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## Information and Notices

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**Court of Auditors**

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*Note to the reader*

The comments published in this report are dated. The significance of the comments depends to a large measure on their date.

## INTRODUCTION

1. To evaluate the system of operation of the EAGGF Guarantee Section or of its 17 common market organizations, or to compare the results of Community projects with the aims of the common agricultural policy, requires a somewhat longer view than does assessment of the annual budgetary management, which forms the basis of the observations in the Annual Report.

It is for this reason that the Court chose to make use of the power conferred upon it by the Treaty to submit observations at any time, by addressing them in the form of a letter from its President to the President of the Commission and by reserving the right to decide at a later date on the publication of these observations and any replies thereto, either in the Annual Report or in a Special Report. In his general reply of 5 September 1979, the President of the Commission clearly expressed his interest in such a procedure.

2. In publishing as a special report these comments on the management of agricultural markets, the Court is aware of their fragmentary nature. Earlier comments of the Court, in its 1977 and 1978 Annual Reports, were mainly concerned with the implementation of the budget for that financial year, the clearing of the accounts for previous financial years, the overall management of appropriations and liquid assets and the measures taken to prevent and suppress frauds and irregularities or to detect gaps in the legislation. Expenditure relating to the various market organizations was often only considered from the point of view of compliance with the general rules for financing the common agricultural policy and of the effect on the financial management of the Guarantee Section as a whole.

3. The Court nonetheless undertook to analyse, in whole or in part, the financial management of each of the 17 common market organizations, beginning with the most expensive (in terms of present or anticipated cost to the budget). An example is the milk

sector, whose expenditure in 1979 will represent 42.6 % of total agricultural expenditure. Out of this mass were chosen firstly one of the most spectacular special measures to dispose of stocks of Community butter: the so-called 'Christmas butter' operation; secondly, the initial application of the regulation on the co-responsibility levy whose implementation in secondary forms, is at present the key to the reform of the market organization of milk producers, having complex effects on Community expenditure and revenue.

The Court then turned its attention to the refunds for the export of basic agricultural products (cereals, milk, sugar, . . .) incorporated in processed products — the so-called 'products not listed in Annex II' of the 1957 Treaty. Expenditure of this nature is rapidly increasing (+ 195 % from 1977 to 1979) and although not associated with a market organization as such, there being none for processed products, plays a considerable part in increasing the value of basic agricultural products.

Lastly the Court considered the fruit and vegetables sector, which regularly proves to be a particularly sensitive area for certain regions of the Community and for public opinion in general and which is also characterized by rapidly increasing expenditure (+ 259 % from 1977 to 1979). The Court paid particular attention to the operations of withdrawal from the market, the use and mechanics of which are based on the very decentralized structure of the producers' groups and deserve close examination.

4. The Court welcomes the understanding shown by the Commission in agreeing to a detailed discussion of its comments and in making appropriate replies. It hopes that through this procedure it will be possible in small steps to get even closer to the reality of the management of agricultural markets and that from the results obtained a general picture of the financial aspects of this management will gradually emerge.

### I. OPERATION 'CHRISTMAS BUTTER'

5. In a letter of 26 April 1979, the Court informed the Commission of the results of its enquiry on the measures relating to the sale at a reduced price of

butter for direct consumption in the Community, generally called the 'Christmas butter' operation, and effected for the winter of 1977/78 by Regula-

tion (EEC) No 2370/77 of 28 October 1977<sup>(1)</sup>. These measures concern all the Member States except for the United Kingdom, for whom different provisions are in force.

The Court has the following comments:

6. Putting 72 000 tonnes of butter on the market over a short space of time at a price approximately 30 % lower than usual does not appear to have created any major disturbances. The effects on the price of butter at the production stage during the reference period may be considered as negligible. This is so particularly in France where contrary to the fears expressed by the experts before the launching of the operation there was no significant drop in the selling price of fresh butter, which continued to be sold normally. The level of the intervention stocks of butter and in particular the public stocks confirm this finding, although there was a certain increase in their volume in the weeks following the operation.

7. The absence of major disturbances is the corollary of a real increase in consumption which on the basis of present information may be estimated at approximately 30 % of the 72 000 tonnes placed on the market for the Community as a whole. A part of the increase during the operation is more apparent than real, in view of the fact that certain movements of private traders' stocks have only a slow and somewhat ragged effect on public stocks (or private stocks benefiting from public aids), whose movements alone are recorded in the official statistics.

