

Official Journal

of the European Communities

ISSN 0378 - 6978

L 388

Volume 32

30 December 1989

English edition

Legislation

Contents

I	<i>Acts whose publication is obligatory...</i>	
★	Council Regulation (EEC) No 4042/89 of 19 December 1989 on the improvement of the conditions under which fishery and aquaculture products are processed and marketed	1
★	Council Regulation (EEC) No 4043/89 of 19 December 1989 opening and providing for the administration of autonomous Community tariff quotas for certain fishery products (1990)	13
★	Council Regulation (EEC) No 4044/89 of 19 December 1989 partially and temporarily suspending the autonomous duties of the Common Customs Tariff on certain fish fillets	16
★	Council Regulation (EEC) No 4045/89 of 21 December 1989 on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and repealing Directive 77/435/EEC	18
★	Council Regulation (EEC) No 4046/89 of 21 December 1989 on the security to be given to ensure payment of a customs debt	24

1

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other Acts are printed in bold type and preceded by an asterisk.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 4042/89

of 19 December 1989

on the improvement of the conditions under which fishery and aquaculture products are processed and marketed

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 155 (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, on 20 January 1989, the European Parliament adopted a resolution on the fishery products processing industry ⁽⁴⁾;

Whereas, within the framework of the reform of the Structural Funds, the Council has adopted:

- Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments ⁽⁵⁾;
- Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards co-ordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments ⁽⁶⁾;

- Council Regulation (EEC) No 4254/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Regional Development Fund ⁽⁷⁾;
- Council Regulation (EEC) No 4255/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the European Social Fund ⁽⁸⁾;
- Council Regulation (EEC) No 4256/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the EAGGF Guidance Section ⁽⁹⁾;

Whereas the marketing and processing of fishery products can contribute to strengthening the Community's economic and social cohesion through the doubling of the Structural Funds between 1987 and 1993, as provided for in the financial perspective attached to the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure of 29 June 1988 ⁽¹⁰⁾, hereinafter called the 'Interinstitutional Agreement';

Whereas it is necessary to estimate the amount of Community finance necessary for the execution of this action; whereas this amount is covered by the financial perspective attached to the Interinstitutional Agreement and whereas the appropriations actually available will be determined under the budgetary procedure in compliance with the said agreement;

Whereas Article 10 of Regulation (EEC) No 4256/88 provides that the Council shall, by 31 December 1989, decide upon the forms of, and the conditions for, the Fund contribution to measures to improve the conditions under which, *inter alia*, fishery products are processed and marketed;

Whereas, following the adoption of the Regulations on the reform of the Structural Funds, Regulation (EEC) No 355/72 ⁽¹¹⁾, as last amended by Regulation (EEC) No 4256/88, must be replaced by a new regulation;

⁽¹⁾ OJ No C 143, 9. 6. 1989, p. 6.

⁽²⁾ OJ No C 323, 27. 12. 1989.

⁽³⁾ OJ No C 329, 30. 12. 1989.

⁽⁴⁾ OJ No C 47, 27. 2. 1989, p. 176.

⁽⁵⁾ OJ No L 185, 15. 7. 1988, p. 9.

⁽⁶⁾ OJ No L 374, 31. 12. 1988, p. 1.

⁽⁷⁾ OJ No L 374, 31. 12. 1988, p. 16.

⁽⁸⁾ OJ No L 374, 31. 12. 1988, p. 21.

⁽⁹⁾ OJ No L 374, 31. 12. 1988, p. 25.

⁽¹⁰⁾ OJ No L 185, 15. 7. 1988, p. 33.

⁽¹¹⁾ OJ No L 51, 23. 2. 1977, p. 1.

Whereas, in order to incorporate the improvement of the conditions under which fishery and aquaculture products are processed and marketed in the common fisheries policy, it has become necessary to adopt a separate specific regulation;

Whereas the adoption of a separate regulation is in accordance with Council Regulation (ECSC, EEC, Euratom) No 2049/88 of 24 June 1988 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾ and entails the application of stricter rules for improving transparency and financial management;

Whereas Title I of Regulation (EEC) No 4256/88, on the speeding up of the adjustment of agricultural structures with a view to the reform of the common agricultural policy, concerns measures for improving the processing and marketing of fishery products;

Whereas Article 155 (2) of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic states that it is for the Council to determine which of the Community's structural measures in the fisheries sector shall be applicable to the Canary Islands, Ceuta and Melilla; whereas Regulation (EEC) No 4028/86 ⁽²⁾ stipulates that most of the common actions for the improvement and adaptation of fishery and aquacultural structures shall apply to these territories; whereas the processing and marketing of fishery and aquaculture products are closely linked to the rest of the structural policy for fisheries and whereas it is therefore desirable to extend the common action provided for in this Regulation to these territories;

Whereas these measures for improving the processing and marketing of fishery products are to be implemented as part of Objective 5 (a) defined in Article 1 of Regulation (EEC) No 2052/88 in order to speed up the adjustment of fishery and aquaculture structures in all Member States;

Whereas Community measures for improving and adjusting structures in the fishery and aquaculture sector were adopted at Community level by Regulation (EEC) No 4028/86 and whereas the processing and marketing of fishery and aquaculture products are activities linked to structural policy and even form an essential component thereof;

Whereas there is currently a growing imbalance between supply and demand and the Community has a substantial trading deficit; whereas the main imported items are high-value products (salmon, crustaceans, molluscs) and processed and prepared products derived therefrom (including tuna fish); and whereas the Community therefore has an interest in developing its own processing industry for fishery and aquaculture products;

Whereas the improvement of the processing and marketing of fishery and aquaculture products, and in particular the

improvement of the hygiene, quality and presentation of such products may open up more outlets, enhance the value of the products concerned and thereby help to increase the productivity of fisheries and aquaculture, and to stabilize prices;

Whereas the common fisheries policy was designed to be managed and implemented at the level of each Member State and whereas steps must therefore be taken to ensure that measures relating to the processing and marketing of fishery and aquaculture products are consistent with the common fisheries policy;

Whereas the continuing improvement of structures in the sector is essential to the harmonious development of a common fisheries policy and thus represents a means of attaining, in the sector, the objectives set out in Article 39 (1) of the Treaty; whereas structural measures for achieving this improvement must therefore be based on a Community approach and on Community criteria;

Whereas the basic guidelines of the new structural policy for fisheries and aquaculture must not only take account of the results obtained and the experience gained in the past, but must also be defined against the background of the completion of a genuine internal market in fishery products and in terms of the new situation obtaining in the sector, which has become more important since the accession of Spain and Portugal to the Community;

Whereas the internal market in the fisheries sector is limited to trade in a small number of products, especially between neighbouring Member States; whereas this market consists, in fact, of several national markets, each characterized by its own structure of supply and demand; whereas, therefore, not only should work in progress be accelerated but new measures should also be taken to complete the internal market in the fisheries sector by 1993;

Whereas the sectoral objectives of the common fisheries policy must contribute to the harmonious development of the Community, to the strengthening of its economic and social cohesion and, in particular, to the speedier advancement of the less-favoured and less-developed regions;

Whereas, furthermore, in accordance with Article 39 (2) of the Treaty the structural policy must take ample account of the economic and social environment of the fisheries sector and must allow scope for adaptation, if necessary, in the light of the diversity or seriousness of certain structural problems at regional level;

Whereas the measures laid down must be in step with the requirements of environmental protection;

Whereas, in the implementation of this Regulation, the Commission will be assisted by the Standing Committee for the Fishing Industry set up by Article 47 of Regulation (EEC) No 4028/86,

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 3.

⁽²⁾ OJ No L 376, 31. 12. 1986, p. 7.

