not necessarily mean that the export in question was not genuine. The incentive for Russian importers to misdeclare sound beef as offal in order to obtain a lower rate of duty is as much as for an EU exporter to declare offal as sound beef in order to obtain a higher rate of refund. However, for this very reason they are unsatisfactory proofs for export refund purposes.

46. In recognition of this problem the Commission issued a decision in July 1999 indicating a list of alternative proofs of arrival which could be accepted <sup>(1)</sup>. The Commission has also set up a procedure for online exchange of information with the Russian Customs <sup>(2)</sup>.

47. It remains to be seen whether the introduction of the above system of communication, which imposes additional requirements on the exporter and the 'central body' designated by Member States, will increase the reliability of the system and facilitate the discharge procedures of export refund claims or whether it will further complicate administrative procedures.

<sup>(1)</sup> Commission Decision K(1999)2497 of 28 July 1999.

<sup>(2)</sup> Commission Regulation (EC) No 2584/2000 of 24 November 2000 establishing a system for the communication of information on certain supplies of beef, veal and pigmeat by road to the territory of the Russian Federation.

**Egypt — treatment of shortages and rejected products**

48. Refunds on exports of beef to Egypt in the 1998 EAGGF year amounted to 131,9 million euro, 21 % of all refunds on beef. The proofs of arrival presented in the majority of cases were Egyptian Customs import declarations. In a significant number of cases examined <sup>(1)</sup> these declarations indicated differences between the gross weights and numbers of cartons shown on the bills of lading (which correspond to the quantities on the export refund declaration) and those released into free circulation on the Egyptian market <sup>(2)</sup>. The treatment of these differences, however, varied according to Member State.

49. The Egyptian customs import declarations, accepted by the Irish and French paying agencies, were accompanied by certificates from their embassies in Egypt to the effect that the net weights, as shown on the bills of lading, had been released into free circulation. Although these certificates indicated the differences in gross quantities and numbers of cartons identified on the Egyptian customs declarations, the paying agencies accepted the embassy certificates for the full net weight and released the guarantees <sup>(3)</sup> in full.

50. The Egyptian customs declarations accepted by the German paying agency were accompanied by certificates from an unapproved supervisory company which also provided the translations. These certificates explained the differences in quantity as samples taken by Egyptian Customs. The German paying agency accepted the supervisory company certificates explaining the differences and released the guarantees in full.

51. The Commission has confirmed that the differentiated part of the refund is payable only on the actual quantity released for consumption (but not on any quantity higher than that on the refund declaration). Member States have therefore incorrectly accepted weights certified on secondary proofs by embassies, rather than those indicated on the primary proofs, the Egyptian import declarations. These systematic irregularities have therefore been referred to the Commission to follow up quantification and recovery.

<sup>(1)</sup> In the first six months of 1998 there were shortages in 14 of 25 shipments from Ireland attracting export refunds.

<sup>(2)</sup> Export refunds are calculated on the net weight. Egyptian import duties are *ad valorem* and therefore Egyptian customs do not check net weights. However, their checks on gross weights and numbers of cartons give indications of shortages. The effect of these shortages on the net weights should be calculated by the paying agencies.

<sup>(3)</sup> Differentiated refunds are paid subject to the claimant lodging a guarantee. This guarantee is released if satisfactory proof of arrival is presented by the claimant within 12 months of the date of export.

52. A continuing problem with exports of beef to Egypt is that some consignments are rejected because the beef does not meet the Egyptian health specifications or because it exceeds the Egyptian maximum fat content limit <sup>(4)</sup>. One transaction selected for testing in Ireland involved such a rejection.

53. An Irish company exported 1 252 tonnes of beef to Egypt in August 1997, with refunds amounting to some 1,07 million euro. The Egyptian authorities rejected 1 000 tonnes which were re-exported to Ireland in January 1998. Permission was granted for temporary reimportation of the beef without loss of refunds, provided it was re-exported from the EU by the end of March 1998. As at February 1999, the beef had still not been re-exported and at the date of the audit in August 1999 the company had not been requested to reimburse the refunds overpaid and penalty due of 20 %, totalling some 1,3 million euro. The Irish authorities have since initiated recovery action.

**Morocco — justification for refund rate and shortages**

54. Morocco is the principal destination for exports of pure-bred bovine animals. Over the last 10 years, exports have amounted to some 96 000 tonnes (equivalent to some 174 000 animals). Refunds paid in the 1999 EAGGF year totalled some 8,5 million euro. There are virtually no exports of animals for slaughter. The refund rate for the type of pure-bred animal exported to Morocco is 38,5 euro per 100 kg higher than the rate for equivalent animals destined for slaughter. Rates for most live animals are differentiated. Those for pure-bred animals are, however non-differentiated and therefore proofs of arrival are not required. There is no duty on pure-bred animals imported into Morocco. Animals for slaughter attract a duty rate of 300 %.

55. EU rules defining the conditions for classification of imported animals as pure-bred require them to be kept for at least 12 months before slaughter <sup>(5)</sup>. Failure to observe this condition results in the reclassification of the animal as one for slaughter and duties are charged.

56. By analogy this rule should apply to exports which are covered in the same regulation. However, as the EU has no ready way of informing itself whether or not such a condition is respected in the non-member country of destination, it is questionable whether pure-bred breeding animals should attract a higher rate of refund than the equivalent animals destined for slaughter.

<sup>(4)</sup> See also observations in the Court's Annual Report on the 1996 financial year paragraphs 5.20 to 5.38. (OJ C 348, 18.11.1997).

<sup>(5)</sup> Commission Regulation (EEC) No 2342/92 (OJ L 227, 11.8.1992, p. 12).

57. Information obtained by the Court from Morocco also indicates that some animals have been found dead on arrival and others have not met the Moroccan conditions for classification as pure-bred animals. The number of such cases is relatively small but it illustrates the inconsistency of treatment with live animals destined for slaughter, where a proof of arrival is required which should result in a reduction of refunds to take account of the dead animals. In Denmark and France the suppliers issued credit notes in respect of the dead animals but refunds were not recovered at that time. As a result of the Court's observations investigations have now been initiated.

