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**REPORT FROM THE COMMISSION TO THE COUNCIL**

**on the Implementation of Ex-Post Controls  
since the modifications introduced by Regulation (EC) N° 3094/94**

**(REGULATION (EEC) N° 4045/89)**



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## **1. INTRODUCTION**

### **1.1 The report**

This report by the Commission concerns the a posteriori audit of undertakings in receipt of agricultural aids from the Community budget. A posteriori audits are performed by Member States. The particular focus of the report is the impact of the modifications introduced with effect from the 1995/96 scrutiny period under Council Regulation (EC) N° 3094/94<sup>1</sup>. For such an evaluation to be fair and useful, a reasonable period of time in which to implement change has to elapse first, and enquiries into the changes made by the Commission services must have been completed. This is why the preparation of the report has been delayed until now.

The report affirms the continued need for sound a posteriori audit and presents pragmatic proposals to further develop the effectiveness of the measure.

### **1.2 A posteriori audit**

Article 8 of Council Regulation (EEC) N° 729/70 of 21 April 1970 on the financing of the common agricultural policy<sup>2</sup> requires Member States 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. This may be seen as the first line of defence in the fight against fraud.

The a posteriori audit of the commercial documents of undertakings, which is the object of Council Regulation (EEC) N° 4045/89<sup>3</sup>, is a complementary instrument to pre-payment checks<sup>4</sup>. A posteriori audit is therefore not the primary instrument of control and it is not the only one. The routine controls and checks undertaken concurrently as part of Member States' authorisation and approval procedures or controls required by Regulation to be performed at a certain moment (for example physical controls on exports) are fundamental to the proper control of EAGGF income and expenditure. It is in this context that the role of a posteriori audit should be viewed.

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<sup>1</sup> OJ N° L328, 20.12.94, p.1

<sup>2</sup> OJ N° L 94, 28.4.1970, p. 13

<sup>3</sup> OJ N° L388, 30.12.89, p.18

<sup>4</sup> Pre-payment checks are checks undertaken by the paying agency or its agents prior to the authorisation of claims for payment.



On the spot, in brief, it is the essence of a posteriori audit, to reconcile the undertakings submissions for EC subsidy with its own documentation (books of account, stock records, production records, for example); and, to test the credibility of the documents held by the undertaking by means of cross-checks with information available from third party sources both upstream and downstream of the audit trail.

The broad object of ex-post controls under Council Regulation (EEC) N° 4045/89 is to form an opinion on whether a supposition of risk (relevant to a set of transactions, the undertaking and the market measures) is proved true or false by reference to relevant, reliable and independent evidence.

The a posteriori audit adds value by allowing a wide range of evidence to be taken into account and by allowing the controllers to follow the flow of goods and money through the different stages of the operation – even between Member States if necessary.

### **1.3 Background to the modifications introduced under R. 3094/94**

Since the publication of special report N° 2/92 (on 22.4.92) by the European Court of Auditors, the Commission services and Member States have collaborated to improve the quality of a posteriori audit carried out under Council Regulation (EEC) N° 4045/89. The initiatives undertaken by the Commission services in co-operation with Member States include: a programme of visits to Member States as part of a continuing assessment of national arrangements for the implementation of a posteriori audit; encouragement and technical assistance for the greater adoption of risk analysis in the planning and implementation of audits; the demonstration of certain computer techniques which are available as an aid to the planning and performance of a posteriori audit; a series of demonstration projects including a guideline for their management, to further mutual assistance between Member States; and the adoption of an Audit Package as a guideline to the work of Member States. One impact of the latter is seen in the steps taken by Member States to refer to a wider range of sources of evidence.

In addition, in 1994, the Commission proposed and obtained the modification of Council Regulation (EEC) N° 4045/89 with the objective of improving the effectiveness and quality of a posteriori audit in the light of Member States experience of the first three years of the Regulation. The modifications came into effect as of the scrutiny programme for 1995/96 (Regulation 3094/94).



Another modification was introduced to take account of the accession of Austria, Finland and Sweden in 1995 (R 3235/94<sup>5</sup>).

Lastly, the Commission:

- adopted two amendments to the implementing regulation, R 1863/90<sup>6</sup>: firstly R 2992/95<sup>7</sup> (which fixes precisely the contents and the form of the information that Member States are required to send either to the other Member States, or to the Commission) and secondly R 2278/96<sup>8</sup> (definition of the methods for co-ordinated activities undertaken within the framework of mutual assistance, called "special exercises");
- has also taken a decision, in accordance with Article 1(4), on the measures to exclude from the application of the R 4045/89 (Decision 96/284/CE<sup>9</sup>).