8. The average rate of 30 % appears to conceal major differences between the Member States (Germany 50 %, Denmark 10 %) and probably within certain Member States. In France, for example, the most favourable response was in the more modern, urbanized regions, among relatively young households in the middle or upper income bracket. There is, however, a strong element of uncertainty in all this data.

Nor is it possible to ascertain how much of this increase in consumption is due to a rise in overall purchases of edible oils and fats and how much to a transfer away from margarine to the reduced-price butter.

Lastly, no serious conclusion may be drawn on the basis of the information available on the important question of the effects of any particular method of marketing on the amount sold. At the most it appears that the preference given in France to supermarkets and the financial advantages granted to industrial packers have produced favourable consequences, as far as the strictly technical implementation of the operation is concerned. But it is impossible to present this as a definite conclusion even in the case of this single Member State and *a fortiori* to apply it to the other countries of the Community.

9. The Court would thus point to the inadequate concern shown both within the Commission departments responsible and in the Member States for the gathering and analysis of information.

With regard to the latter, the Court notes in particular the case of Italy, which benefited from a special scheme (which will be dealt with later) but did not provide any report on its application. But in the other Member States as well, the information that should have been supplied on the implementation of the operation was not, or if supplied, was inadequate.

With regard to the Commission, the Court can only regret the absence of any systematic research, on the basis of experience and sound econometric methods, into the best choice of general objectives, the type of customer aimed at, the amount of price reduction, the channels of distribution, etc. It is accordingly impossible for the Commission to submit proposals for future years that are based on objective criteria.

It is not so much the 1977 operation which will be affected, of course, as the measures likely to be adopted in the years to come, in respect of which the Court feels obliged to give this warning.

10. The special arrangements in the case of Italy consist purely and simply in authorizing this Member State to subsidize, at the Communities' expense, the consumption of inferior quality home-produced butter which for this reason was not likely to be stored by the intervention agencies while abundant stocks existed in the other Member States. In this way, additional butter production was encouraged,

<sup>(1)</sup> OJ No L 277, 29. 10. 1977.

a result which seems to run counter to the basic purpose of the operation, i.e. to reduce the existing stocks financed by the Community as a whole.

11. From the information given above (paragraph 6), it might be supposed that the net result of the sale of 100 kg of 'Christmas butter', after a sufficient period of time, would be a reduction by approximately 30 kg in Community stocks. From the financial point of view, the revenue from the sale of these 30 kg at a reduction of 30 % constitutes the final result of the operation. This revenue is therefore to be set against the shortfall resulting from the fact the discount of 30 % was also granted on the other 70 kg. A simple arithmetical calculation shows that the two amounts balance. Thus the reduction of the existing stocks by a given quantity costs exactly the same as the purchase of the same quantity at the intervention price (2 · 30 u.a./kg) <sup>(1)</sup>.

In other words, to simply write off the existing stocks after their purchase at the intervention price is theoretically no more expensive than this type of promotion. Obviously this conclusion relates solely to the 1977/78 'Christmas butter' operation and is subject to the accuracy of the data at present available.

This fact must be noted, although all the other measures to promote the consumption of butter have now been exploited practically to the limit. In other words, an increased effort through the other measures, either in terms of quantity or by a greater reduction in price, would, for an identical value,

<sup>(1)</sup> 1977/78 price.

probably produce even higher costs than those of the Christmas butter operation.

12. *In its reply of 24 January 1980, the Commission pointed out that 'the cost to the EAGGF of the sale of "Christmas butter" expressed in the quantities of additional butter sold has, as the Court notes, effectively risen, which is a good sign that the possibilities for encouraging the consumption of butter have been practically exhausted. Most of the butter sold in this way involves no more than a rotation of the intervention stocks. It is important for technical reasons to have a rotation of this kind and, faced with the choice of various measures, this system is an argument in favour of the so-called "Christmas butter" operation, which reaches consumers in general, since they reacted by increasing their purchases by 30 % over a given period.*

13. *The effect of the "Christmas butter" operation was examined by the Commission on the basis of the information that it had received from all the Member States. The Commission, however, considers that a more detailed examination, in particular of the long term effect of replacing other oils and fats and of the publicity effect of the operation, is desirable. This study can only be undertaken, however, by an organization highly specialized in this area of research.*

14. *The special measure for Italy was based upon the particular market conditions of this country, i.e. in general, the absence of intervention stocks. Supplying intervention butter on the Italian market solely for the "Christmas butter" operation by transfers between intervention agencies or other means would have involved additional costs in connection with removal from the warehouses and transport and would also have been likely to create problems of financial control.'*

## II. CO-RESPONSIBILITY LEVY

15. The problems posed by the application of the co-responsibility levy on milk production, instituted by Regulation (EEC) No 1079/77 of 17 May 1977 <sup>(1)</sup> led the Court, by a letter of 14 May 1979, to make the following comments upon the general economics of the measure and upon the particular financial operations for collection of the levy during the period under consideration.