HAS ADOPTED THIS REGULATION:

Article 1

Objectives

1. Within the framework of the reform of the Structural Funds provided for in Regulation (EEC) No 2052/88 and in order to facilitate the adaptation of the conditions under which fishery and aquaculture products are marketed and processed to the development of the common fisheries policy, a common measure within the meaning of Article 2 of Regulation (EEC) No 4256/88 is hereby established in order to improve the conditions under which fishery and aquaculture products are processed and marketed. Under this measure, the Community may participate in the financing of investments which meet one or more of the following objectives:

- (a) contribute to the economic and social cohesion of the Community;
- (b) take account of the needs of the less-favoured regions defined in Article 8 of Regulation (EEC) No 2052/88 and the Annex thereto;
- (c) contribute to improving the situation of the production sectors of fishery and aquaculture basic products; in particular they must guarantee the producers of those products an adequate and lasting share in the resulting economic benefits;
- (d) help to direct production and processing towards the objectives pursued by the common fisheries policy through the structural measures adopted in the areas defined in Article 1 (b), (e) and (f) of Regulation (EEC) No 4028/86;
- (e) improve, in the long term, the marketing and processing structures for fishery and aquaculture products;
- (f) improve the marketing and distribution networks for fishery and aquaculture products;
- (g) help to improve the hygiene, quality, preservation and packaging of products, or contribute to the better use of by-products;
- (h) promote technical innovation, and the processing and marketing of new or underexploited species;
- (i) help to adapt processed products to consumer demand at reasonable prices;
- (j) contribute to market stability for fishery and aquaculture products;

(k) help to ensure the regular and adequate supply of raw materials to the fishery and aquaculture product processing sector, or enable such supplies to be modified by an appropriate production process;

(l) take account of the Community's fishery products deficit and of the need for a balanced exploitation of the Community's internal resources.

2. The common measure shall apply to the entire Community.

3. The primary aim of the common measure shall be to contribute towards the achievement of Objective 5 (a) defined in Article 1 of Regulation (EEC) No 2052/88 by speeding up the adjustment of fishery and aquaculture structures to the development of the common fisheries policy, in accordance with the conditions laid down in Regulation (EEC) No 4256/88.

4. The common measure shall complement national measures of a similar nature and contribute to their implementation within the framework of the partnership between the Community and the Member States defined in Article 4 of Regulation (EEC) No 2052/88.

TITLE I

SECTORAL PLANS

Article 2

General guidelines for the sectoral plans

In order to improve the processing and marketing of fishery and aquaculture products, each Member State shall prepare a sectoral plan covering the entire fisheries and aquaculture sector. Plans must be drawn up at national level, taking into account any regional data which may be available in the Member State concerned, in order to ensure the effective integration, planning and management of the processing and marketing of fishery and aquaculture products, and must be conceived in such a way as to:

- create a viable industry which is in conformity with Community policies and in particular with the common fisheries policy, which takes account of the foreseeable trend of raw materials supplies in the medium term and which is in step with existing fishery activities and structures,
- develop and adapt facilities for the processing and marketing of fishery and aquaculture products and improve their quality and hygiene conditions in order to increase productivity and added value and to satisfy the requirements of producers and consumer demand,
- take account of the socio-economic needs of the fishing and aquaculture industry and reflect the impact of this Regulation.

Member States shall endeavour to ensure that consistency is achieved between national sectoral plans and regional development plans where the latter include measures relating to fisheries and aquaculture.

Article 3

Content of sectoral plans

1. Sectoral plans must contain a report on activities undertaken during the previous three to five years and a description of the present situation as regards the processing and marketing of fishery and aquaculture products.
2. Sectoral plans must give precise details of the requirements of the sector and of the means which will be deployed to satisfy those requirements and to justify Community assistance.
3. Sectoral plans must give particulars also of the policies implemented by the Member State during the period of validity of the plan and give precise details of the objectives and the financing plan.
4. The period envisaged for implementing the plan must not exceed five years.
5. An outline of the sectoral plan and of the information which it shall contain, as an indicative basis, is given in the Annex.

Article 4

Updating and new sectoral plans

If the period originally determined by a Member State for implementing a sectoral plan has expired, or if a significant modification must be made to it, a new or updated sectoral plan must be drawn up. It shall contain, in addition to the information referred to in Article 3, a report showing:

- (a) the progress achieved as against the forecasts in the earlier plan, in particular regarding the availability of public funds;
- (b) the development of the situation regarding the processing and marketing of products, and the need to update the plan or to prepare a new one.

Article 5

Procedure for the submission of sectoral plans and the approval of Community support frameworks

1. The initial sectoral plans must be submitted to the Commission by the Member States within three months of the entry into force of this Regulation.

The dates for the submission of subsequent plans or of adjustments to existing plans shall be fixed by the Commission in agreement with the Member State concerned.

2. On the basis of the sectoral plans, decisions concerning the Community support frameworks for fishery and aquaculture products shall be taken by the Commission, in agreement with the Member State concerned, within six months in accordance with Article 11 of Regulation (EEC) No 2052/88 and in accordance with the procedure laid down in Article 8 (2) and (3) of Regulation (EEC) No 4253/88, following consultation of the Standing Committee for the Fishing Industry set up by Article 47 of Regulation (EEC) No 4028/86.

3. As part of the approval procedure, the Commission shall see to it that the Community support frameworks are compatible with the priorities of the Community policies and in particular with those of the common fisheries policy.

4. Measures falling within the scope of this Regulation may be taken into consideration by the Commission when establishing the Community support frameworks for areas covered by Objectives 1, 2 and 5 (b), as provided for in Title III of Regulation (EEC) No 4253/88. Such measures must conform to the provisions of this Regulation.

In such cases, the Commission, before adopting its decision, shall obtain the opinion of the Standing Committee for the Fishing Industry, set up by Article 47 of Regulation (EEC) No 4028/86, on the said measures.

TITLE II

OPERATIONAL PROGRAMMES, GLOBAL GRANTS, SUITABLE PROJECTS

Article 6

Forms of assistance

1. For the purposes of the application of this Regulation, Community assistance shall be provided in one or more of the following forms:

- part-financing of operational programmes,
- provision of global grants,
- part-financing of suitable projects,
- support for pilot and demonstration projects and for technical assistance and studies in preparation for operations,

as shown in Article 5 (2) of Regulation (EEC) No 2052/88.

2. The part-financing of operational programmes and the provision of global grants shall constitute the main forms of assistance.

3. Part-financing may also be granted for suitable projects, but only where they relate to new processing and marketing units. In this case the thresholds referred to in Article 16 (2) of Regulation (EEC) No 4253/88 shall not apply.

Article 7

Pilot/demonstration projects, technical assistance, studies

Community financial support of up to 1% of the annual budgeted amount may, in accordance with Article 8 of Regulation (EEC) No 4256/88, cover:

- pilot of demonstration projects for the processing or marketing of species, especially new ones,
- technical assistance and the necessary preparatory studies,
- studies to assess the effectiveness of the measures provided for by this Regulation.

Article 8

Applications for assistance

1. Applications for assistance shall be drawn up in accordance with the conditions laid down in Articles 14 (1) and 16 (1) of Regulation (EEC) No 4253/88 and shall be submitted to the Commission by the Member State or, with that State's agreement, by any body it may designate to do so.

Applications shall relate to one of the forms of assistance provided for in Article 6 (1) of this Regulation and shall be compatible with the Community support framework adopted by the Commission, in accordance with Article 5 (2) of this Regulation.

2. Applications shall contain the information necessary for the Commission to:

- assess the conformity of the proposed measures with Community policies, in particular the common fisheries policy,
- assess the contribution of the proposed measure to the improvement of processing and marketing structures, the consistency of the constituent measures and their conformity with the Community support framework it has approved and with the selection priorities,
- check the positive effects of the proposed measure on the fisheries and aquaculture production sector together with the advantages of a possible increase in production capacity in this respect,
- check that the implementing and financing procedure will ensure the effective implementation of the measures,
- ensure that Community provisions relating to the award of public contracts are observed,

- determine the precise nature of the assistance it will have to provide,
- evaluate the overall impact on the environment and the means available for offsetting or reducing any adverse effects.