#### **1.4 The intended impact of the modifications introduced under R. 3094/94**

Regulation 4045/89, in its original state, included a minimum obligation for the annual number of controls per Member State, with, moreover, an obligation to check every two years the companies having received or paid more than ECU 200 000 in a year. These obligations left very little latitude to the Member States to select the companies to be checked.

In the modification introduced by R. 3094/94, the minimum number of controls has been reduced, and Member States will, for the measures for which this technique is suitable, have to use risk analysis to select the companies to check, and to determine the operations to be checked in each selected company.

The improvement of co-operation between Member States, with a view to detecting the frauds carried out during operations involving several countries of the European Union, was another essential objective of the modification introduced by R. 3094/94. It was expected that this result could be attained by improving the mutual assistance procedures, and by envisaging the possibility for Commission staff to be present at the time of control (or, if necessary, to assist in the control), and that agents of the Member State requesting the control under mutual assistance could be present at the time of the control carried out by the authorities of the Member State receiving the request.

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<sup>5</sup> OJ N° L338, 28.12.94, p.16

<sup>6</sup> OJ N° L170, 3.7.90, p.23

<sup>7</sup> OJ N° L312, 23.12.95, p.11

<sup>8</sup> OJ N° L308, 29.11.96, p.30

<sup>9</sup> OJ N° L107, 30.04.96, p.17



The amendments to the original text also gave the opportunity to make several other alterations covering the practical methods of implementation of controls, with a view to improving their effectiveness.

Among these changes were a wider definition of commercial documents (by including explicitly documents concerning the quality and the nature of the products), and the strengthening of the rules regarding access to the documents held by third parties (suppliers, customers, carriers, etc.).

### **1.5 The Audit package**

In order to help the inspectors of the Member States who have to carry out the task foreseen in the Regulation, a control programme was drawn up, on the basis of the information drawn from the various missions carried out in the Member States. This document, which was the subject of co-operation with the representatives of the Member States, thus highlights some practical working methods for the inspectors, and was favourably received in the Member States.

## **2. RESULTS FROM CONTROLS UNDER REGULATION 4045/89**

### **2.1 Scrutinies carried out by the Member States**

The number of scrutinies carried out by Member State for four scrutiny periods (1993/4 to 1996/7) are contained in annexes 1-4. However, the information is not complete for 1996/7.

Member States' annual reports dealing with the 1996/97-scrutiny period were due to be sent to the Commission before 01/01/98. Whilst only 7 Member States were able to comply with this deadline, most (12) had sent their reports by the end of January. All reports were received by June 1998.

The results from 4 scrutiny periods can be summarised as follows:

	Minimum number (Article 2(2))	Controls planned	Controls performed	Controls performed as a % of minimum
1993/94	6879	7718	6835	99.4%
1994/95	6062	6291	5581	92.1%
1995/96	4251	4777	4502	105.9%
1996/97	3848	4254	3954	102.8%
Total	21040	23040	20872	99.2%



For the 1993/94 three countries fell marginally below the minimum number of controls required. For Spain (99.4%) and France (95.7%) this failure was only marginal. However, Italy failed by a wide margin to meet its regulatory requirements, with an overall rate of 58%. As for earlier scrutiny periods, the Italian Custom's service completed its scrutiny programme but there was a very low rate of achievement by the Ministry of Agriculture.

For the 1994/95 scrutiny period, once again Spain and France fell marginally below the minimum number (98%). Italy again fell well below the minimum number of controls required (56.8%). Greece achieved 81% of the required number.

For the 1995/96 scrutiny period Spain and the Netherlands were marginally below the required numbers of controls (99.7% and 95.5% respectively). Italy was still well below the required number (78.4%) although this was an improvement on previous years. Greece had carried out 86.7% of the required number.

For the 1996/97 scrutiny period there was a marked improvement by Italy, which fell only just below the required minimum (as did Belgium and Ireland). Greece had carried out 77.7% of the required number of controls.