<sup>(1)</sup> OJ No L 131, 26. 5. 1977.

### General remarks

16. At the present stage of its enquiries the Court does not intend to comment upon the question of whether a reduction in the net price received by the producers is likely to result in a reduction of the milk surpluses or upon the conditions (in particular, extent of price reduction) necessary to achieve this.

The Court would note only that the preamble to Regulation (EEC) No 1079/77 shows that the main

objective of the measures introduced by this regulation was to stabilize, or at least to curb, milk production.

17. From this point of view, the application of the levy was to a great extent equivalent to a drop in the price of milk from the producer, which could have resulted from a sufficient change in the level of intervention prices. The rate of the levy does not fluctuate. There are of course exemptions, but these only involve a small part of the production and a minority of producers (mountain and hill areas).

If the general measures had consisted in reducing the production price rather than collecting a tax, these exemptions could probably have been replaced by direct payments to the farmers.

18. The same policy, therefore, can be achieved by two different types of measure. The practical differences between them would not be significant at producer level. They would be, however, at Community level. First of all, the co-responsibility levy resulted in an increase in the resources of the Community. The drop in the intervention price, on the contrary, would have caused a reduction in the EAGGF Guarantee expenditure. Secondly, the collection of the levy involved an increase in administrative work for the dairy undertakings and the administration of the Member States. It is difficult to give an exact figure for the cost of this, but it undoubtedly represents a considerable proportion of the sums in question. The report on the situation in the milk sector (Doc COM/78/430 final of 27 September 1978) indeed points out that '... receipts barely exceed collection costs' (paragraph 23, page 6).

The Court therefore wishes to know the reasons for the choice made between the two types of solution possible.

It would particularly like to know whether, during the preparatory studies, a comparison had been made between the estimated costs of each of the two types of solution possible.

19. The increase in Community resources caused by the creation of the levy was allocated to certain new expenditure, provided for in a somewhat vague manner by Regulation (EEC) No 1079/77, although it would have been equally possible to incorporate this revenue into the global own resources of the

Community. It is true that in Judgment 138/78 of the European Court of Justice it was found that the creation of the co-responsibility levy was legally valid. But it is the duty of the Court of Auditors to consider the aspect of sound financial management and in particular to evaluate the contents of the measure adopted from this point of view. This is the case in particular for the allocation of the revenue from the co-responsibility levy to the actions to improve the balance of the milk products market.

Such an evaluation is not possible at the moment, however, due to the incomplete and provisional nature of the information at present available on the use of this revenue. The Court would nevertheless point out at this stage of its investigation that the practice of allocating revenue is forbidden by the first paragraph of Article 3 (1) of the general Financial Regulation of 21 December 1977 (1).

#### Comments on the collection of the levy

20. Whereas in most of the Member States, collection of the levy is on the whole conducted in a satisfactory manner, the situation in France calls for a number of criticisms from the Court.

20.1. The collection of the levy, in France, was entrusted to FORMA (Fund for the guidance and control of agricultural markets) the intervention agency responsible for milk products. The audit carried out by the Court at the head office of FORMA revealed that for the period from 16 September 1977 (date of the entry into force of the levy) to 31 December 1977, FORMA declared a sum of FF 28 000 000 to the EAGGF in the form of co-responsibility levy, a sum corresponding to the revenue which could have been expected during the period under consideration, taking into account the rate of the levy and of the volume of milk collection. But in fact this sum has not been levied from most of the dairy undertakings: a small number of collection statements and cheques were received by FORMA and returned by this organization to the senders.

20.2. This practice should not be allowed. From the preamble to Regulation (EEC) No 1079/77 it appears that the levy aimed to curb milk production by making its price less attractive. By not collecting this tax, FORMA observed neither the letter nor the spirit of the Community legislation and contributed to perpetuating the imbalance which it was necessary to overcome. In addition it distorted the conditions of competition at the inter-State level. By paying the sums owing to the Commission from national funds it granted an indirect aid to the

(1) OJ No L 356, 31. 12. 1977.

French producers which is forbidden by the Treaty of Rome.