#### **Lebanon — shortages — inconsistent follow-up by Member States**

58. Lebanon is the principal destination for live bovine animals destined for slaughter. Refunds paid in the 1998 EAGGF year amounted to some 58 million euro. An OLAF investigation uncovered a number of irregularities involving false proofs of arrival, weight shortages, dead animals and incorrect classification of animals for slaughter as pure-bred. France has so far issued recovery orders for some 161 000 euro. Investigations are continuing. In Italy, however, the criminal case has been dismissed by the national courts and recovery action for refunds overpaid has not been initiated.

#### **Estonia — trade agreements creating the danger of carousels**

59. The EU has a free-trade agreement with Estonia covering milk products. Consequently, there are no duties payable on imports into Estonia of butter from the EU and imports into the EU of butter from Estonia are at reduced rates of duty <sup>(1)</sup>. The EU pays refunds on exports of butter to Estonia. In the 1998 EAGGF year, refunds on butter to Estonia amounted to 6,9 million euro. At the same time, the volume of imports of butter from Estonia has been significant. Table 6 shows the quantities of butter imported from and exported to Estonia from 1996 to 1999.

Table 6

#### **Butter — EU imports from and exports to Estonia**

Year	Imports	Exports
1996	3 987	783
1997	12 014	2 244
1998	3 419	1 590
1999	222	1 692

Source: Comext.

60. The risk of EU butter, exported with refunds to Estonia, being reimported as Estonian butter was identified by OLAF in 1997 and Member States were informed.

61. On the basis of laboratory tests, the German Customs authorities concluded that butter, declared on import to the EU to be of Estonian origin, had not been manufactured there. It was therefore not eligible under the free-trade arrangements. Recovery orders were issued in Germany for some 700 000 euro in underpaid duties.

62. As a result of its investigations in Estonia, OLAF concluded that it was difficult to trace the movement of EU butter once cleared into free circulation. The investigation by the Estonian authorities proved that an Estonian company, a major exporter of butter to the EU, had insufficient evidence to support the issue of movement certificates. These certificates are required in order for the butter to benefit from reduced rates of duty on import into the EU. In a 12-month period in 1996/1997 this company had imported 1 056 tonnes of EU butter and exported to the EU 1 107 tonnes. The Member States concerned (Germany, France and the Netherlands) have subsequently initiated action to collect duties underpaid. These are estimated at some 3 million euro.

63. The free-trade arrangements in milk products with Estonia should have taken into consideration the possibility of the benefits which could be obtained from reimporting EU butter which had been subsidised with export refunds. The refund rate on exports of butter to Estonia should have been set at zero as has recently been done for exports of cheese to that destination <sup>(2)</sup>.

64. The problem related to free trade in milk products was not limited to butter to and from Estonia. The free trade agreements in milk products also include the other Baltic States, Latvia and Lithuania, and other milk products such as cheese and skimmed milk powder (SMP). There is a significant import-export trade in cheese (Table 7) and a smaller trade in SMP. The Commission should examine the justification for export refunds on products covered by all free-trade agreements in order to eliminate the possibility of carousel trade.

<sup>(1)</sup> Commission Regulation (EC) No 2508/97 (OJ L 345, 16.12.1997, p. 31).

<sup>(2)</sup> Commission Regulation (EC) No 1869/2000 (OJ L 222, 2.9.2000, p. 8).

Table 7

## Summary of cheese imports from and exports to the Baltic States

(tonnes)

	EU cheese exports to the Baltic States				EU cheese imports from the Baltic States			
	1996	1997	1998	1999	1996	1997	1998	1999
Estonia	742	585	544	453	—	—	18	—
Latvia	270	236	263	204	320	1 047	1 034	1 451
Lithuania	198	231	115	199	993	2 032	1 518	1 814
<b>Total</b>	<b>1 211</b>	<b>1 053</b>	<b>922</b>	<b>857</b>	<b>1 313</b>	<b>3 079</b>	<b>2 570</b>	<b>3 265</b>

NB: The amounts are rounded.  
Source: Comext.

**Possible diversion of cheese to Canada**

65. The rates of refund for exports of cheese to Canada have always been lower than those for the equivalent cheese exported to the USA. From September 1995 for example, refunds on cheese to Canada were all set at zero, whilst there were still positive rates for the USA. EU statistics for exports of cheese to Canada indicate significantly lower quantities over the years 1995 to 1999 than Canadian import statistics for cheese of EU origin (Table 8). This suggests the possibility that some imports of EU cheese into Canada have been effected through the USA thus attracting undue refunds supported by invalid proofs of arrival. The case is currently under investigation by OLAF. If refunds were paid on the difference in quantities from 1995 to 1999, the total amount is likely to exceed 15 million euro.

Table 8

## Comparison of statistics for imports of EU cheese into Canada

(tonnes)

Year	EU export statistics	Canadian import statistics	Difference
2000	12 746	not available	
1999	10 098	12 935	2 837
1998	9 159	12 776	3 617
1997	8 291	13 074	4 783
1996	8 078	12 901	4 823
1995	7 663	12 228	4 565

NB: Figures exclude cheese exports from Austria, Finland and Sweden.  
Sources: Comext and Canadian Department of Foreign Affairs and International Trade.

**North Korea — proof of market penetration**

66. This case, concerning an export of some 3 200 tonnes of Danish feta cheese to North Korea with the payment of some 2,23 million euro in export refunds, was referred by the Court to OLAF for investigation.

67. When exports of feta to Iran ceased in 1996, a considerable quantity remained in stock. Some of the stock was sold to manufacturers of processed cheese within the EU and by late 1998 the stock figure stood at around 3 200 tonnes.