3. The details for implementation of this Article shall be adopted by the Commission after consultation of the Standing Committee for the Fishing Industry.

TITLE III

INVESTMENTS, ELIGIBILITY, SELECTION

Article 9

Types of investment

Measures implemented under this Regulation shall concern public, semi-public or private investments in respect of fishery and aquaculture products and cover, in particular:

- premises and/or equipment intended, *inter alia*, for:
 - the extension or rationalization of facilities for cutting, filleting, salting, drying, smoking, the removal of heads, evisceration and skinning and for souasing, cooking and canning or other forms of packaging,
 - bulk packaging of the products and packing the products for retail sale,
 - auction markets and facilities for first-hand sale,
 - storage, cold-storage and deep-freezing facilities,
- investments concerning new processing techniques,
- facilities to improve the quality and hygiene of production and marketing conditions, in particular those dealing with molluscs and shellfish and with water filtration,
- all equipment required for processing and marketing from the time of landing from fishing vessels in ports to the final product.

Article 10

Eligibility

1. The investments defined in Article 9 shall be eligible for Community assistance throughout the Community.
2. However, in order to be eligible for such financial assistance, investments must:
 - in particular, belong to one of the classes defined in Article 9,

- form an integral part of a Community support framework and contribute to the lasting economic effect of the structural improvement provided for therein,
- offer adequate assurances of technical and economic viability,
- guarantee the Community origin of the bulk of the raw materials.

3. Investments shall not be eligible which concern:

- product processing on board ship,
- fishery and aquaculture products intended to be used and processed for purposes other than human consumption (except investments intended solely for the treatment, processing or marketing of fishery wastes),
- the retail sector,
- vehicles used for the transport and distribution of fishery and aquaculture products,
- work commenced before the date of receipt of the application for assistance by the Commission; however, in the case of an operational programme or a global grant, work commenced during the six months preceding the date of receipt of the application for assistance by the Commission shall be deemed eligible,
- products other than those listed in Annex II to the Treaty. The Commission may, however, allow investments concerning other products provided that the beneficiaries of the assistance have direct contractual links with the producers of basic fishery and aquaculture products.

4. Within the framework of the investments referred to in paragraph 1, costs may be eligible for funding if they relate to:

- (a) the construction and acquisition of immovable property, other than purchase of land;
- (b) the acquisition of new machinery and equipment, including computers, software and computer programmes;
- (c) overheads such as fees for architects, engineers and consultants, the cost of feasibility studies up to 12% of the costs referred to in points (a) and (b).

Article 11

Selection priorities

The investments must ensure the rational development of the processing and marketing of fishery and aquaculture products and guarantee producers of basic products a satisfactory and lasting share of the economic benefits arising from them.

In general, priority shall be given to investments which concern one or more of the following categories:

- the construction, modernization and rationalization of auction markets and halls for the first-hand sale of products landed by vessels flying the flag of a Member State,
- the storage and handling of fishery and aquaculture products,
- the smoking of fishery and aquaculture products,
- facilities for preparation for first-hand sale and filleting of fresh fish and the preparation of deep-frozen fish,
- the preparation on land of finished products from fish which has been caught and/or deep-frozen on board vessels flying the flag of a Member State.
- undertakings producing preserved and semi-preserved products including those using sousing techniques, provided that they are production units which are technically advanced, economically viable and capable of withstanding free international competition,
- the development of new products and new technologies based in particular on the results of the research, pilot and demonstration projects,
- the improvement of the quality and hygiene of production and marketing processes,
- the enhancement of the added value of products.

Priority shall also be given to investments submitted by producers of basic products, producers' groups or associations thereof, and cooperatives, with particular attention being paid to the needs of small and medium-sized undertakings.

Article 12

Beneficiaries

1. Community assistance shall be granted to natural or legal persons or groups of such persons, responsible for investments, which may be public, semi-public or private.

2. Community assistance shall be paid in accordance with the conditions laid down in Article 15 of this Regulation;

- by the authority designated pursuant to Article 14 (1) of Regulation (EEC) No 4253/88, or
- by the intermediary designated pursuant to Article 16 (1) of Regulation (EEC) No 4253/88.

*Article 13***Decisions granting assistance and budgetary commitments**

1. The Commission shall decide upon granting assistance as a general rule within six months of receipt of the application for assistance.

2. Member States shall be given prior notice of draft decisions contemplated by the Commission. At the request of a Member State, the Standing Committee for the Fishing Industry shall be consulted on draft Commission decisions.

3. The decisions referred to in paragraph 1 shall be notified to the authority or intermediary referred to in Articles 14 (1) and 16 (1) of Regulation (EEC) No 4253/88 and to the Member State concerned.

4. In the case of multiannual measures, the authority or intermediary referred to in paragraph 3 shall send the Commission each year the information necessary to enable the commitment to be effected in the annual instalments provided for in Article 20 (2) of Regulation (EEC) No 4253/88 and to check the conformity of the investments with the decisions referred to in paragraph 1 of this Article and in Article 5 (2) and (4) of this Regulation.

relation to the eligible cost of investments may not exceed the maximum rates laid down in paragraph 1 above.

Such other forms may not, however, be implemented until the details for their implementation have been adopted by the Commission after consultation of the Standing Committee for the Fishing Industry.

3. The Member States concerned shall finance at least 5 % of the eligible costs of the investments accepted by the Commission for the granting of assistance.

4. The contribution of the beneficiaries referred to in Article 12 (1), in relation to the eligible costs of the investments accepted, shall be at least:

- (a) 25 % in the areas concerned by Objective 1;
- (b) 45 % in other areas.

5. Member States may, within the limits set by the scope of this Regulation, adopt additional aid measures which are subject to conditions or rules other than those laid down herein, or which involve an amount in excess of the maximum amounts referred to in this Article, provided that they are in conformity with Articles 92, 93 and 94 of the Treaty.

TITLE IV

GENERAL FINANCIAL PROVISIONS AND CONTROLS

*Article 14***Rates of assistance**

1. Assistance may not exceed, in relation to the eligible costs of the investments:

- (a) 50 % in the regions concerned by Objective 1, in accordance with Article 8 of Regulation (EEC) No 2052/88 and the Annex thereto;
- (b) 30 % in other regions.

The Community support framework may provide for the rates of assistance adopted, taking into account the considerations listed in Article 13 of Regulation (EEC) No 2052/88.

2. Assistance shall be in the form of capital grants.

If assistance takes one of the forms provided for in Article 5 (3) of Regulation (EEC) No 2052/88, the equivalent grant in

*Article 15***Procedure for payment of the assistance**

1. The amount of the advances or balances which must be paid in accordance with Article 21 of Regulation (EEC) No 4253/88 shall be paid to the authority designated pursuant to Article 14 (1) of that Regulation or, where appropriate, and with the agreement of the Member State, to the intermediary referred to in Article 16 (1) of that Regulation.

Payment of the balance shall be made after the financial contribution of the Member State, provided for in Article 14 (3) of this Regulation, has been paid to the beneficiaries.

2. The authority or intermediary referred to in paragraph 1 shall check the documents supporting the final expenditure of the beneficiaries and shall see to it that there are no irregularities before the Community assistance is paid. It shall also carry out on-the-spot checks in order to verify that the information contained in the aid application corresponds to the true situation. Payment to the beneficiary must as a general rule be made within five weeks of submission of the application to the authority or intermediary, provided that the application is accompanied by all the documents required by the authority or intermediary and the information necessary for establishing the effective nature of the expenditure.