FORMA appears to want to consider the period of three and-a-half months in 1977 as closed, i.e. not to collect the sums outstanding for this period at all. The irregularity would thus in a manner be sanctioned.

20.3. The collection statements for 1978 give evidence of refusals, delays in submission of statements, delays in payment and a total absence of on-the-spot checks of dairies, at least until October 1978. At that date, out of 1 250 taxable persons (this number varies from month to month), about 320 were still refusing to reply. The transmission of statements and the payment of levies continues to be erratic. From the outset FORMA has not taken any measures to enforce collection despite the legal means afforded it by Article 6 of Decree 77-1041 of 14 September 1977.

20.4. The Court is aware that this organization had to face serious problems on the entry into force of the legislation on co-responsibility and that the difficulties which existed in 1978 appeared to be limited to a few regions. The questions may be asked whether the levy system is suited to the particular situation of these regions of Eastern France (Doubs, Jura, Haute-Savoie, Savoie) which specialize in a certain type of cheese production involving the collection of milk by numerous very small cooperatives, containing sometimes no more than four or five producers. In none of its replies to various parliamentary questions on the subject did the Commission make mention of the difficulties of collection in France or of this special situation. The Court therefore wonders whether the Commission is aware of the situation in France. It would in particular like to know whether the Commission carried out on-the-spot audits.

21. The Court recorded a number of anomalies in respect of the other Member States.

21.1. Minor problems arose in Belgium on the census of the dairies subject to the levy. Some delays in payment were also noted in this country.

21.2. An error of 3 000 pounds sterling in favour of a cooperative in Ireland was found. Due to an erroneous entry, the firm had wrongly held this sum to its own account for a period of about five months.

21.3. In no Member State was the intervention agency responsible for collection of the tax able to state the exact quantities of milk not subject to the legislation (mountain and hill areas, marketing of milk bought from another producer).

21.4. The Court of Auditors was unable to obtain any precise information on the physical checks which are supposed to be made on the number of milk deliveries to the dairies, and in particular on the method and frequency of these checks. It is only in the United Kingdom that it was able to establish that certain amounts were rectified after a check on the volume of the tanks and reservoirs in which the collected milk was stored.

22. *On 24 January 1980 the Commission replied: 'in order to control expenditure in the milk sector, the alternatives of lowering the intervention price and introducing a co-responsibility levy were examined on both their economic and political merits. The co-responsibility levy was adopted in the end because it had the advantage of being a more selective policy instrument, meeting both the requirements of market equilibrium and the needs of small farmers in respect of income. The Council showed a clear preference for the introduction of the co-responsibility levy and for extending it if necessary, rather than a drop in the intervention price which would be politically less acceptable.'*

23. *The Commission shares the Court's view that the costs of collecting the tax are high in relation to the revenue. It notes, however, that the revenue in question is the result of an extremely low co-responsibility rate (0.5 %). Aside from its financial results, the Commission considers that this system of co-responsibility, once adopted and established, politically and administratively, should remain in force in order that more substantial use be made of it afterwards. The new co-responsibility measures proposed by the Commission to the Council should be regarded in this light.*

24. *The aim of the co-responsibility levy was to establish a more direct link between production and the outlets for sale, with a special view to reducing the financial costs. Its introduction went hand in hand with that of the additional measures intended to increase the milk and milk products market. To this end, programmes were drawn up after consultation of the professional bodies. For the first years of application, the level of expenditure has been close to the level of the levy revenue. This is not therefore a case of revenue allocated in a manner not provided for by the Financial Regulation.*

25. *The implementation of the co-responsibility levy in the Member States may be assumed to have had problems in its initial stages. While the Commission reserves the right to examine, in the course of the audits due to be effected, the solutions adopted by certain Member States in the initial period, it regards the situation at present as satisfactory.*

The Commission's reply has prompted the Court to make the following remarks:

26. The Commission recognizes that there has been a sort of *de facto* allocation of revenue without creating a situation which is expressly in contravention of the Financial Regulation. It justifies its past actions by the need to have an instrument which is more selective than a drop in the intervention price and refers to the measures which it proposed to the Council in December 1979 as the basis of future action.

The Court recognizes the need to have a selective instrument for the management of the market which

covers both the requirements of overall balance and more particular considerations. From this point of view, the decision taken in 1977 is positive in principle.

It is obvious, however, that the entry of revenue as negative appropriations under a specific chapter of the budget is equivalent to allocating the same amount to the corresponding expenditure of the same chapter, while reducing by as much the apparent expenditure by means of a set-off. The Court stated this point clearly in its 1978 Annual Report <sup>(1)</sup>.