68. In December 1998, 3 200 tonnes of feta, manufactured in early 1996, was shipped from Denmark to North Korea. The expiry date for feta in tetrabrick packs is normally 18 months after the date of production. The latest date of production for the transactions examined by the Court was 8 March 1996. The feta in question had therefore exceeded its expiry date by at least 12 months. The operation was not under any food aid programme but the product was for distribution by the North Korean Flood Damage Rehabilitation Committee. The feta was invoiced at 0,3 euro per kg compared to the refund rate of 0,7 euro per kg. The invoice total was some 966 000 euro. The exporter was paid normal export refunds totalling some 2,23 million euro.

69. The invoiced value of the feta, equivalent to 30 euro per 100 kg, is below the minimum free-at-frontier price of 230 euro per 100 kg necessary to qualify for export refunds <sup>(1)</sup>. This rate was set on 5 May 1996 and applied to all cheese. However, from 12 July 1996 to 3 February 1999, an exception was made for feta manufactured from cow's milk <sup>(2)</sup>. Justification for this is questionable, it being the only exception to the free-at-frontier price requirement, given that it coincided with the accumulation of a large stock of feta which was proving difficult to dispose of.

70. The fact that the feta had exceeded its normal expiry date by more than 12 months; that this was the only sale of feta to North Korea in recent years (there have been none since); and that the refund was more than double the invoiced value suggests that this operation was not a normal commercial transaction designed to penetrate a market. It had no real economic purpose and was

<sup>(1)</sup> Commission Regulation (EC) No 823/96 (OJ L 111, 4.5.1996, p. 9).

<sup>(2)</sup> Commission Regulation (EC) No 1315/96 (OJ L 170, 9.7.1996, p. 20).

effected solely to obtain a payment from the Community. Refunds should therefore not have been paid because the product was not marketable under normal terms <sup>(1)</sup>.

### ***Japan — justification for refund rates for cheese not destined for direct consumption***

71. Japan is the third largest market for EU cheese. The EU exports around 35 000 tonnes to Japan annually. Subsidies on exports of cheese to Japan amount to around 25 million euro each year. The main types of cheese exported are Danish Samsø, Maribo and mozzarella, German Gouda and Steppenkaese. The rates of refund vary according to the type of cheese and are in the range of 0,8 to 1 euro per kg.

72. Most cheese consumed in Japan is either processed or grated. Japan has a quota for imports of cheese for processing (transformation into processed cheese). In 1999, the EU share of this quota was some 2 150 tonnes. Some of the EU cheese imported into Japan carries the proviso 'industry only' on its invoices and/or on its packaging. Much of the other EU cheese imported into Japan is destined for grating. For 1997, this figure was estimated at some 19 000 tonnes.

73. Until 2000 <sup>(2)</sup>, the preamble to regulations fixing the rates of refund for milk products always stated that the level of refund for cheese was calculated for products intended for direct consumption. The Commission has not provided any justification for the removal of this provision. Since the rates of refund for both processed and grated cheese are lower than for whole cheese, it is questionable whether cheese specifically destined for such uses should attract the rates applicable to cheese destined for direct consumption.

74. There is also a difference between Japanese import and EU export statistics. In 1999, Japanese statistics showed imports of grated cheese from Ireland and Germany which are not reflected in the EU export statistics or in the export refund payment databases. The matter has been referred to OLAF for investigation.

### ***Uruguay, Ukraine, Croatia — import declarations not evidencing clearance into free circulation***

75. In some instances goods attracting differentiated export refunds are placed in free zones or under warehousing or inward-

processing regimes in the non-member destination. Since it is a regulatory requirement that the goods should be placed on the market in the same destination <sup>(3)</sup> after warehousing or processing, a free zone, warehousing, inward-processing or temporary importation entry does not provide sufficient proof that the goods were placed on the market in the declared destination.

76. Proofs of arrival accepted by the Danish paying agency for exports of cheese to Uruguay were copies of Uruguayan customs import declarations certified as true copies by the Danish Consul General in Uruguay. However, the import declarations described the type of importation as temporary and they did not correspond to the model in the Danish file of valid proofs. They were therefore not acceptable proofs of placing on the market in Uruguay, but had nevertheless been accepted by the Danish paying agency.

77. Refunds unduly paid in the 1997 and 1998 EAGGF years amount to some 268 000 euro. At the time of writing, the Danish authorities had not initiated any recovery action.

78. In Austria, the paying agency rejected proofs of arrival in Ukraine and Croatia, which indicated inward processing and returned them to the beneficiaries who promptly altered the documents to indicate clearance into free circulation and resubmitted them to the paying agency. These alterations were detected and recovery procedures initiated. As a result of the Court's observations, original proofs are no longer returned to beneficiaries.

79. Similar cases have also been identified by the Italian paying agency for exports to the Ukraine. However, in these cases further proofs were sought.

### ***Albania — irregular proofs of arrival for imports from Greece***

80. To solve the problem posed by the irregular proofs of arrival at destinations in Albania, the Greek authorities proposed to the Commission to regularise all the files concerning export refund payments which remained unsettled between 1995 and 1998 (approximately 820 000 euro) by applying the rule which allows Member States to exempt the exporter from furnishing proofs of arrival where the transaction concerned is the subject of an export declaration giving entitlement to a refund, the differentiated part of which does not exceed 1 000 euro <sup>(4)</sup>. The Commission rejected the proposal and the Greek authorities subsequently settled the

<sup>(1)</sup> The judgment of the ECJ in case C-12/73 is relevant here. It reads 'A product which could not be marketed within the Community under normal conditions and under the description given in the claim for a refund would not meet these requirements as to quality'.

<sup>(2)</sup> Commission Regulation (EC) No 74/2000 (OJ L 10, 14.1.2000, p. 13).

<sup>(3)</sup> Article 15(2) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999). See also the judgment in the European Court of Justice case C-74/98.

<sup>(4)</sup> Article 19 of Commission Regulation (EEC) No 3665/87 (OJ L 351, 14.12.1987, p. 1).

cases on the basis of the original documents presented. Following the Court's intervention, the Commission asked OLAF to conduct an inquiry.

## CONTAINER MOVEMENTS

81. During this audit, Member States were asked to obtain information relating to the movement of selected containers carrying goods which had attracted export refunds. The aim was to verify that the description and quantity of the goods according to the container company, matched that on the refund claim and that the goods were removed from the container at the destination declared on the refund claim.