For Italy, the Ministry of Agriculture carried out just 17% of the minimum controls in the 1993/94 scrutiny period (the Customs department carried out all necessary controls). Because of this failure to achieve the regulatory requirements, financial corrections of 23MECU were made in the clearance of accounts 1994. The continuing failure to achieve the minimum number of controls will lead to proposals for further corrections in the clearance of accounts 1995 (for the 1994/5 scrutiny programme) and, subject to verifications, for a clearance of accounts under the reformed procedure for the scrutiny period 1995/96. By the scrutiny period 1996/97 the necessary improvements had been put in place and the required minimum was met.

For Greece, at least part of the failure to achieve the minimum number of scrutinies was caused by a significant amount of extra work that was carried out in the cotton sector. Because of the large number of frauds and irregularities discovered in this sector, the Commission services required the Greek authorities to carry out extra work, particularly in downstream checks with producers. As this work has been of significant benefit to the Commission in reducing the problems identified, the Commission services agreed, exceptionally, to a reduction in the number of 4045/89 scrutinies. However, this reduction was only supposed to be for one scrutiny period. An evaluation will be carried out to establish whether, taking into account the additional work in the cotton sector, sufficient 4045/89 scrutinies have been undertaken.



The reported average duration of controls performed varied from 2 to 60 days. The number of days spent on a control will obviously vary depending on the nature of the company and the scheme. During its on-the-spot visits the Commission attempts to evaluate whether the duration of controls is sufficient.

A total of 3874 and 4088 controls were planned for scrutiny periods 1997/98 and 1998/99 respectively (annex 5). The compulsory minimum number of controls has steadily decreased over the years (from 7150 in 1992/93 to approx. 3500 in 1998/99). This is partly due to the rise in the basis of the calculation of the minimum number of undertakings to be scrutinised (from ECU60 000 to ECU 100 000) and also because of the reform of the Common Agricultural Policy – direct aids to farmers have increased and these are excluded from the scope of Regulation 4045/89 as from scrutiny period 1995/96.

## **2.2 An analysis of results reported by the Member States**

The results of controls under Regulation 4045/89 have a deterrent as well as a detective effect. The overall effectiveness of the Regulation should not therefore be measured solely in terms of irregularities identified.

Nevertheless, the Member States have reported, over the years that this Regulation has been in operation, a total amount of ECU 491,7 million of irregularities identified in 3456 cases.<sup>10</sup> This is already a substantial amount. It does not take into account cases under 4000 ECU (which are not reported individually) or many other cases where a Reg. 4045/89 control has led to the instigation of a full fraud investigation.

The total amount of irregularities declared to the Commission for EAGGF Guarantee during the years 1991 – 1998 was 1.43bn ECU. Irregularities identified under Regulation 4045/89 were 34.2% of this total amount. This is a clear demonstration of the importance of Regulation 4045/89 to the Community.

The annexed tables show the number of irregularities communicated to UCLAF under Regulation 595/91<sup>11</sup> by sector and by Member State (annex 6), the amounts involved in reported cases (annex 7) and the amounts recovered (annex 8) following a Reg. 4045/89 control.

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<sup>10</sup> The information concerning irregularities communicated is from the Commission's IRENE-database, which only has details of cases amounting to over 4000 ECU.

<sup>11</sup> OJ N° L67, 14.3.91, p.11



The highest number of irregularities has been found in the milk sector (844 cases), in the olive oil sector (434 cases) and in the cereals sector (424 cases). The cereals sector represents the highest amount (130.3 million ECU) of irregularities found, then the milk sector (63.5 million ECU) and the olive-oil sector (61.5 million ECU). At the Member State level the highest value of irregularities identified is by Italy (229,3 million ECU i.e. 46,6 %; 555 cases). The highest number of cases has been communicated by Spain (671 cases with a value of 48.2 million ECU i.e. 9,80 %) and by Germany (638 cases with a value of 25.9 million ECU i.e. 5,28 %).

The percentage of recoveries varies considerably from one Member State to another, the lowest rate being 2,2 % and the highest 100 % (annex 5). The overall recovery percentage is 17% (EU-15). It must be kept in mind that in some Member States the judicial process may take many years and the overall recovery percent can therefore be expected to rise. However, such a wide variation is a sign of considerable differences both in the nature of cases reported and in the effectiveness of recovery processes.

More detailed analysis of this aspect can be found in the annual reports of the Commission on the fight against fraud (for 1997 see document COM(98)276 final of 6/5/98).