27. The situation thus created necessitates the construction of an appropriate legal framework. The Commission's reply demonstrates that at present such a framework does not exist. The general provisions of the Financial Regulation make no provision, except in the very specific cases listed in Articles 3 and 22, for either the allocation of revenue to specific expenditure or the compensation of expenditure by revenue in the form of negative expenditure allocated to the same chapter.

If, in exceptional cases, it should appear necessary to maintain a direct link between revenue and expenditure relating to the management of a specific market, this should be done by clear, express rules, particularly since they will constitute exceptions to the general provisions of the Financial Regulation.

<sup>(1)</sup> OJ No C 326, 31. 12. 1979; paragraphs 2.11 and 2.12, p. 14 — paragraph 2.20, pp. 22 to 24.

### III. EXPORT REFUNDS ON PRODUCTS NOT LISTED IN ANNEX II

28. In a letter of 15 June 1979, the Court informed the Commission of its views on one of the fundamental mechanisms of the common agricultural policy: the maintenance of the level of European prices *vis-à-vis* those of the world market, by means of levies and refunds. This system is applied to all agricultural products which are the subject of a market organization. It thus ensures that for these products there is equal competition between suppliers from both sides of the community frontiers.

29. Food products manufactured from agricultural foodstuffs (biscuits, chocolates, beer, etc. . . .) are not subject to this mechanism. They nonetheless consist of agricultural produce that has simply been processed. If there were no correcting mechanism at hand, competition would be prey to distortions. To avoid this, the common agricultural policy has provided for a tax on imports, in the form of a variable component added to customs duties, and aid to exports, in the form of a refund. The purpose of



Regulation (EEC) No 2682/72 of 12 December 1972 <sup>(1)</sup> is to define the modes by which this refund is calculated, and it is in their regard that the Court wishes to make the following observations.

### **Complexity of the Regulation**

30. In order to determine the rights of the beneficiaries as exactly as possible, Regulation (EEC) No 2682/72 lays down a method of calculating refunds based on the actual quantities of basic products used in the manufacture of each batch of finished product exported. This method led to the establishment, in a number of annexes to Regulation (EEC) No 2682/72 of a list of basic products which qualified for refunds and a list of agricultural food products of a constant composition (pasta, beer, etc.).

On the other hand, where mixed semi-finished products are used, Regulation (EEC) No 2682/72 provides for recourse to conversion rates into basic products. It does, however, also retain the possibility of determining separate refund rates for each basic product.

In sum, the picture is one of an extremely complex provision.

### **Unwieldy administration**

31. Observing the provisions of this regulation places a heavy administrative burden on the government departments concerned, who are obliged to know, for each refund claim, the quantity of each processed product exported, its exact composition in terms of basic products, and the refund rates applicable to each basic product at the time of export. They must further make the necessary calculations for each customs declaration. The refund claims received by the departments concerned are very numerous, representing, in certain cases, more than 50 % of all claims received. They entail long and detailed work, bringing with it a considerable risk of error. The situation has repercussions upon the private sector, which is sensitive to administrative obstacles. Established firms can manage to absorb the volume of additional work, but the same is not true of the small and medium-size enterprises,

which are thereby particularly hampered in their efforts to export.

### **Weakness of the system of controls**

32. Article 8 of Regulation (EEC) No 2682/72 provides for the organization of systems of control and supervision in the Member States as well as the duty of the latter and the Commission to supply each other with information. The Court's investigations allow it to state that there exists practically no exchange of information between the Member States and the Commission, and the latter has no knowledge of what controls there are actually in being. Nor is there any coordination between the Member States. Each of them has naturally used the control systems already in existence within their own borders to achieve the tasks imposed by Regulation (EEC) No 2682/72.

The inevitable result is substantial differences between the methods employed: chemical analysis of the finished product, or physical on-site inspection of the manufacturing process. Thus, the United Kingdom and France essentially employ chemical analysis; the Netherlands use both methods; in Ireland, certain factory inspections cover only the use of a single basic product (sugar) etc. . . .

Finally, the frequency with which checks are operated varies considerably between the Member States.

### **Gaps in the Regulations**

33. Despite their complexity and detailed character, the regulations have certain gaps. Thus procedures for allowing for losses in manufacture are not specifically laid down, although in certain cases these losses may reach 30 % in weight of the basic product. In the same way, there is a risk of double payment of refunds in the case of fructose exports. A given quantity of sugar allows the manufacture of a certain quantity of fructose and glucose. Refunds could be obtained directly for the glucose, and indirectly for the whole of the sugar used where the fructose is exported.