82. Some Member States (Germany, Greece, France, Italy, and Sweden) provided the information requested. However, the United Kingdom did not consider that the Court had the right to ask Member States to obtain and supply information which they did not hold for their own purposes, the Netherlands did not obtain all of the information because of the demand on its resources and Denmark took over four months to provide incomplete information.

83. At the time of drafting this report this aspect of the audit was therefore incomplete. Based on the information received at that time, some 5 % of the cases required follow up by Member States (Germany, France, Italy and Austria) because *prima facie* the container numbers were incorrect or the movement details did not match those on the refund claim.

## CONCLUSIONS AND RECOMMENDATIONS

84. Some major weaknesses have been found in the approval and control of supervisory companies and in the system of issue of proofs by Member States' embassies. Many irregularities and suspected frauds have been uncovered by OLAF and at the initiative of DG AGRI. Some of these involve supervisory companies approved for the issue of proofs of arrival. The Court's audit has revealed further suspected irregularities. Little reliance can therefore be placed on the system of proofs of arrival<sup>(1)</sup> (see paragraphs 17 to 80). This conclusion is all the more disturbing given

<sup>(1)</sup> See also Annual Report on the 1987 financial year, where the Court concluded that, 'While differentiated rates of refund apply, the Court has difficulty in envisaging any system of controls over proof of arrival which would provide sufficient safeguard against a determined attempt at fraudulent declaration' (OJ C 316, 12.12.1988).

that the Commission has identified serious weaknesses in Member States' physical checks on the description and quantity of exported goods (see paragraph 8).

85. It is important, however, to distinguish between the validity of the proofs and the genuineness of the transaction. There is no evidence that the majority of transactions giving rise to refunds are not genuine commercial transactions. This calls into question the requirement for the systematic presentation of proofs of arrival. The system is complex and onerous, with considerable compliance costs for administrations and trade alike, and gives little assurance. Most of the irregularities and frauds have been detected after the proofs have been accepted by paying agencies.

86. The Court considers that for those products where export refunds are required it would be preferable to apply one refund rate for each product to all destinations. However, the Court recognises that at the present time for various reasons, including existing trade agreements, this is not possible.

87. In respect of the system for checking that goods have been placed on the market in non-member countries the Court recommends that:

- proofs of arrival should only be required in cases of doubt, or for high risk destinations,
- transport documents and commercial invoices should be presented to paying agencies for all claims exceeding the *de minimis* limit<sup>(2)</sup>,
- *a posteriori* checks<sup>(3)</sup> on placing on the market should be intensified and shipping and container movement databases should be consulted for the transactions selected for *a posteriori* checks.

88. If the requirement for the systematic presentation of proofs of arrival is perpetuated:

- checks to be carried out for the issue of proofs by Member States' embassies should be the same as those for supervisory companies (see paragraphs 35 to 38),

<sup>(2)</sup> Article 17 of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11).

<sup>(3)</sup> Council Regulation (EEC) No 4045/89 (OJ L 388, 30.12.1989, p. 18).

- the Commission should take over the responsibility for the approval of supervisory companies (see paragraph 26) as is already the case for food aid,
  - when an approval is withdrawn from a supervisory company it should apply to all companies within the same group (see paragraph 26),
  - consideration should be given to introducing penalties for irregular proofs of arrival issued by supervisory companies (see paragraph 17),
  - the Commission should be responsible for maintaining and updating files of model proofs of arrival which can be accepted and should coordinate verifications in non-member countries (see paragraph 13).
89. The Commission and OLAF should ensure that when frauds and irregularities are detected they are followed up assiduously in all of the Member States concerned.
90. The suspected irregularities identified in this report involve more than 100 million euro. The Commission should also ensure that, where it has not already been done, recovery action is initiated promptly. In other cases, such as the dismissal in Italy of the case concerning live animals to Lebanon, the Commission should consider action under the clearance of accounts procedure.
91. Finally, refunds should not be paid on products which are subject to reduced rates of import duty in non-member countries and in the EU under trade agreements where this creates the possibility of carousels (see paragraphs 59 to 64).

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 11 and 12 July 2001.

*For the Court of Auditors*

Jan O. KARLSSON

*President*

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## ANNEX

**PRINCIPAL REQUIREMENTS FOR THE ISSUE OF PROOFS BY SUPERVISORY COMPANIES*****Article 16(5) of Commission Regulation (EC) No 800/1999***

The minimum requirements for the approval of international control and supervisory agencies are the following.

- (a) Control and supervisory agencies shall be approved at their request by the competent authorities of the Member States for a three-year period. Approval shall be valid for all Member States.
- (b) Where the primary and secondary proofs referred to in point (b) of paragraph 1 and point (c) of paragraph 2 are drawn up, the control and supervisory agencies shall carry out all the checks necessary to determine the nature, characteristics and quantity of the products mentioned in the certificate. A file shall be opened for every certificate issued in which all surveillance activities are recorded. The checks shall be carried out on the spot at the moment of import, except in duly justified exceptional cases.
- (c) The control and supervisory agencies referred to in point (b) of paragraph 1 and point (c) of paragraph 2 shall be independent of the parties involved in the transaction under scrutiny. In particular, neither the control and supervisory agency carrying out the controls for a particular transaction, nor any subsidiary company belonging to the same financial group, may take part in the operation as exporter, customs agent, carrier, consignee, warehousekeeper or in any other capacity likely to give rise to a conflict of interest.
- (d) Without prejudice to Article 8 of Regulation (EEC) No 729/70 and Article 3 of Council Regulation (EEC) No 4045/89 <sup>(1)</sup>, Member States shall inspect the activities of the control and supervisory agencies at regular intervals or when there is reason to doubt whether the conditions for approval have been observed.
- (e) Member States shall withdraw approval, wholly or partly, if it is found that the control and supervisory agency cannot any longer guarantee compliance with the conditions governing approval. The Member State concerned shall immediately inform the other Member States and the Commission of the withdrawal of approval. This information shall be the subject of an exchange of views within all relevant management committees. The withdrawal shall be valid for all Member States.

