

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 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
- (b) 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, relate to not less than 5 % of the export declarations in respect of which applications are submitted for the amounts specified in Article 1 (1).

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

⁽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.

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

Under the same procedure, a scrutiny rate greater than 5 % may, by way of exception, be fixed for specific cases and periods, on the basis of objective findings of an increased risk of fraud.

In that case, the rate mentioned in 1 (b) shall be deemed to be satisfied for a customs office when, taking into account the checks carried out in the said specific cases, the minimum rate of 5 % has been reached for all sectors taken together during the calendar year in question.

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 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.

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 verifi-

cations 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 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.

Done at Brussels, 12 February 1990.

For the Council

The President

J. WALSH

(1) OJ No L 281, 1. 11. 1975, p. 1.