### **Lack of uniformity in the scheme**

34. The scheme for products not listed in Annex II rests on the collection of a 'variable component' on

<sup>(1)</sup> OJ No L 289, 27. 12. 1972.

imports and the payment of export refunds. The latter are calculated on the basis of the actual composition of the amounts exported in terms of basic products.

The 'variable component' on the other hand is calculated on the basis of a notional composition of the imported product. According to the Commission's specialists, this was the only possible method in that chemical analysis, the only usable technique in the case of imports, was not sufficiently reliable to determine the actual composition of the product imported. Furthermore, the notional system gives better control over the desired level of protection from imports, and in any case, the MCA's are at the moment calculated in the same way.

Whatever its merits, the fact is that the scheme for products not listed in Annex II is totally lacking in uniformity.

35. In sum, the grounds for the system at present in force, and its objectives, are none too clear.

If the aim is to ensure, under suitable conditions, straightforward compensation for manufacturing costs, then over-elaborate precautions designed to guarantee the strict accuracy of the refunds due are not justified. After a certain point the profit for the firms themselves is very low in relation to the administrative complications. It would thus be better, as in many national legal systems, to have recourse to notional methods of valuation. One method, for example, would be to establish annually, for each exporting firm, a list of the products manufactured and the tonnage exported which would serve as a basis after establishing an average, for calculating the refunds due to that firm the following year.

If the aim is rather to maintain as effective a common agricultural policy as possible by preserving and even expanding a sector which is capable of both creating outlets for surplus production and contributing to the balance of payments of the various Member States, then perhaps it would be desirable to move in the direction of a special scheme for agricultural food products, that could take account of the state of the market for each of the products in question. Indeed, such a viewpoint is not foreign to Regulation (EEC) No 2682/72, which allows for the possibility of establishing different refund rates for the basic products incorporated in processed prod-

ucts than those applicable to the same products exported unprocessed. But this possibility has yet to be truly explored at present.

36. *In its reply of 24 January 1980, the Commission stated: 'the system of refunds in this sector has a clear economic importance in ensuring the sale of agricultural products and at the same time the competitiveness of Community industry in the export markets. The Court rightly refers to the complex nature of the existing legislation, and wonders whether alternative systems could not be considered. But the rules of any new system and their implementation are likely to be equally as complex, if not more so. A system of notional quantities per undertaking runs the risk of creating distortions in competition between products and a system "taking account of the state of the market for each of the products in question" would probably be impossible to implement since hundreds of products are involved. It should also be pointed out that in order to comply with the GATT regulations, the Community is bound to grant limited refunds on the basic products contained in the goods. The observance of this rule, moreover, allows a system of financing by the EAGGF Guarantee Section to operate.*

37. *As the situation was one of a number of basic products being used in a range of processed products and as the desire is to be as realistic as possible, the implementation of the basic idea did indeed appear complex in the beginning and does involve a somewhat unwieldy administration. It should be pointed out however that in certain cases it was possible to simplify the administration of the scheme by the use of computerized systems. With regard to monitoring the implementation of the decisions, the Commission, although of the opinion that the latter could, in certain cases, be improved, has no reason to believe that refunds have been paid without adequate justification as a result.*

38. *With regard to the absence of Community rules for losses occurring in manufacture, the Commission stresses that it is extremely difficult to introduce simple Community rules without unfair discrimination between different products and industries. It was therefore considered that the losses should be dealt with in relation to the products in question, case by case.*

39. *A certain standardization of the methods*

*employed by the Member States to check the quantities used by the undertakings could help to simplify*

*and harmonize the conditions of competition, without upsetting the system.'*

#### IV. WITHDRAWAL MEASURES FOR FRUIT AND VEGETABLES

40. In a letter of 15 June 1979 the Court stated that the measures relating to the withdrawal of fruit and vegetables in the Community, in application of Regulation (EEC) No 1035/72 of 18 May 1972<sup>(1)</sup>, represented a cost of 139 million u.a. for the EAGGF for the year 1976/77 when withdrawals were particularly heavy. They mainly concern three Member States: France, the Netherlands and above all Italy where they produce the most significant financial effects (for the above-mentioned year, 129 million u.a. were charged to the Community).

The Court has the following comments:

41. The legislation applicable to the field of withdrawal was based on the system existing in the Netherlands, a relatively small country, where a fairly orderly market has been achieved and where for a long time the traders' organization has played an active role in organizing, developing and controlling production.