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<sup>(1)</sup> OJ L 388, 30.12.1989, p. 18.

## THE COMMISSION'S REPLIES

### SUMMARY

I. In order to understand the reasons why export refunds in the beef and the milk sector are differentiated, as well as the consequences of this in terms of the general economy of these sectors, the Commission, before answering the individual observations from the Court, wants to explain clearly the rationale of the system in place, present financial figures and stress that differentiated refund rates are very limited.

— The Commission considers the present system fully justified:

- differentiated export refunds are fixed at a lower rate than general refunds, reducing the cost to the EAGGF budget,
- international commitments oblige the EU to refrain from introducing any measure that would have a consequence on the price level in trade (export refund as well as sale at reduced prices from intervention stocks) for beef to be exported to South Korea, Taiwan, Japan, Singapore and Malaysia (these countries are among the major beef importing countries in the world). Similarly in the milk sector, international agreements oblige us to pay lower or zero rates of refund to respect our international obligations in quantity and outlay terms (e.g. the EU eliminated the refunds for certain destinations on cheese, to reduce demand for export licences with refund and stay within the GATT limits). But international agreements also enable the EU in some cases to pay lower refunds (e.g. milk products for Canada and the USA),
- furthermore, the EU allows an annual import quota at preferential duties of 52 100 tonnes of bovine meat (deboned weight) from a number of ACP countries (Council Regulation (EC) No 1706/98, Article 4). No export refunds are granted for those destinations.

The consequence of this distinction between countries for which a refund can or cannot be granted is the appearance of a *de facto* differentiation.

— The budgetary cost of the system should also be taken into consideration.

- expenditure on export refunds has been substantially reduced over the past decade and this trend is continuing,
- it plays an important role in stabilising the internal market of the EU and minimising the need to purchase into intervention. In today's situation 1 tonne of meat (carcasse weight equivalent) being purchased into intervention generates a cost for the EAGGF of about EUR 1 900. The export refund for the same quantity of male carcasse beef is EUR 970. A similar example for the milk sector in May 2001 shows that 1 tonne of SMP generates a cost of EUR 500 to intervention whereas the same quantity can be disposed of for EUR 50 through export refunds.
- For about 90 % by value of total exports of beef and milk a single refund rate applies. For the remaining exports a substantially lower rate is applied, particularly for exports to the candidate countries. About 21 % of the total quantity of cheese and 7 % of the beef exported from the Community is exported without any refund.

II. The Commission takes Article 3 of Regulation (EC) No 800/1999 to mean that where a single refund rate applies to all non-member countries, entitlement to a refund is acquired on leaving the customs territory of the Community.

Where there are grounds for suspicion (serious doubt), however, the paying agency, before paying out the refund, may require evidence that the goods have been imported into a non-member country or undergone substantial working or processing.

III. The current system generally provides for proof of arrival to be furnished in the form of official documents such as customs import documents. A catalogue of customs documents and stamps valid in 58 non-member countries was issued to Member States in 1992. The Commission is willing, for some non-member countries at least, to consider compiling a compendium which would be kept continuously updated.

IV. The Commission has undertaken a specific audit in respect of proofs of arrival issued by supervisory companies. For the reasons outlined in points 34 and 35 this audit was carried out in Germany, which was in practice the only Member State accepting such certificates on a large scale. The enquiry resulted in a financial correction of about EUR 20 million.

It is further true that the Commission has always evaluated proofs of arrival for transactions selected for testing under the clearance-of-accounts procedure. This evaluation has given rise to other financial corrections under past clearance exercises.

V. The approval conditions for supervisory companies will be evaluated during the ongoing audit (started in May 2001) on differentiated refunds carried out under the clearance of accounts. When the Commission learned that a Member State had withdrawn approval from a company belonging to a particular group it asked Member States where other members of the group were located to check whether those companies exhibited the same shortcomings.

VI. The Commission departments concerned have commenced talks with the Member States about the best way of aligning and improving practice regarding certification by embassies.

VII. According to the information received from the Court, the amount relates largely to suspected irregularities established in one Member State in the period 1994 to 1996 (EUR 60 million) and to irregular exports to Iraq after the embargo was imposed in 1991 (about EUR 40 million). The cases are being followed up by the Commission, and are being handled in accordance with the rules. For the other cases appropriate action will be taken by the Commission.

VIII. Relaxing the conditions for presenting proofs of arrival in the way recommended by the Court is not workable, because requiring proof of arrival only in cases of doubt, or for high-risk destinations, could lead to loss of control over exports to countries for which an export refund is not fixed. It will also expose the Community to fundamental criticism of the way the EU monitors and controls its subsidised trade with non-member countries, particularly taking into consideration its international undertakings to refrain from granting export refunds for specific markets.

Therefore, relaxing the requirements for proof of arrival is bound to generate a potential risk for the Community budget.

— As a matter of priority, the Commission will discuss with the departments responsible for *a posteriori* checks how to include consultation of shipping and container movement databases in the audit programmes.

## INTRODUCTION

2. The Commission takes Article 3 of Regulation (EC) No 800/1999 to mean that entitlement to a (non-differentiated) refund is acquired on leaving the customs territory of the Community. In certain exceptional circumstances, however, described in

Article 20(1)(a), (b) and (c), the paying agency, before paying the (non-differentiated) refund, will require proof that the products have been imported into a non-member country or undergone substantial working or processing within 12 months of the date of export. Different rules apply after a refund has been paid (Article 20(4)).

**CLEARANCE-OF-ACCOUNTS AUDITS**

7. As a result of the findings in Germany it was decided to carry out an enquiry in all other Member States to evaluate the proofs of arrival they accept (customs import documents, embassy proofs, etc.). The enquiry is currently under way.