### **3. EVALUATION : MISSIONS ON THE SPOT**

#### **3.1 Introduction**

Missions to certain Member States (Germany, Denmark, Spain, France, Ireland, Netherlands and UK) were undertaken in 1996 and 1997 to analyse the implementation of the modified scrutiny Regulation (EEC) No. 4045/89. The assessment has considered whether Member States have incorporated the modifications into national legislation and administrative instructions; revised organisational structures and systems to satisfy their modified scrutiny obligations; and set in place satisfactory operational arrangements for planning, executing, monitoring and reviewing the strategic and practical application of the modified regulation. This work will continue in the future.



The Commission has attempted to take full account of:

- the varied arrangements established by Member States to meet their scrutiny obligations;
- the numerous national, regional and sectorial control bodies charged with the responsibility for a posteriori controls under the surveillance of special units;
- and the different incidence of EAGGF income and expenditure by product and measure for each Member State.

The missions have also examined the practical application of R4045/89 in the field of export refunds. Some national audits carried out under the program 1996/97 (relating to the expenditure for 1995) were selected, and the quality of the work performed was assessed. The audit also included visits to beneficiaries of refunds.

### **3.2 General Observations**

#### **3.2.1 Objectives**

Most bodies responsible for scrutinies have set out their objectives in broad terms consistent with the Council Regulation (EEC) N° 4045/89. One Member State, Italy, however, failed to put all the necessary organisation and personnel in place. This failure prevented Italy from discharging its duties under the regulation (see paragraph 2.1) A significant improvement in Italy has now been made and the situation was fully acceptable by the 1996/97 scrutiny period.

All scrutiny bodies have manuals or administrative instructions in some shape or form to provide practical audit guidance. These are usually adequate.

#### **3.2.2 Organisation**

Most Member States have continued to opt for a loose organisation of existing control bodies monitored by a special department. Usually, Customs authorities have responsibility for the scrutiny of export refunds, with Agricultural and Finance Ministries responsible for internal market schemes.



Special departments are quite good in co-ordinating the planning of scrutiny programmes but control missions have shown that a significant improvement in the management of the scheme could still be achieved. The Special Department's could improve their supervision of the implementation of the programme, reporting, follow up of results, training, administration of scrutiny reports and other related documents, and the general surveillance of the performance of scrutinies. The Commission would like to see more review of scrutinies carried out and analyses of the results by special departments.

### *3.2.3 Training*

Efforts by Member States are variable. At the level of meeting individual training needs, the practice of many Member States is good. At the level of providing programmed training to develop the general level of skills among a posteriori inspectors, the situation is disappointing. However, some Member States set a good example with a continuing programme of training seminars. In 1998 Austria, the UK and the Netherlands invited inspectors from other Member States to attend their seminars, which is a positive and welcome development.

There is a reluctance by some national control bodies to work together in the field and in areas such as training. It is always useful to ensure that the strengths of one national control body are made known and demonstrated to other national control bodies involved with a posteriori control. Training can cut across traditional demarcation lines between services.

### *3.2.4 Planning*

The level of co-ordination between national control bodies is at best very good, at worst adequate. Some Member States continue to experience technical difficulties in summarising, by undertaking, the payment and income data prepared by different national agencies. Some 4045/89 services need to make additional efforts to obtain accurate information from the EDP services of their Paying Agencies. In addition, the allocation of a unique identification reference for each undertaking is necessary in certain Member States.

At the level of the implementation of individual audits, nearly all Member States appear to have adequate practice. The best is very good indeed with sound routine preparation procedures.



### *3.2.5 Risk analysis*

All Member States practice some form of risk analysis. Risk analysis to select the beneficiaries for control is generally well established. However, while it is heartened by the progress in some Member States, the Commission is concerned by the continuing lack of development of risk analysis in others. The best practitioners set a high standard.

The standard of risk analysis to select the dossiers for control, and the elements within that dossier to control, are more varied. The scrutineers do not always have all information, which is necessary to have a comprehensive view of the operator and on the risks inherent to his activities.

The controllers need to know the risks related to various transactions, and how to examine these risk elements, in order for the risk analysis to be effective. They should, for example, know all the export refund rates, and the variation between rates based on small differences in the product or different destinations. The risks related to certain special procedures, such as transshipment, inward processing and prefinancement, also need to be understood by controllers. The controllers should always have access to the results of controls carried out by Customs' services at the point of export or in the context of an economic system (such as inward processing) – this is not the case in several Member States.