Consequently the withdrawal operation was based on the activity of groups of producers which it was intended to promote in this way. These groups were allocated the rôle of authorizing officer and of paying agent in respect of the expenditure charged to the EAGGF. They were entrusted with the task of initiating, organizing and financing, at least in the initial stage, the withdrawal operations.

It is not certain, however, whether all the conditions obtained in the Netherlands are now met in all the Member States.

42. Thus it seems, above all in the case of Italy, that the market had not developed in such a way as to allow withdrawal only to be effected where strictly necessary. There still exist, mainly in that country, factors which partition the market in such a way that demand may not be satisfied in certain places while withdrawals take place in others (transport difficulties — for example between Sicily and the rest of the territory, but also between the north and south of the country —, monopoly marketing

networks — cases of groups linked to specific distribution networks, etc. . . .).

43. Similarly the producers' organizations responsible for effecting the withdrawals did not all develop in the same way and it appears that some of them, in particular in Italy, do not always fulfil the conditions of Regulation (EEC) No 1035/72 (marketing of the total production of the members; rules of sole contribution). The Commission was called upon to take note of this situation and requested Italy (in July 1978) and France (in September 1978) to carry out enquiries, at present underway, with a view to an investigation of these groups.

44. While welcoming these recent actions, the Court regrets that they did not occur earlier. The principal cause of this delay would appear to be the very decentralized nature of the organization of the fruit and vegetables market and the Commission's difficulty in obtaining full information on its operation, in particular at the level of the producers' groups.

Plain as the situation is, it is nevertheless regrettable. It is often impossible as a result for the Commission to judge whether all parts of the withdrawals system are operating properly, and clearance operations, in particular, are made very difficult.

The Court thus recommends the Commission's departments to take steps to ensure that its information on the producers' groups is more extensive, more systematic, and obtained more quickly.

45. Although the Commission has now adopted an amendment to Regulation (EEC) No 1035/72 making provision for pre-emptive withdrawals, certain types of withdrawal in France, in particular those which concern storable products, have for a long time in fact been of a pre-emptive nature. In this Member State, on the basis of material information confirmed orally, the Court found that as the result of an arrangement between the trade, the intervention agency and the national authorities concerned, pre-emptive withdrawals are sometimes carried out although the market prices remain on the whole above the Community withdrawal price.

<sup>(1)</sup> OJ No L 118, 20. 5. 1972.

An examination of the budgetary effect of these operations has not established that they represented an additional charge for the Community but on the other hand there is nothing to show that they have reduced withdrawal expenditure. In any event they are not compatible with the legislation, nor with the new rules that have been introduced and which make these pre-emptive withdrawals subject to the prior authorization of the Community authorities. The departments responsible do not appear, as far as the Court is aware, to be absolutely clear on this point.

46. In general, Community legislation, by decentralizing the management of withdrawals and placing it in the hands of producer groups, has caused a splintering of the whole withdrawals system and related physical checks. Consequently, the institution responsible for supervising the proper management of the market and the regular commitment of Community funds allocated to this purpose is faced with the difficulty of having to have the necessary checks carried out on-the-spot, where necessary by persons in the trade with the participation of the Member States. The Commission must understand that these checks are essential, although considerable problems are caused by their being performed at second hand, so to speak, or even third hand.

47. These physical checks to which the withdrawal is subject should, considering the fungible nature of the products concerned and the often very ephemeral nature of the initial cause of the Community expenditure in the field, constitute the strongest link in the systems of supervision in the Member States.

These checks, however, are to a certain extent their weak spot.

48. An initial weakness is the very purpose of the checks. Inspectors whose usual task is consumer protection are here being requested to act for a less directly positive purpose: the non-marketing of the product, which sometimes means its being destined for animal feedstuffs or even 'destruction'.

As there exists in addition a close personal contact between inspector and inspected and since, by its nature, withdrawal occurs at an economically difficult period for the inspected, one may well imagine that there are many factors which tend to weaken the inspectors' vigilance.

49. In addition, development of quality controls in Italy has been very slow in connection with the mar-

keting of fruit and vegetables within the country. Quality standards are therefore less likely to be respected when it is a question not of marketing the products but of withdrawing them from the market. During their on-the-spot visit the officials of the Court occasionally found that the withdrawn products clearly did not meet the required quality standards.