**QUALITY OF CHECKS ON PROOFS OF ARRIVAL**

10. The current system distinguishes between primary and secondary proofs of arrival. If an exporter is unable to obtain the primary proof of his choice (a customs import document or certificate of unloading and importation issued by a supervisory company), he may substitute a secondary proof; the forms this may take are listed exhaustively in Article 16(2) of Regulation (EC) No 800/1999. These documents are just as reliable and have the same effects in law.

11. At a Member State's request the Commission will contact the authorities in non-member countries to find out whether they recognise the document queried by that Member State as valid.

The Commission agrees that it is within the competence of the individual Member States to check the particulars of proofs of arrival. However, it would emphasise that the requirements for these proofs are the same throughout the EU.

12. The forthcoming enquiry on differentiated refunds to be carried out under the clearance-of-accounts procedure intends to focus on evaluation of the management and control systems for proof of arrival applied in the different Member States.

13. The Commission will discuss with the Member States the possibility of keeping a register of model proofs of arrival which they are prepared to accept and ways of improving coordination.

**THE EFFECT OF THE PROOF-OF-ARRIVAL SYSTEM ON RELEASE OF GUARANTEES**

16. One of the purposes of introducing proofs of arrival was to deter deflection of trade flows. The Commission believes that the stringent rules of the present system are necessary in order to ensure proper control.

**APPROVAL AND CONTROL OF SUPERVISORY COMPANIES**

17. When a Member State decides to withdraw its approval from a control and supervisory company the Commission duly notifies the other Member States, explaining the reasons for the decision whenever it can. The reasons may have to do either with the way the company is organised within the Member State or the checks it carries out in non-member importing countries.

The Commission will also discuss with the Member States whether approval of supervisory companies might be made conditional on the provision of a security.

18. The Commission has considered the danger of conflicts of interest in connection with supervisory companies and has drafted a working paper setting out guidelines on this matter. One of its recommendations is that no supervisory company (or other member of the same financial group) involved in an export transaction under Article 16 of Regulation (EC) No 800/1999 may act in the same transaction as customs agent, haulier, forwarding agent or warehousekeeper etc., or in any other capacity that might occasion a conflict of interests.

19 to 23. As stated, *inter alia*, in the comments on points V and 34, according to the information available to the clearance-of-accounts unit only Germany in practice accepted certificates from supervisory companies on a large scale. Traders in other Member States only presented such proofs in exceptional cases; they usually present customs import documents to the paying agencies. However, the Commission will carry out an audit of differentiated refunds and will consider financial corrections should it find systems errors concerning checks on such certificates.

25 to 28. The Commission will try to devise a system that would place greater responsibility on supervisory companies.

26. The approval and monitoring of the activities of supervisory companies in connection with the system of proofs of arrival has always been the Member States' responsibility. At one time the Commission had plans for a Community-wide approval procedure (Regulation (EEC) No 887/92) but it remained a dead letter and was repealed by Regulation (EC) No 2955/94, experience having shown that the Member States were best placed to judge whether a company merited approval. Following extensive discussions with the Member States, therefore, the Commission drew up a paper which was circulated in 1995 setting out guidelines for them to follow in approving and monitoring supervisory companies. In the interests of legal certainty some of the guidelines, particularly for approval, were then incorporated into the general

legislation governing refunds (Article 16(5) of Regulation (EC) No 800/1999).

27 and 28. The Commission has drawn the problems mentioned by the Court to the attention of OLAF, which is currently carrying out the enquiry.

29 and 30. After becoming aware of the problems in Germany, the Commission wrote to all the Member States asking them how many supervisory company certificates their paying agencies had accepted during the period concerned. It appeared that 7 546 certificates had been accepted, 7 280 of them in Germany (97 %) and only 266 (3 %) in all the other Member States combined.

The decision was therefore taken to focus the checks on Germany, which until the end of 1995 allowed a supervisory company to issue primary proof of arrival even when it had not received timely instructions from the exporter to be present at the moment of unloading in order to carry out checks. No indication was found in other Member States that the same systems error existed there.

The rate of correction applied to these cases (i.e. those accounting for 97 % of the total) was equivalent to 25 % of the expenditure at risk, representing EUR 20 million. This is a very high rate, to be applied only in exceptional cases.

The Commission therefore considers that controls were effectively targeted on the expenditure at risk. In addition, as noted above, it has decided to carry out an audit of differentiated refunds in order to examine what proofs of arrival other Member States accept (given that they rarely use supervisory companies) and what checks they carry out in respect of these proofs.

31. OLAF is following up these cases.

32. Over the years the Commission has done its best to address the problem of how best to provide proof of arrival at destination. To make it easier for Community exporters to obtain proof of importation it provided, in Regulation (EEC) No 887/92, that certificates issued by supervisory companies, already listed as secondary proof, could be used as primary proof in the same way as customs import documents.

The Commission's view is that supervisory company certificates should continue to be categorised as primary proof, as this gives exporters greater scope and prevents them from being wholly reliant on importers in non-member countries for primary proof of import (since in normal commercial practice it is usually the importer who has access to the customs import document).

## **RELIABILITY OF PROOFS OF ARRIVAL ISSUED BY MEMBER STATES' EMBASSIES**

35. Embassies and consulates have a different legal status to supervisory companies. Specific provision is made in the Community rules for the latter (Article 16(5) of Regulation (EC) No 800/1999).

38. These matters will be followed up in the course of the specific audit of differentiated refunds referred to in point 12. The Commission would also point out that it is the clear responsibility of the Member States to guarantee the soundness of these proofs.

## **TYPES OF PROBLEMS AND/OR IRREGULARITIES WHICH HAVE BEEN DETECTED IN EXPORTS TO SPECIFIC DESTINATIONS**

### ***Jordan — circumvention of UN embargo on supplies to Iraq***

40 to 42. For the purposes of recovery OLAF must abide by the underlying principles of Community law, including the right to appeal to an appropriate (administrative or judicial) body.

### ***Russia — falsified import declarations***

43. At the Sixth Conference of Directors of EU paying agencies (6 May 1999), OLAF (UCLAF, as it then was) invited the agencies concerned to contact it with a view to getting the available codes for Russian customs offices.