### *3.2.6 Performance of the control*

On the basis of the reperformance of the a posteriori controls it is evident that the standards attained by controllers is not always sufficient. This indicates the need at the level of the Member State for better training, better preparation and better review.

Particular points where weaknesses have been identified are:

- a) up to date information - it was found that some controllers were using outdated versions of regulations, for instance, accepting proofs of arrival which were no longer acceptable;



b) micro/macro approach - most controls remained limited to the micro approach - a verification of some selected operations. The Commission believes that more emphasis should be given to the general production and trade conditions (a macro approach). For example, a macro approach would include verification of accounting records to identify credit notes or insurance claims or controls of the overall production records to examine the maximum capacities and the quantities available for export. A control of an individual storage, prefinancing or processing aid payment is not possible without knowing the storage capacity of the plant, the processing capacity, the origin of all the goods purchased and their customs status. The use of packaging could also be important evidence. For beef exports, it is often necessary to examine a group of claims together in order to re-establish the details of the operation.

c) upstream and downstream checks - many controllers did not make sufficient use of the possibilities to carry out up- and downstream checks. Checks of independent companies can provide a very high level of evidence as to the operations under scrutiny. As an extension to the normal type of cross-checks, particular problems with the activities of surveillance companies have been identified by the Member States, as well as by the Commission services. This is dealt with in section 4;

### **3.2.7 Reporting**

The audit report is the only product of a control that is tangible to a third party. As such it is a vital document. In general, Member States produce adequate reports.

In some cases, the Commission controllers found it difficult to identify from the reports:

- the risk elements identified before the control
- the approach adopted to meet these risks
- the time spent in different phases of the control
- the dossiers examined
- the work performed at the company
- the reasons for performing, or not performing, up- and downstream controls
- questions remaining open at the end of the control.



It is important that, through their reports, the controllers report elements of risk that they were not able to cover in their scrutiny. Special Departments, as managers of the scheme, should be aware of the possibilities and limits of controls under R4045/89.

Special services are asked to review reports in their Member States to ensure that they are clear and provide the necessary information for an outsider to understand the work that has been carried out and the results that have been found.

### **3.2.8 *Review***

This process enables progress against the programme to be monitored, planning assumptions to be checked, and provides input into the subsequent year's planning. Member States do carry out review, but it is of variable quality and often takes place at an inappropriate level.

### **3.2.9 *Mutual Assistance***

The Commission, based on its own experience and on reports from the Member States, has the impression that mutual assistance between Member States under Article 7 is not completely satisfactory. See section 5 of this report.

## **4. SURVEILLANCE COMPANIES**

In many cases, an export refund is differentiated by destination, i.e. there is a higher rate of aid for one destination than for another. In this case, the exporter must provide a proof of arrival, stating that the goods have been received into a particular third country and that the goods have been imported for home consumption. These proofs of arrival (POA) are, wherever possible, documents from the customs services. However, alternatively, a surveillance company can be used to certify the arrival, and putting into free circulation, of the goods.

This process is governed by the requirements of Article 18 of Regulation 3665/87<sup>12</sup>. The surveillance companies are required to carry out enquiries in the country of arrival to allow it to give its certificate. The companies themselves must be accredited by the Member States and be independent of the beneficiary or of any other party involved in the transaction.

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<sup>12</sup> OJ N° L351, 14.12.87, p.11



Evidence collected by the Commission services, and from a special enquiry carried out by the UK scrutineers, suggests that these surveillance companies are not, in reality, always acting correctly or independently. These findings relate to a significant number of cases where proof of arrival documents were established without a proper verification on the spot. They also highlighted a number of cases where false proof was issued knowingly by the companies.

The Commission services carried out a mission to examine the reliability of proofs of arrival issued by an important supervisory company. Doubts on the value of these documents had arisen during earlier missions made within the framework of R. 4045/89. A number of irregularities were found and the provisional conclusion was that the value of the POAs was doubtful. A further investigation by the authorities of the Member State has led to several irregularities being discovered.

The special service for Regulation 4045/89 in the UK instigated a special enquiry into the activities of one surveillance company. The findings were so serious that the accreditation of this company has now been suspended.

During several anti fraud enquiries undertaken or co-ordinated by UCLAF, it was found that export refunds had been unduly paid on the basis of false, erroneous or incomplete information contained in certificates established by the agents of surveillance companies or by agents of related companies or sub-contractors working in a third country. These findings demonstrate serious doubts about the value of many of the POA's issued.