3. At the end of each quarter, the authority or intermediary referred to in paragraph 1 shall forward to the

Commission a list of the payments made to beneficiaries with particulars of the supporting documents in its possession.

4. A progress report shall be transmitted by the authority or intermediary referred to in paragraph 1 to the Commission every year.

5. The details for implementation of paragraphs 3 and 4 shall be adopted by the Commission after consultation of the Standing Committee for the Fishing Industry.

Article 16

Checks and controls

1. Member States shall submit a description of their management and control arrangements for the Community assistance provided for in this Regulation.

2. Pursuant to Article 23 of Regulation (EEC) No 4253/88, the authority designated in accordance with Article 14 (1) of that Regulation or, where appropriate, the intermediary referred to in Article 16 (1) of that Regulation shall send the Commission, at its request, all supporting documents and any other documents such as to establish that the financial or other conditions imposed have been met.

Article 17

Reduction, suspension or discontinuation of assistance

In the framework of partnership, and in accordance with the procedure laid down in Article 24 of Regulation (EEC) No 4253/88, the Commission may decide to suspend, reduce or discontinue its assistance if:

- the investments have not been carried out as envisaged,
- certain conditions laid down in the Commission decision referred to in Article 13 (1) have not been fulfilled,
- the implementation periods have not been observed,
- the beneficiary sells equipment or facilities having received aid under this Regulation within six or ten years respectively of the date of their acquisition or of the completion of the work, without prior authorization from the Commission.

Such a decision shall be notified to the Member State concerned and to the authority designated pursuant to Article 14 (1) of Regulation (EEC) No 4253/88 or, where appropriate, the intermediary referred to in Article 16 (1) of that Regulation.

Article 18

Annual budgeted amount

The amounts deemed necessary for the execution of the action introduced by this Regulation shall be determined each financial year by the budgetary authority.

Article 19

Monitoring and assessment

The monitoring and assessment of the financial measures provided for herein shall be carried out in accordance with Articles 25 and 26 of Regulation (EEC) No 4253/88.

TITLE V

OTHER PROVISIONS

Article 20

The common action established by this Regulation shall be applicable to the Canary Islands, Ceuta and Melilla.

Article 21

Transitional provisions

1. Until 31 December 1990, projects may be submitted in accordance with Regulation (EEC) No 355/77.

2. Projects presented in 1990 under Regulation (EEC) No 355/77 which do not form part of a sectoral plan shall be considered, until 30 June 1991, for the purposes of the granting of financial assistance under that Regulation.

3. On their expiry and at the time of their review, the specific programmes approved by the Commission under Regulation (EEC) No 355/77 will be extended until 30 June 1991.

Article 22

Entry into force

This Regulation shall enter into force on 1 January 1990.

All references in other acts to Regulation (EEC) No 355/77 and relating to fisheries shall, except where otherwise stated in the transitional provisions referred to in Article 21 of this Regulation, be replaced by references to this Regulation.

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

Done at Brussels, 19 December 1989.

For the Council
The President
J. MELLICK

ANNEX

OUTLINE SECTORAL PLAN

A. FISHERIES

1. General description of the area

- geographical configuration;
- demographic structure;
- main economic indicators;
- level of employment;
- gross regional product (composition and trends);
- importance of fisheries to the general economy of the region.

2. General description of fisheries in the region

2.1. *Fishing fleet*

- (a) types of vessel, characteristics, types of fishing gear used;
- (b) employment directly linked with the fishing fleet;
- (c) area of activity of the fishing fleet in the short, medium and long-term; development trends of resources in terms of yield; information sources used for evaluating these trends;
- (d) development of the fishing fleet in the region following the implementation of the multiannual guidance programme defined in Regulation (EEC) No 4028/86, and impact on capacity and future landings.

2.2. *Ports and landing sites*

- (a) description of fishing ports (location, size);
- (b) complete breakdown of main species landed, stating, where necessary, the origin of imports;
- (c) description of facilities, current needs and problems in each port.

2.3. *Auctions*

Number, capacity, location and extent of use of auctions; species sold; current shortcomings due to lack of concentration of sales; shortcomings attributable to the inadequacy of facilities and equipment or other factors.

2.4. *Coldstore capacity of the area*

Location and capacity of coldstore facilities in the area; turnover (annual volume of entries and exists of goods); types of product stored. Inadequacy of capacity for storing the production of local or other fleets. Storage of products from other regions (differentiating between Community and non-Community products): types and quantities of products stored for processing; description of problems and of shortcomings.

2.5. *Related sectors*

Description, where necessary, of related sectors in the region (shipyards, repair workshops, supply stores) and impact of the local fleet on their economy.

B. AQUACULTURE

1. General description of aquaculture in the region

- (a) outline of the aquaculture sector, present situation and outlook (requirements, plans);
- (b) description of the type of facilities, their capacity and methods of production;
- (c) description of the types and quantities of products for which aquaculture production could supply the raw material;

- (d) description of the quality of the waters concerned, means used for obtaining an appropriate quality of water for fish-farming in accordance with Community rules;
- (e) description of the environmental protection measures taken.

C. PROCESSING AND MARKETING

1. Processing

Detailed figures for the sector (number of undertakings, types of products processed); present sources of raw materials; problems involving the ability of the industry to compete with other industries inside and outside the Community; current problems relating to equipment and sources of raw materials; full description of the present situation and outlook for the various types of fishery and aquaculture products.

2. Marketing

Detailed figures for the sector (number of undertakings, type of marketing); description by sector of future sales and marketing strategies for the various types of fishery and aquaculture product.

D. AIMS OF THE PROGRAMME AND RESULTS EXPECTED FOR THE PERIOD IN QUESTION

A detailed description should be given of the aims to be achieved for remedying the abovementioned shortcomings, and particulars should be given of the way in which the various sectors will be affected.

A list should also be given of the legal, financial or other measures planned by the Member State for developing the processing and marketing sector, as well as the number and type of projects to be presented under the programme.

The desired level of Community funding should also be specified, together with the consequences of a total or part refusal. A financing plan must be prepared for this purpose comprising, where the Member State so wishes, annual tranches.

Lastly, details should be given of why the objectives have been set, the way in which they will benefit the region and the quantitative effect of their implementation on the regional economy.

E. INFORMATION

- (a) Definition of the geographical areas in which fisheries and aquaculture are significant; history of the processing and marketing sector and the reasons for its present geographical location;
- (b) a survey of the present situation and a description of past and future trends justifying the action, particularly as regards:
 - the economic and social situation of the area in general, insofar as it is of importance to the sectoral plan, and in particular the fisheries and aquaculture sector,
 - the importance of fishing and/or aquaculture to the economy,
 - the situation as regards the processing and marketing of fishery and/or aquaculture products, in particular the present capacity of the undertakings in question and their geographical distribution;
- (c) the needs which the plan must answer and its objectives, in particular the number, nature and size of the processing units, storage facilities and auctions, but also the number of jobs likely to be created, and the species and quantities of raw materials for processing;
- (d) the means deployed to improve hygiene conditions at each stage of the processing and marketing of fishery and aquaculture products;
- (e) the marketing and sales strategies proposed for the sectors of processed products;
- (f) the means envisaged for attaining the objectives of the plan, in particular the total amount of the investments and the financial contribution of the Member State;