47. The Commission notes with satisfaction that the Court acknowledges the measures it has taken with regard to the acceptability and control of proofs of arrival for exports to Russia.

### ***Egypt — treatment of shortages and rejected products***

48. There is no difference of opinion between the Commission and the Court on how to deal with differences between weight at departure and weight at destination. The Court's request relates purely to the follow-up of the individual cases concerned. In so far as the discrepancies observed relate to samples taken by the authorities in the non-member country (if demonstrated to be the case), Article 15(4) of Regulation (EC) No 800/1999 allows for the refund to be granted on the weight of the samples.

These cases will be examined during the clearance-of-accounts unit's audits of differentiated refunds in the course of their missions to Ireland, Germany and France.

#### **Morocco — justification for refund rate and shortages**

54 to 56. The danger identified by the Court, that cattle for slaughter may attract the refund for breeding cattle, materialised in a real case detected by the Commission in Germany at the time of unification. The Commission investigated a massive cattle export to Poland, declared as being breeding cattle. On investigation, the animals were found to be slaughter cattle. (See clearance-of-accounts summary report of 1991, point 6.1.2).

The Commission's findings related to:

- the absence of pedigree certificates issued by official herd books showing the results of performance tests and the results of the assessment of the genetic value of the animals, their parents and their grandparents,
- the health certificates for breeding animals satisfying the requirements of the importing countries,
- the lack of age criteria and a general failure to check the commercial evidence (price, delivery conditions, etc.).

In the light of these findings certain conditions were laid down in Article 3 of Regulation (EEC) No 2342/92 that have to be met in order to qualify for the refund for breeding cattle. This shows that the Commission has taken the necessary steps to have reasonable assurance that only genuine breeding cattle obtain the higher refunds. In addition, in doubtful cases, Article 20 of Regulation (EC) No 800/1999 should be applied (doubts regarding real destination). Regulation (EEC) No 4045/89 (*a posteriori* bookkeeping checks) also offers an appropriate tool for carrying out checks on trade in breeding cattle.

55. The Commission will take the appropriate action.

57. The cases reported here show the importance of such controls and the possibility of tracing back cases where refunds have to be reimbursed.

Refunds are not granted for animals that die en route. Exporters are required in every case to declare the number of animals that have been cleared through customs in the importing country (Article 5(2) of Regulation (EC) No 615/98).

#### **Lebanon — shortages — inconsistent follow-up by Member States**

58. With regard to exports of live bovine animals to Lebanon on which refunds were paid, the competent Italian authorities have

been asked to provide fuller information about the irregularities detected, the amounts concerned and the number of export transactions for which the misleading certificates of unloading were issued. France notified irregularities involving three companies for the year 2000, to a total value of FRF 1 061 506,85.

#### **Estonia — trade agreements creating the danger of carousels**

59. The Commission does not agree with the Court that no export refund should be paid on butter going to Estonia because there is a zero duty rate on the entry of Estonian butter into the Community.

Nevertheless it is prepared to examine the situation in light of the Court's comments. The Commission's present position is that milk prices in Estonia are among the lowest in the candidate countries (e.g. Estonia: EUR 13/100 kg, Poland: EUR 24/100 kg), and consequently Estonian butter prices are close to the world market price.

60. In the Estonian case it is worth noting that the rules established are fulfilling their function and the competent authorities within and outside the EU are cooperating to combat cases of irregularity. While the Estonian authorities claim they cannot identify the origin of butter in free circulation such a claim has to be judged in the light of the veterinary certification which must be issued by the country of origin and which must accompany products at all times for health reasons. Research on the potential use of isotopes, which is at an advanced stage, but which will require the cooperation of non-member countries, will in future make it possible for the origin of butter to be identified and checked.

62. The Commission does not agree with the Court that in the context of the free-trade arrangements with Estonia for milk products the export refund for butter should have been set at zero, as was done for cheese.

If the Commission were to fix zero refunds for butter to Estonia it would have to do the same for the other milk products covered by the agreement. It would thereby shut EU milk products out of the market of a candidate country and allow other countries to absorb the EU's share of that market.

In the Commission's opinion, encouraging trade flows between the EU and the candidate countries is an important medium-term objective in the light of Estonia's future accession to the single market. For the EU to exclude itself from the lower-priced Estonian market by fixing export refunds at zero is not the Commission's preferred option.

Nevertheless, in the light of the Court's comments the Commission will continue to monitor the situation closely, and will give

consideration to the Court's view that export refunds should not be paid on certain products when the import duty on those products is either zero or less than the normal rate of import duty.

#### ***North Korea — proof of market penetration***

66 to 69. As the investigation is still under way, OLAF does not feel it appropriate to comment on this case.

70. OLAF will determine in due course whether the transaction was a commercial one and decide whether the goods were not marketable under normal terms.

#### ***Japan — justification for refund rates for cheese not destined for direct consumption***

71 to 74. The Commission clearly explained its reasons for modifying the preamble to the export refund Regulation in its note to the Court dated 19 February 2001 (AGR 004898). There was never a provision in the Articles of the Regulation corresponding to the particular phrase in the preamble. The text was brought into line on the basis of legal advice by deleting the phrase in the preamble because it was impossible to implement it in practice.

The Commission shares the Court's view that refunds on cheese for processing, in appropriate market circumstances, could in theory be lower than on natural cheese in an appropriate presentation for direct consumption. It is virtually impossible to check the end use in a non-member country. Refunds are fixed to bridge the gap between internal prices and external prices taking into account the general situation on the markets. Since the removal of the phrase in the preamble, the market situation and the EU's cheese exports have been such as to justify maintaining the status quo with regard to the refund, whether the cheese is intended for processing in a non-member country or for direct consumption. The refund paid on a cheese is closely linked to its dry-matter content. That dry-matter content does not change if the intended use of the cheese in a non-member country is switched from direct consumption to processing. Therefore there are good reasons for treating the milk dry-matter exported in the same way irrespective of the intended use of the cheese in a non-member country. Nevertheless, the Commission will continue to monitor and keep the matter under review.