50. In the Netherlands also, problems may arise from the fact that the physical checks on withdrawal are entrusted to the employees of a strongly trade-based organization, who carry out their inspections among the producer groups on a permanent basis.

Heavy reliance on the pre-withdrawal checks is sometimes the reason for deficiencies in the withdrawals, but it is above all in respect of the destination of the withdrawn products that omissions appear. Only the initial stage, the 'Veiling' (fruit auctions) is subject to supervision; the withdrawn products — those that are not destroyed (for the staff of the Court established that some are, contrary to the official statements of the Netherlands) — are then passed free of charge to a sole entrepreneur who is supposed to turn them into animal feed but who is not subject to any regular supervision.

This example illustrates the difficulty which exists in monitoring the utilization of the withdrawn products. Some of their potential destinations are of such a nature that one wonders whether the problems of short-term over-production of which the withdrawals are the result are not being transferred to other sectors without considering the effects on these sectors (distillation into alcohol, for example). As for 'non-feedingstuff purposes', they may cover such a multitude of possibilities (including the destruction that is often necessary) that comparisons and controls are worthless.

51. In Italy and France, the groups often receive reimbursement on the basis of allowances which have not yet been paid to the producers. The producers are thus bearing directly or indirectly (imposition of premiums, etc. . . .) the financing costs of the group. This practice is contrary to the provisions of Article 18 (2) of Regulation (EEC) No 1035/72 which states that 'the value of the financial compensation shall be equal to the indemnities paid by the producers' organizations, less net receipts . . .' and with those of Article 15 (1), last subparagraph, which provides for the constitution by the producers' organizations of an intervention fund to finance the withdrawal measures. In general, financ-

ing practices may vary greatly from one group to another for a multitude of reasons (deductions by the group, taxation of the withdrawal allowance, distribution of the withdrawal allowances between all of the members of the group, etc. . . .).

The situation could scarcely be otherwise, in a system in which the Commission — and probably the intervention agencies — is so ill-informed on the management of the groups, and especially their main features: initiation, size and destination of withdrawals on the one hand and financial relations with their members on the other.

52. In the Netherlands, the accounting system instituted by the 'Produktschap' allows this organization to declare to the Commission (in respect of the financial compensation for the withdrawals) as monthly expenditure amounts corresponding to global advances, which may be subject to corrections at a later date but probably not more than minor ones. These corrections are made when the expenditure is finally settled, sometimes after two years.

53. *In its reply of 24 January 1980, the Commission 'draws attention to the fact that the characteristics of the fruit and vegetable market, i.e. a wide diversity of products which are, in general, highly perishable, whose volume of production may vary considerably from one year to the next and whose prices are subject to considerable and sometimes very rapid fluctuations depending on the season, quality, variety, supply and local demand etc. . . ., favour a common market organization which is relatively flexible and decentralized in nature. There are many advantages to this option and even if the Commission does not know what is happening daily within each producers' organization, it is informed each day of the trend in prices in the various regions. It therefore regularly receives information on the action taken by the producers' groups and in particular the withdrawal operations. Furthermore it should be pointed out that the withdrawal procedure is automatic, i.e. it occurs whenever*

*the market price falls below the withdrawal price for the product in question.*

54. *With regard to the monitoring of expenditure, the Commission obviously cannot have staff working in each producers' organization. The improvement of controls, as for any other sector, depends both on the effectiveness of the national controls in the Member States, the relations between these supervisory bodies and the Commission and the subsequent examination by the latter of the supporting documents checked by the Member States.*

*In addition, as has already been done on several occasions, the Commission may carry out special enquiries in the producers' organizations.*

55. *The Commission was aware of the existing gaps in the quality control of the products, above all in respect of compliance with standards on the domestic market. The attempts that it has made to improve this control and to ensure that its departments are better informed, often come up against problems of shortage of staff in the Member States and occasionally administrative difficulties in the Member State in question.*

56. *It should be noted that the processing of products withdrawn from the market into alcohol amounts, on average, to only 1.33 % of the total production of alcohol of agricultural origin in the Community and that problems in ascertaining the actual destination of products used for purposes other than foodstuffs should not be overestimated once the goods are withdrawn from normal circulation, which is the aim of the legislation.*

57. *With special regard to paragraph 51 of the report, the practice of some groups as notified by the Court does not in fact appear to be fully in compliance with the legislation. But if the producers do sometimes cover a part of the short-term financing costs of the group, it should nevertheless be pointed out that the organization is in the hands of these same producers'.*

Adopted on 30 April 1980.

Michael N. MURPHY

President of the Court of Auditors