- (g) the relationships, coordination and links of the sectoral plan with other national and Community programmes in the area, in particular with the measures provided for in Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector;
 - (h) a description of the nature of and detailed provisions relating to national aid, and relevant national and regional legislation;
 - (i) an indicative list of the categories of investments and other measures liable to be funded as part of the plan (the Commission will decide later on the information to be provided in respect of each investment);
 - (j) national criteria for selecting investments not referred to above, since it cannot be expected that a sectoral plan will describe in detail all the investments proposed for funding during its period of validity;
 - (k) an indication of the way in which investments liable to be funded will obtain their supplies of raw materials, taking into consideration Community resources, the resources of third countries, the trend of fishery agreements, agreements relating to international waters and other non-Community sources of supply;
 - (l) an indicative description of the types of product likely to be marketed and of their situation in relation to the present state of the Community market;
 - (m) the overall impact on the environment of the measures provided for in the plan, where such impact is significant, and the means for dealing with it;
 - (n) the period envisaged for implementing the plan, which must not exceed five years;
 - (o) the administrative, legal or financial measures adopted or to be taken for implementing the plan, in particular the nature of the measures envisaged and the authorities or intermediaries designated pursuant to Articles 14 (1) and 16 (1) of Regulation (EEC) No 4253/88.
-

COUNCIL REGULATION (EEC) No 4043/89

of 19 December 1989

opening and providing for the administration of autonomous Community tariff quotas for certain fishery products (1990)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas Community supplies of certain species of fish or fish fillets currently depend on imports from third countries; whereas it is in the Community's interest to suspend partially the customs duties for the products in question, within Community tariff quotas of an appropriate volume; whereas, in order not to jeopardize the development prospects of this production in the Community and to ensure an adequate supply to satisfy user industries, it is advisable to open these quotas for the period from 1 April to 31 December 1990 applying customs duties varied accordingly to sensitivity of the different products on the Community market;

Whereas it is necessary, in particular, to ensure for all Community importers equal and uninterrupted access to the said quotas and to ensure the uninterrupted application of the rates laid down for the quotas to all imports of the products concerned into all Member States until the quotas

have been used up; whereas the necessary measures should be taken to ensure efficient Community management of the tariff quotas, while allowing Member States to draw on the quota volumes the necessary quantities which correspond to importations actually made; whereas this type of management requires close cooperation between the Member States and the Commission;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within, and jointly represented by, the Benelux Economic Union, any operation relating to the administration of the tariff quotas may be carried out by any of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 April to 31 December 1990, the customs duties applicable on importation to products listed below shall be suspended at the levels and within the limits of the Community tariff quotas indicated for each product:

Series No	CN code (¹)	Description	Amount of quota (in tonnes)	Quota duty (%)
09.2753	ex 0302 50 ex 0302 69 35 ex 0303 60 ex 0303 79 41	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>), and fish of the genus <i>Boreogadus saida</i> , excluding livers, roes, presented fresh, chilled or frozen, for processing (a) (b)	40 000	3,7
09.2755	ex 0302 63 00 ex 0303 73 00	Coalfish (<i>Pollachius virens</i>), excluding livers, roes, presented fresh, chilled or frozen, for processing (a) (b)	15 000	3,7
09.2757	ex 0302 62 00 ex 0303 72 00	Haddock (<i>Melanogrammus aeglefinus</i>), excluding livers, roes, presented fresh, chilled or frozen, for processing (a) (b)	10 000	3,7
09.2765	0305 62 00 0305 69 10	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>) and fish of the species <i>Boreogadus saida</i> , salted or in brine, but not dried or smoked	53 000	7
09.2767	0305 51 10 0305 59 11	Cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>) and fish of the species <i>Boreogadus saida</i> , dried, unsalted, not smoked	800	10
09.2769	ex 0305 30 11 ex 0305 30 19	Fish fillets, dried, whether or not salted, of cod (<i>Gadus morhua</i> , <i>Gadus ogac</i> , <i>Gadus macrocephalus</i>) and of fish of the species <i>Boreogadus saida</i>	1 200	11

Series No	CN code ⁽¹⁾	Description	Amount of quota (in tonnes)	Quota duty (%)
09.2771	ex 0305 30 90	Fillets of coalfish (<i>Pollachius virens</i>), salted, for processing (a) (b)	3 500	10
09.2773	ex 0306 13 10 ex 0306 23 10	Shrimps and prawns of the species <i>Pandalus borealis</i> , in shell, fresh, chilled or frozen, for processing (a) (b)	5 000	7
09.2789	ex 0302 21 10 ex 0303 31 10	Lesser or Greenland halibut (<i>Reinhardtius hippoglossoides</i>), fresh, chilled or frozen, for processing (a) (b)	2 000	4

⁽¹⁾ See Taric Codes in the Annex.

(a) Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions.

(b) The quota shall apply to products intended to undergo any operation unless they are intended to undergo exclusively one or more of the following operations:

- cleaning, gutting, tailing, heading,
- cutting (excluding filleting or cutting of frozen blocks),
- sampling, sorting,
- labelling,
- packing,
- chilling,
- freezing,
- deep freezing,
- thawing, separation.

The quota is not allowed for products intended, in addition to undergo treatment (or operations) qualifying for the quota where such treatment (or operations) is (are) carried out at retail or catering level. The reduction of customs duties shall apply only to fish intended for human consumption.

2. Within the limits of these tariff quotas, the Kingdom of Spain and the Portuguese Republic shall apply customs duties calculated in accordance with the relevant provisions in the Act of Accession.

3. Imports of the products in question shall not be covered by the quotas referred to in paragraph 1 unless the free-at-frontier price, which is determined by the Member States in accordance with Article 21 of Regulation (EEC) No 3796/81⁽¹⁾, as last amended by Regulation (EEC) No 3468/88⁽²⁾, is at least equal to the reference price fixed, or to be fixed, by the Community for the products under consideration of the categories of the products concerned.

Article 2

The tariff quotas referred to in Article 1 shall be managed by the Commission, which may take all appropriate administrative measures in order to ensure effective administration thereof.

Article 3

If an importer presents in a Member State an entry for release for free circulation, including a request for preferential benefit for a product covered by this Regulation and if this entry for release is accepted by the customs authorities, the Member States concerned shall inform the Commission and draw an amount corresponding to its requirements from the corresponding quota amount.

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 305, 10. 11. 1988, p. 1.

The drawing requests, with indication of the date of acceptance of the said entries, must be transmitted to the Commission without delay.

The drawings are granted by the Commission by reference to the date of acceptance of the entries for release for free circulation by the customs authorities of the Member States concerned to the extent that the available balance so permits.

If a Member State does not use the quantities drawn, it shall return them as soon as possible to the corresponding quota amount.

If the quantities requested are greater than the available balance of the quota amount, allocation shall be made on a *pro rata* basis with respect to the requests. Member States shall be informed by the Commission of the drawings made.

Article 4

Each Member State shall ensure that importers of the products concerned have equal and uninterrupted access to the quotas for such time as the residual balance of the quota volumes so permits.

Article 5

The Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 6

This Regulation shall enter into force on 1 April 1990.

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

Done at Brussels, 19 December 1989.