74. The Commission departments concerned will fully cooperate with OLAF to clarify the differences between EU export data and Japanese import data. The investigation is still under way.

#### ***Uruguay, Ukraine, Croatia — import declarations not evidencing clearance into free circulation***

77 to 79. Under Article 3 of Regulation (EEC) No 595/91 OLAF must be notified of such irregularities.

80. OLAF is dealing with this case.

#### **CONTAINER MOVEMENTS**

81 to 83. It is possible to use information extracted from databases such as Lloyds (on the movement of vessels) or, if feasible, information obtained from container companies in order to form an opinion as to the genuineness of individual export operations.

Both kinds of check can give an insight into the physical movement within a given period, of a chartered means of transport or a chartered container.

However, they can never provide acceptable proof of the weight, nature or characteristics of the exported commodities, nor can they constitute proof of products being imported into a non-member country.

Consequently, although the Commission is open to exploring the scope for use of this kind of check in individual cases, for example where irregularities are suspected, it does not believe that such checks can be applied to all exports.

#### **CONCLUSIONS AND RECOMMENDATIONS**

84. The Commission agrees with the Court's findings that significant weaknesses have been established in certain specific areas, such as the way approved control companies carry out their duties or the lack of the requisite certainty as to the genuineness of some proofs. Accordingly, measures have already been adopted in order to strengthen the procedures in place or allow access to alternative forms of proof. The Commission will discuss with the Member States the points raised by the Court in this connection.

The Commission will continue with its audits under the clearance-of-accounts procedure in order to minimise the financial risk for EU expenditure.

85. The Commission is pleased that in general the Court does not question the genuineness of the commercial transactions involved.

86. On about 90 % of total beef and milk exports by value, the same refund rate is applied. For the remaining exports a substantially lower rate is applied, particularly for exports to the candidate countries.

The Commission will think about sectors in which the application of a tender system might be workable and feasible.

87.

— Relaxing the conditions for presenting proofs of arrival in the way recommended by the Court is not workable, because requiring proof of arrival only in cases of doubt, or for high-risk destinations, could lead to loss of control over exports to countries for which an export refund is not fixed. It will also expose the Community to fundamental criticism of the way the EU monitors and controls its subsidised trade with non-member countries, particularly taking into consideration its international undertakings to refrain from granting export refunds for specific markets.

Therefore, relaxing the requirements for proof of arrival is bound to generate a potential risk for the Community budget.

— Where differentiated refunds apply, the Commission does not believe that presenting transport documents or commercial invoices would offer adequate assurance that the goods have arrived in the non-member country for which the refund is paid. As part of the administrative streamlining of procedures for proofs of arrival, however, it will consider the feasibility of increasing the levels set in Article 17 of Regulation (EC) No 800/1999,

— the Commission will discuss with the departments responsible for *a posteriori* checks how to include consultation of shipping and container movement databases in the audit programmes.

88.

— The forthcoming clearance-of-accounts inspections will look at the quality of checks carried out by Member States. The audit started in May.

In a statement delivered at the meeting of the Trade Mechanisms Management Committee on 12 September 2000 the Commission reminded Member States that for embassy certificates to be acceptable as secondary proofs they must show the quantity, type and characteristics of the products. It also pointed out that embassies

must keep files of all certificates issued, noting the checks carried out to support certification.

— The Commission has no plans to change the current system, considering that the Member States are closer to events on the ground and in a better position to judge whether a control agency should be approved. If the Commission were to take over that responsibility it would in any case have to rely on the Member State's experience and opinion of the companies concerned.

*A posteriori* checks offer an opportunity to verify that companies have complied with Community rules and the guidelines set out by the Commission.

— The Commission will be discussing the idea put forward in this indent with the Member States, but two points will need to be clarified:

— the financial criteria — effective control or membership of a single group,

— what part of the supervisory company is being examined. The impact of any shortcomings found to exist will be greater in the case of a subsidiary outside the EU which is providing services to all members of a group within the EU (e.g. agency in Angola). In that case approval should clearly be withdrawn from all the group's affiliates in the Community.

— If a supervisory company is found to have issued a misleading certificate the act and its consequences are attributable to the beneficiary of the refund (see Article 52(4) of Regulation (EC) No 800/1999, attracting repayment of the refund and a penalty under Article 51.

At the same time the Commission will try and devise a system that places greater responsibility on the supervisory companies.

It will also very shortly be considering the feasibility of creating and maintaining an up-to-date catalogue of customs forms and stamps used in non-member countries, possibly for selected countries only.

89. In recent years, the clearance-of-accounts unit has intensively audited the expenditure on export refunds declared by the Member States, and important financial corrections have been applied in cases where it was found that the payments had not been made in accordance with the rules.



Proofs of arrival for transactions selected for testing under the clearance-of-accounts procedure have always been evaluated, and where necessary financial corrections have been made under past clearance exercises.

90. According to the information received from the Court, the amount relates basically to suspected irregularities established in one Member State in the period 1994 to 1996 (EUR 60 million) and to irregular exports to Iraq after the embargo was imposed in 1991 (about EUR 40 million). These cases are being followed up by the Commission, and are being handled in accordance with the rules. The Commission will take appropriate action in the other cases.

After an enquiry which lasted five years, during which thousands of certificates issued by supervisory companies were examined in detail, a financial correction of EUR 20 million has been applied

for Germany, which corresponds to 25 % of the expenditure at risk. In 2001 and 2002 the clearance unit will examine the control procedures applied in respect of proof of arrival in other Member States.

For Italy a financial correction of about EUR 33 million was applied because of deficient controls. In respect of the criminal case concerning exports of live animals to Lebanon dismissed by the Italian courts, we would point out that such cases should be notified to OLAF.

91. The Commission will give consideration to the Court's view that export refunds should not be paid on certain products when the EU import duty on the products is either zero or less than the normal rate of duty. The Commission, as indicated in its comments on point 59, will consider this point in the context of the EU-Estonia situation.

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