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COUNCIL REGULATION (EEC) No 386/90

of 12 February 1990

on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts

(OJ L 42, 16.2.1990, p. 6)

Amended by:

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► <u>M1</u>	Council Regulation (EC) No 163/94 of 24 January 1994	L 24	2	29.1.1994
► <u>M2</u>	Council Regulation (EC) No 14/2008 of 17 December 2007	L 8	1	11.1.2008

Corrected by:

- **C1** Corrigendum, OJ L 234, 17.9.1993, p. 23 (386/90)
- **C2** Corrigendum, OJ L 111, 30.4.1994, p. 115 (386/90)

▼B**COUNCIL REGULATION (EEC) No 386/90****of 12 February 1990****on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts**

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, pursuant to 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⁾, Member States are to 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, in its special report on the system of payment of agricultural export refunds ⁽⁵⁾, and in its annual report concerning the financial year 1987 ⁽⁶⁾, the Court of Auditors drew attention to a number of shortcomings in certain Member States in the monitoring of agricultural products for which refunds or other amounts are granted on export;

Whereas the organization which, in principle, would afford the best safeguards without giving rise to economic constraints and administrative costs outweighing the prospective gains for Community finances would be one which combined physical monitoring on export and the auditing of accounts;

Whereas, in order to improve and harmonize the measures taken by the Member States, a Community monitoring system should be set up;

Whereas such a monitoring system must be based in particular on physical spot checks of goods at the time of export, including goods exported under a simplified procedure, and on the scrutiny of the payment application files by the paying agencies; whereas the audit to be conducted ex post facto in the undertakings concerned by the competent bodies is governed by 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 ⁽⁷⁾;

Whereas the number of physical checks, including laboratory analyses where these prove necessary must be increased in view of the importance of agricultural refunds within the Community budget,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation sets down certain procedures for monitoring whether operations conferring entitlement to the payment of refunds

⁽¹⁾ OJ No C 29, 6.2.1987, p. 5.

⁽²⁾ OJ No C 190, 20.7.1987, p. 144.

⁽³⁾ OJ No L 94, 28.4.1970, p. 13.

⁽⁴⁾ OJ No L 185, 15.7.1988, p. 1.

⁽⁵⁾ OJ No C 215, 26.8.1985, p. 1.

⁽⁶⁾ OJ No C 316, 12.12.1988, p. 68.

⁽⁷⁾ OJ No L 388, 30.12.1989, p. 18.

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on and all other amounts in respect of export transactions have been actually carried out and executed correctly.

2. For the purposes of this Regulation, the term 'goods' means products in respect of which the amounts referred to in paragraph 1 are paid in accordance with Community provisions adopted within the framework of the common agricultural policy.

Article 2

Member States shall carry out:

(a) physical checks on goods in accordance with Article 3, at the time the customs export formalities are completed and before authorization is given for the goods in question to be exported, on the basis of documents submitted in support of the export declaration, and

▼M1**▼C2**

(b) physical checks on substitution in accordance with Article 3a, and

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►M1 ►C2 (c) ◀ ◀ scrutiny of the documents in the payment application file in accordance with Article 4.

Article 3

1. Without prejudice to any specific provisions which require more extensive checks, the physical checks referred to in Article 2 (a) must:

(a) take the form of spot checks conducted frequently and without prior warning;

(b) in any event, ►C1 relate to a representative choice of not less than ◀ 5 % of the export declarations in respect of which applications are submitted for the amounts specified in Article 1 (1).

▼M1

2. In accordance with the detailed rules to be determined under the procedure referred to in Article 6, the rate mentioned in paragraph 1 (b) shall apply:

- per customs office,
- per calendar year, and
- per product sector.

However, the rate of 5 % per product sector may be replaced by a rate of 5 % covering all sectors insofar as the Member State applies a selection system based on a risk analysis carried out in accordance with criteria to be laid down in accordance with the procedure laid down in Article 6. In this case, a minimum rate of 2 % shall be compulsory per product sector.

▼M2

Where the Member State applies the second subparagraph, it may also choose to replace the rate of 5 % per customs office by a rate of 5 % for its entire territory. The Member State shall notify the Commission before it applies or ceases to apply this subparagraph.

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3. In cases where ordinary visual inspection fails to establish that the goods correspond to the description given in the refunds nomenclature, and where classification or the quality of the goods requires very precise information about the ingredients thereof, the customs authorities shall verify that description according to the nature of the product by using all the senses or by applying physical measures that may go as far as

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submitting the goods for analysis by laboratories specially equipped for the purpose.

4. The checks referred to in this Article shall be carried out without prejudice to any measures which the customs authorities may take to ensure that the goods leave the customs territory in the same state as when the export authorization was granted.

▼M1*Article 3a*

In the case of export declarations accepted by an internal customs office, a minimum rate or minimum rates of physical checks on substitution may be carried out by means of representative sampling by each customs office of exit from the Community. The various minimum checking rate(s) shall be determined in the light of the type of risk, in accordance with the procedure laid down in Article 6.

▼B*Article 4*

Paying agencies shall scrutinize, on the basis of the payment application files and other available information, in particular on the basis of the documents relating to the export and the comments of the customs services, all the evidence in these files adduced to justify the payment of the amounts in question.

Article 5

Member States shall take steps to coordinate the controls imposed on individual operators and combine the verifications provided for in Articles 3 and 4 and in Regulation (EEC) No 4045/89.

Sub coordinated controls shall be carried out, on the initiative or at the request either of the Commission staff or of the customs authorities making the physical checks or the competent authorities scrutinizing the payment application file or auditing the accounts ex post facto.

Article 6

Any provisions required for the application of this Regulation shall be adopted in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 ⁽¹⁾ or, as appropriate, the corresponding Articles of the other Regulations on the common organization of markets.

They may relate in particular to:

- the method for calculating the minimum percentage referred to in Article 3 (1) (b) and particular detailed rules and/or derogations therefrom with regard to specific situations,
- the goods which are to be submitted for analysis under Article 3 (3),
- the coordination of controls between the competent departments of the Member States and the Commission staff.

Article 7

1. In accordance with the procedure referred to in Article 6, transitional measures shall be adopted with regard to the application of Article 3 (1) and (2).

2. Before 1 January 1992, the Commission shall submit a progress report on the application of this Regulation to the Council and, in the

⁽¹⁾ OJ No L 281, 1.11.1975.

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light of experience gained, shall propose any necessary amendments to the monitoring system provided for under this Regulation.

Article 8

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

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