For the Council
The President
 J. MELLICK

ANNEX

Series No	CN code	Taric code
09.2753	ex 0302 50 10	* 10
	ex 0302 50 90	* 11
	ex 0302 50 90	* 91
	ex 0302 69 35	* 10
	ex 0303 60 11	* 10
	ex 0303 60 19	* 10
	ex 0303 60 90	* 10
	ex 0303 79 41	* 10
09.2755	ex 0302 63 00	* 10
	ex 0303 73 00	* 10
09.2757	ex 0302 62 00	* 10
	ex 0303 72 00	* 10
09.2769	ex 0305 30 11	* 10
	ex 0305 30 19	* 10
09.2771	ex 0302 21 10	* 10
	ex 0303 31 10	* 10
09.2773	ex 0306 13 10	* 10
	ex 0306 23 10	* 11
	ex 0306 23 10	* 91
09.2789	ex 0305 30 90	* 13

COUNCIL REGULATION (EEC) No 4044/89

of 19 December 1989

partially and temporarily suspending the autonomous duties of the Common Customs Tariff on certain fish fillets

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas Community supplies of fillets of certain species of fish currently depend on imports from third countries; whereas it is in the Community's interest to suspend partially the customs duties for the products in question; whereas, in order not to jeopardize the development prospects of production of competitive products in the Community and to ensure an adequate supply to satisfy user industries, it is advisable to limit these suspension measures to a period from 1 April to 31 December 1990,

HAS ADOPTED THIS REGULATION:

Article 1

From 1 April to 31 December 1990, the autonomous duties of the Common Customs Tariff applicable to the products listed below shall be suspended at the level indicated in respect of each of them:

CN code (¹)	Description	Rate of duty (%)
ex 0304 20 57 ex 0304 90 47	Fillets and meat of hake (<i>Merluccius</i> spp., excluding the genus <i>Merluccius merluccius</i> , <i>Merluccius bilinearis</i> and <i>Merluccius carpensis</i>), in the form of industrial blocks, frozen, for processing (a) (b)	11
ex 0304 20 85	Fillets of Alaska pollack (<i>Theragra chalcogramma</i>), in the form of industrial blocks, frozen, for processing (a) (b)	11

(¹) See Taric codes in the Annex.

(a) Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions.

(b) The suspension shall apply to products intended to undergo any operation unless they are intended to undergo exclusively one or more of the following operations:

- cleaning, gutting, tailing, heading,
- cutting (excluding filleting or cutting of frozen blocks),
- sampling, sorting,
- labelling,
- packing,
- chilling,
- freezing,
- deep freezing,
- thawing, separation.

The suspension is not allowed for products intended, in addition, to undergo treatment (or operations) qualifying for the suspension where such treatment (or operations) is (are) carried out at retail or catering level. The reduction of customs duties shall apply only to fish intended for human consumption.

2. In the framework of these suspensions, the Kingdom of Spain and the Portuguese Republic shall apply customs duties calculated in accordance with the relevant provisions in the Act of Accession.

3. Imports of the products in question shall not be covered by the suspensions referred to in paragraph 1 unless the free-at-frontier price, which is determined by the Member States in accordance with Article 21 of Regulation (EEC) No 3796/81 ⁽¹⁾, at last amended by Regulation (EEC) No 3468/88 ⁽²⁾, is at least equal to the reference price fixed, or to be fixed, by the Community for the products under consideration or the categories of the products concerned.

Article 2

This Regulation shall enter into force on 1 April 1990.

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

Done at Brussels, 19 December 1989.

For the Council
The President
J. MELLICK

ANNEX

CN-code	Taric code
ex 0304 20 57	* 03
ex 0304 20 57	* 81
ex 0304 20 85	* 10

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 305, 10. 11. 1988, p. 2.

COUNCIL REGULATION (EEC) No 4045/89

of 21 December 1989

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas, under Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 2048/88 ⁽⁴⁾, the Member States take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence;

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

Whereas Member States must be encouraged to reinforce the scrutiny of commercial documents of undertakings receiving or making payments which they have carried out in accordance with Directive 77/435/EEC ⁽⁵⁾;

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

Whereas the documents used as a basis for such scrutiny should be determined in such a way as to enable a full scrutiny to be carried out;

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

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

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

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

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

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

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

⁽¹⁾ OJ No C 192, 29. 7. 1987, p. 15.

⁽²⁾ OJ No C 291, 20. 11. 1989, p. 105.

⁽³⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽⁴⁾ OJ No L 185, 15. 7. 1988, p. 1.

⁽⁵⁾ OJ No L 172, 12. 7. 1977, p. 17.

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

Whereas it is necessary for an estimate to be made of the amount of the Community financing required for implementing this measure; whereas such amount forms part of the financial forecast appearing in point II of the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure⁽¹⁾ of 29 June 1988; whereas the appropriations actually available will be determined under the budgetary procedure in compliance with that agreement;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinized. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities under the system of financing by the Guarantee Section of the EAGGF. *Inter alia* the selection shall take account of the financial importance of the undertakings in that system and other risk factors.

2. The scrutiny referred to in paragraph 1 shall apply, for each period of scrutiny referred to in paragraph 4 to a

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 33.

number of undertakings which may not be less than half the undertakings whose receipts or payments, or the sum thereof, under the system of financing by the Guarantee Section of the EAGGF, amounted to more than ECU 60 000 for the calendar year preceding the beginning of the period of scrutiny in question.

For the period of scrutiny beginning in 1990 the amount of ECU 60 000 quoted in the first subparagraph shall be replaced by ECU 100 000 and by ECU 90 000 for that beginning in 1991.

It shall be compulsory for undertakings the sum of whose receipts or payments amounted to more than ECU 200 000 and which were not scrutinized in accordance with this Regulation during the preceding scrutiny period to be scrutinized.

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

3. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with which undertakings within the meaning of Article 1 are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 3.

4. The scrutiny period shall run from 1 July to 30 June of the following year.

Scrutiny shall cover at least the calendar year preceding the scrutiny period; it may be extended for a period to be determined by the Member State which precedes that calendar year as well as the period between the 1 January of the year in which the period of control commenced and the effective date of control of an undertaking.

5. The scrutiny carried out pursuant to this Regulation shall not prejudice the inspections undertaken pursuant to Article 6 of Regulation (EEC) No 283/72⁽²⁾ or those undertaken pursuant to Article 9 of Regulation (EEC) No 729/70.

Article 3

1. The accuracy of primary data under scrutiny shall be verified in appropriate cases by an adequate number of cross-checks, including, *inter alia*:

- comparisons with the commercial documents of suppliers, customers, carriers and other third parties directly or indirectly connected with transactions carried out within the financing system by the EAGGF Guarantee section,
- physical checks upon the quantity and nature of stocks, and

⁽²⁾ OJ No L 36, 10. 2. 1972, p. 1.

— comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGGF Guarantee section.

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

Article 4

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

The Member States may prescribe a longer period for the retention of these documents.

Article 5

1. The persons responsible for the undertakings shall ensure that all commercial documents and additional information requested are supplied to the officials responsible for the scrutiny or to the persons empowered for that purpose.

2. The officials responsible for the scrutiny or the persons empowered for that purpose may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

Article 6

1. Member States shall ensure that officials responsible for the scrutiny shall be entitled to seize commercial documents, or have them seized. This right shall be exercised with due regard for relevant national provisions and shall not affect the application of rules governing proceedings in criminal matters concerning the seizure of documents.

2. Member States shall adopt appropriate measures to penalize natural or legal persons who fail to fulfil their obligations under this Regulation.

Article 7

1. Member States shall assist each other for the purposes of carrying out the scrutiny provided for in Articles 2 and 3 where an undertaking is established in a Member State other than that in which payment of the amount in question has or should have been made or received.

2. During the first quarter of the year following the year of payment, Member States shall send a list of the undertakings referred to in paragraph 1 to each Member State in which such an undertaking is established; the list shall contain all the details necessary to enable the Member State of destination to identify the undertakings. A copy of each list shall be sent to the Commission.

The Member State receiving or making the payment may ask the Member State in which the business is established to inspect that business as a matter of priority, in accordance with Article 2, indicating specific reasons for the request. A copy of each request is to be sent to the Commission.

3. During the first quarter of the year following the year of payment, Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.

Article 8

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

2. This Article shall not prejudice national provisions relating to legal proceedings.

Article 9

1. Before 1 January following the scrutiny period Member States shall send the Commission a detailed report on the application of this Regulation.

2. The report must set out any difficulties encountered and the measures taken to overcome them and put forward, where appropriate, suggestions for improvements.

3. The Member States and the Commission shall have regular exchanges of views on the application of this Regulation.

4. The Commission will evaluate annually the progress achieved, in its annual report on the administration of the funds referred to in Article 10 of Regulation (EEC) No 729/70.

5. The Commission shall submit before 31 December 1991 a report on the application of this Regulation. Within the framework of this report, the Commission shall examine the specific situation that could result for certain Member States from the application of this Regulation and, where appropriate, it shall make appropriate proposals.

Article 10

1. Member States shall draw up programmes for scrutinies to be carried out pursuant to Article 2 during the subsequent scrutiny period.

2. Each year, before 15 April, the Member States shall send the Commission their programme as referred to in paragraph 1 and shall specify:

- the number of undertakings to be scrutinized and their breakdown by sector on the basis of the amounts relating to them,
- the criteria adopted for drawing up the programme.

3. The programmes established by the Member States and forwarded to the Commission, shall be implemented by the Member States, if, within six weeks, the Commission has not made known its comments.

4. Amendments made by the Member States to the programmes shall be subject to the same procedure.

5. Exceptionally, at any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of one or more Member States.

6. For the first year of application, the scrutiny programmes established by the Member States shall be forwarded to the Commission not later than 1 May 1990 and shall be implemented if the Commission has not made known its comments before 15 June 1990.

Article 11

1. In each Member State not later than 1 January 1991 a special department is to be made responsible for monitoring the application of this Regulation and for,

- the performance of the scrutiny provided for herein by officials employed directly by that special department, or
- the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.

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

2. The department or departments responsible for the application of this Regulation must be organized in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny carried out prior to payment.

3. In order to ensure that this Regulation is properly applied the special department referred to in paragraph 1 shall take all the measures necessary.

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

- training the national officials responsible for carrying out the scrutiny referred to in this Regulation, in order to enable them to acquire sufficient knowledge for performing their duties,
- administering the scrutiny reports and any other documents relating to the scrutinies carried out and provided for under this Regulation,
- the preparation and communication of the reports referred to in Article 9 (1) and the programmes referred to in Article 10.

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

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

6. This Article shall not apply when the minimum number of undertakings to control, in accordance with Article 2 (2), is less than 10.

Article 12

The Community shall participate under the conditions set out in Articles 13, 14 and 15 in the financing of the additional expenditure actually incurred by the Member States and linked to:

- the reduction of the threshold for calculating the number of scrutiny checks to be carried out,
- the mobilization of means intended to improve the quality of scrutiny.

Article 13

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

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

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

- ECU 500 000 per year for the first three years and ECU 250 000 for the fourth and fifth years in the case of Germany, Spain, France, Italy, the Netherlands and the United Kingdom,

- ECU 250 000 per year for the first three years and ECU 125 000 for the fourth and fifth years in the case of Belgium, Denmark, Greece, Ireland and Portugal, and
- ECU 50 000 per year for the first three years and ECU 25 000 for the fourth and fifth years in the case of Luxembourg.

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

The Community contribution to the remuneration expense of staff shall be decided for each Member State at a fixed rate.

Article 14

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

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

Article 15

The Community shall contribute towards the expenditure actually incurred by the Member States in respect of the purchase of data processing and office equipment required by the departments responsible for the application of this Regulation, at the rate of 100 % up to a maximum amount of:

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

Article 16

1. The maximum amount of Community expenditure deemed necessary for carrying out the measure introduced by

this Regulation shall be ECU 6 080 000 for the first year, ECU 5 160 000 for the second and third years and ECU 2 580 000 for the fourth and fifth years.

2. The budgetary authority shall determine the appropriations available for each financial year.

Article 17

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

Article 18

The amounts in ecus appearing in this Regulation shall be converted into national currencies by applying the rate of exchange operating on the first working date of the year when the scrutiny period begins and published in the C series of the *Official Journal of the European Communities*.

Article 19

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

Article 20

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

Article 21

In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organized under this Regulation and to the data held, including those stored in the data processing systems.

Article 22

1. Directive 77/435/EEC shall be repealed with effect from 1 January 1990. The scrutiny carried out from that date under that Directive shall be deemed to be carried out in accordance with this Regulation.

2. References made to Directive 77/435/EEC shall be deemed to be made to this Regulation.

Article 23

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply with effect from 1 January 1990.

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

Done at Brussels, 21 December 1989.

For the Council
The President
E. CRESSON

COUNCIL REGULATION (EEC) No 4046/89

of 21 December 1989

on the security to be given to ensure payment of a customs debt

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas certain provisions of the law on customs matters stipulate that the customs authorities are either obliged or entitled to require security to be given to ensure payment of a customs debt which has been, or may be, incurred;

Whereas the rules governing such security are of particular importance for the proper functioning of the customs union and for ensuring the greatest degree of equal treatment for traders; whereas, since the giving of security in fact involves substantial expense, it is important that all Community traders, irrespective of the Member State in which they are situated, be subject to the same rules in regard, *inter alia*, to the manner in which such security may be given and the calculation of the amount thereof;

Whereas, where security is required, it must be given once only by the person by whom the customs debt has been or may be incurred; whereas no security should be required where that person is a public authority, since there is no risk of failure to pay the amount of the customs debt involved; whereas the cost involved in the provision of security, both for traders and for the customs authority, may be disproportionate to the real risk of non-payment of the customs debt where the amount of the latter does not exceed a certain limit; whereas the customs authority must therefore have the option to waive security for customs debts below that limit;

Whereas, for the sake of simplification, it should be made possible to give comprehensive security covering a number of operations in respect of which a customs debt will or may be incurred;

Whereas, where the requirement of security is optional, such security should be required insofar as the customs debt is not

certain to be paid by the prescribed time-limit; whereas the customs authority should assess the facts of the specific case to determine whether the customs debt is not certain to be paid; whereas provision must be made for such optional security to be required at any time if the customs authority considers it necessary;

Whereas, where the requirement of security is compulsory, the amount thereof must be equal to the amount of the customs debt in question as established or estimated by the customs authority; whereas, where the requirement of security is optional, the maximum amount thereof must not exceed the amount of the customs debt actually at stake;

Whereas the types of security most effective for ensuring payment of a customs debt are a cash deposit or its equivalent or the provision of a guarantor; whereas the persons concerned must be free to choose between those two types of security; whereas, under certain customs procedures, specific types of security are, however, provided for at Community level; whereas they should be retained; whereas the customs authority must have the right to refuse the proposed security where it considers that security does not ensure payment of the customs debt within the time-limit laid down; whereas, as occasion requires, that authority must, however, have the right to accept types of security other than one of the two referred to above where they provide equivalent assurance that the customs debt will be paid;

Whereas the security must be released as soon as the customs debt to which it relates is extinguished or can no longer arise; whereas it must be made possible for part of the security to be released having regard to any reduction in the amount of the secured customs debt;

Whereas, for the sake of simplification, the rules for securing import duties and export duties must also be applied where security is given to ensure payment of charges resulting from the implementation of the common agricultural policy imposed on Community goods in intra-Community trade;

Whereas the rules governing security contained in certain international conventions remain unaffected by the application of Community rules on the subject; whereas the same is true of the Community transit procedure;

Whereas it is necessary to repeal or amend such provisions relating to security as are already contained in Community legislation which conflict with those in this Regulation,

⁽¹⁾ OJ No C 30, 4. 2. 1983, p. 11.

⁽²⁾ OJ No C 77, 19. 3. 1984, p. 159 and OJ No C 291, 20. 11. 1989, p. 49.

⁽³⁾ OJ No C 211, 8. 3. 1983, p. 2.

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the rules governing the security to be given, in accordance with the law on customs matters, to ensure, in whole or in part, payment of a customs debt.
2. For the purposes of this Regulation:
 - (a) 'the law on customs matters' shall mean all Community provisions and provisions which contribute to the application of Community rules governing the import, export, transit and presence of goods forming the subject of trade between the Member States and between the latter and third countries;
 - (b) 'customs debt' shall mean the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply under the provisions in force to goods liable to such duties;
 - (c) 'person' shall mean:
 - either a natural person,
 - or a legal person,
 - or, where such a possibility is provided for by the existing rules and regulations, an association of persons which is recognized as being empowered to execute legal acts without having the legal status of a legal person;
 - (d) 'import duties' shall mean customs duties and charges having equivalent effect, and agricultural levies and other import charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (e) 'export duties' shall mean agricultural levies and other export charges laid down under the common agricultural policy or under the specific arrangements applicable to certain goods resulting from the processing of agricultural products;
 - (f) 'customs authority' shall mean any authority competent to apply the law on customs matters, even if that authority is not part of the customs administration;
 - (g) 'Community goods' shall mean goods:
 - entirely obtained in the customs territory of the Community without the addition of goods from third countries or territories which are not part of the customs territory of the Community,
 - from countries or territories not forming part of the customs territory of the Community which have been released for free circulation in a Member State,
 - obtained in the customs territory of the Community either from goods referred to exclusively in the second indent or from goods referred to in the first and second indents.

TITLE I

Requirement of security

Article 2

1. Where, pursuant to the law on customs matters, the customs authority requires security to be given to ensure payment of a customs debt, such security shall be given by the person by whom that debt has been, or may be, incurred.
2. The customs authority may require only one security to be given for the same customs debt.
3. The customs authority may allow the security to be given by a third party instead of the person from whom the security was required.
4. No security shall be required where the person by whom a customs debt has been, or may be, incurred is a public authority.
5. The customs authority may waive the requirement for provision of security where the amount of the customs debt in question does not exceed ECU 500.

Article 3

1. Where the law on customs matters provides that the requirement of security is optional, the requirement of such security shall be left to the customs authority's judgment insofar as a customs debt which has been, or may be, incurred is not certain to be paid within the prescribed time-limit.

Where the security referred to in the preceding subparagraph is not required, the customs authority may nevertheless ask the person referred to in Article 2 (1) for an undertaking setting out the obligations which that person is legally obliged to fulfil.

2. The security referred to in the first subparagraph of paragraph 1 may be required:
 - at the time of application of the rules which make provision for requiring such security to be given, or
 - at any subsequent time when the customs authority finds that the customs debt which has been, or may be, incurred is not certain to be paid by the prescribed time-limit.

Article 4

At the request of the person referred to in Article 2 (1), a comprehensive security may be given to cover one or more operations in respect of which a customs debt has been, or may be, incurred.

Article 5

Where the law on customs matters makes it compulsory to give security, the amount of the security shall be fixed by the customs authority at a level equal to:

- the exact amount of the customs debt or debts to be secured, where that amount can be established with certainty at the time when the security is required,
- the maximum amount, as estimated by the customs authority, of the customs debt or debts which have been, or may be, incurred in other cases, particularly if the security is required to cover a number of operations to be carried out during a given period.

Article 6

Where the law on customs matters provides that the security is optional, and the customs authority requires it to be given, the amount of the security shall be fixed by the customs authority so as not to exceed the level provided for in Article 5.

TITLE II

Giving of security

Article 7

Subject to the second subparagraph of Article 10 (1), security may be given by:

- making a cash deposit, or
- a guarantor.

Article 8

1. A cash deposit shall be made in the currency of the Member State in which the security is required.

The following shall be deemed equivalent to a cash deposit:

- submission of a cheque the payment of which is guaranteed by the institution on which it is drawn in any manner acceptable to the customs authority,
- submission of any other instrument recognized by the customs authority as a means of payment.

2. Security in the form of a cash deposit or payment deemed equivalent to a cash deposit shall be given in accordance with the provisions in force in the Member State in which the security is required.

Article 9

The guarantor shall undertake to pay jointly and severally with the debtor the secured amount of a customs debt which fails to be paid. The guarantor must:

- have his normal residence or an establishment in the Community, and
- subject to the provisions concerning freedom to provide services, have been approved by the customs authority of the Member State in which the security is given. Such approval may be subject, among other things, to the

condition that the guarantor be a person whose main or secondary professional activities relate to the provision of such services.

Article 10

1. The person required to give security shall be free to choose between the types of security laid down in Article 7.

However, the customs authority may refuse to accept the type of security proposed where it is incompatible with the proper functioning of the customs procedure concerned.

The customs authority may stipulate that the type of security chosen by the person be maintained for a specific period.

2. The customs authority may, where the provisions adopted in accordance with Article 15 (2) so allow, accept types of security other than those referred to in Article 7 where they provide equivalent assurance that the customs debt will be paid.

It may, subject to the same conditions, accept a cash deposit or the submission of securities even if they do not comply with the conditions laid down in Article 8 (1).

Article 11

The customs authority may refuse the security proposed where it does not appear to it certain to ensure that the customs debt will be paid by the prescribed time-limit.

Article 12

Where the customs authority establishes that the security given does not ensure, or is no longer certain or sufficient to ensure, payment of the customs debt by the prescribed time-limit, it shall require the person referred to in Article 2 (1), at his option, to give additional security or to replace the original security with a new security.

TITLE III

Release of the security

Article 13

1. The security may not be released until such time as the customs debt in respect of which it was given is extinguished or can no longer arise. As soon as the customs debt is extinguished or can no longer arise, the security shall be released forthwith.

2. Once the customs debt has been extinguished in part or may arise only in respect of part of the amount which has been secured, part of the security shall be released accordingly at the request of the person concerned, unless the amount at stake does not justify such action.

TITLE IV

Final provisions

Article 14

This Regulation shall apply in cases where security is given to ensure payment of charges resulting from the implementation of the common agricultural policy, imposed on Community goods in intra-Community trade.

Article 15

1. The Committee on General Customs Rules provided for in Article 24 of Council Directive 79/695/EEC of 24 July 1979 on the harmonization of procedures for the release of goods for free circulation ⁽¹⁾, as last amended by Directive 81/853/EEC ⁽²⁾, may consider any matter concerning the application of this Regulation which is raised by its Chairman either on his own initiative or at the request of a Member State.

2. The provisions required for the implementation of this Regulation shall be adopted in accordance with the procedure laid down in Article 26 (2) and (3) of Directive 79/695/EEC.

Article 16

The provisions of this Regulation shall apply without prejudice to such special provisions as are applicable to security pursuant to:

- international conventions,
- Council Regulation (EEC) No 222/77 of 13 December 1976 on Community transit ⁽³⁾, as last amended by Regulation (EEC) No 1674/87 ⁽⁴⁾.

Article 17

1. Directive 79/695/EEC is hereby amended as follows:

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

Done at Brussels, 21 December 1989.

(a) Article 18 (3) is replaced by the following:

'3. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the giving of security.'

(b) Article 19 (7) is replaced by the following:

'7. The competent authorities may make the granting of the facilities provided for in this Article conditional upon the giving of security.'

2. Article 11 of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes ⁽⁵⁾, as last amended by the Act of Accession of Spain and Portugal, is replaced by the following:

'Article 11

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such value, the importer may, at his request, obtain the release of the goods in question on condition that he provides sufficient security to cover the difference between the amount of the customs duties for which the goods may ultimately be liable and that resulting from the information contained in the declaration.'

Article 18

Member States shall inform the Commission of the measures it adopts for the purpose of applying this Regulation.

The Commission shall communicate this information to the other Member States.

Article 19

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 1991.

For the Council

The President

E. CRESSON

⁽¹⁾ OJ No L 205, 13. 8. 1979, p. 19.

⁽²⁾ OJ No L 319, 7. 11. 1981, p. 1.

⁽³⁾ OJ No L 38, 9. 2. 1977, p. 1.

⁽⁴⁾ OJ No L 157, 17. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 134, 31. 5. 1980, p. 1.