The Commission is very concerned about the findings arising from these different enquiries. As a result, at the meeting of experts on 30 June 1998, Special Services were asked to include investigations into surveillance companies in their enquiries under Regulation 4045/89 for the 1998/99 scrutiny period.

The SG/UCLAF will inform the Member States of the results of 4045/89 scrutinies of surveillance companies and will analyse the associated risks during meetings of the UCLAF group "Irregularities and Mutual Assistance".

The Commission services have also proposed improvements to Regulation (EEC) 3665/87 to clarify the responsibilities of these societies.



## **5. MUTUAL ASSISTANCE**

Controls at a national level are no longer sufficient when dealing with an increasingly international environment. For this reason, mutual assistance between Member States was introduced in Article 7 of Regulation 4045/89. The Commission and the Member States identified this issue as one of the major problems in the operation of the Regulation. The Court of Auditors has also highlighted in at least two of its reports (2/92 on the audit of export refunds in the milk and milk products sector and, more recently, 5/97 on the management of the Community market in cereals) the problems that arise from insufficient co-operation between Member States and the need to reinforce the provisions of Article 7. The Commission responded in two ways : by launching special exercises and by making concrete improvements to the operation of mutual assistance.

### **5.1 Special Exercises**

The Member States and the Commission took the initiative to develop, under the name of special exercises, activities involving several Member States in co-ordinated way.

The first of these special exercises was positively received by the Member States, and permitted at the same time to confirm the positive and negative elements already identified, namely, in negative:

- the lack of use by the Member States of the possibilities offered by Article 7 of the Regulation;
- the excessive length of the time of response to the requests;
- the absence of useful information, in the administrations of the Member States, on the commercial activities of the companies;
- the refusal on principle by certain Member States to allowing officials of other Member States to be present during controls on their national territory, as foreseen by Article 21 paragraph 3 of Regulation 4045/89, as amended by Regulation 3094/94;
- the absence of an adequate budget intended to cover interpretation and travel expenses;



and in positive:

- that the special exercises could be reserved for the multinational corporations, as other companies can be checked by means of the normal operation of Article 7;
- that management of joint actions was more effective if Member States all recognised the principle of subsidiarity, i.e. the control of such enquiries by small groups of Member States under the leadership of one of them;
- the usefulness of exchanges of inspectors between Member States;
- the real possibility for Member States to work together to achieve the common control objectives.

The second exercise (started at the meeting of the 6th group of experts held on 6 September 1994) showed that mutual assistance could function in a satisfactory way; structured in a rigorous way in Co-ordination Groups, with regular meetings and formalised reporting, it was an undeniable success, confirmed by the wish of the Member States to renew it.

A document containing guidelines (Doc. VI/6852/94) set the following aims of the exercise:

- to identify the anomalies arising from commercial activities beyond national borders, both inside and outside the Union;
- to guarantee an equal treatment with regard to the commercial activities throughout the Community;
- to develop contacts;
- to arrive at a better understanding of the importance of agricultural aid within multinational companies;
- to improve the professional skills of the inspectors;
- to facilitate the exchange of information between the participants;
- to spread more widely the best audit practices, for the benefit of all.

The Commission services consider that these two exercises should allow the Member States to continue to work together, which should lead to the launch, in specific cases, of real multilateral enquiries. In this spirit, Article 7 of Regulation 1863/90 (as last amended by Regulation 2278/96) sets out a number of criteria and conditions which have the goal of making international action effective.



## **5.2 Requests for Mutual Assistance**

The question of the application of Article 7, §4, of Regulation 4045/89 was discussed during the 10th experts group, held on 27 November 1996. The various delegations recognised that mutual assistance was a key element of the provisions of control of the Regulation 4045/89, but that its operation required better communication between the Member States: in many cases, a quasi-absence of practical results has been noted (for example when enquiries have to be given up in the absence of responses to the requests for mutual assistance).

Some of the factors which affect the smooth operation of mutual assistance were underlined, including:

- the lack of precision in the question put by the applicant Member State;
- the question of the language of transmission;
- the lengthy hierarchical procedures involved in correspondence between Member States;
- the higher priority given by the inspectors to their own control programme, compared to the priority given to requests from the other Member States.

During the 11th group of experts, held on 20 May 1997, the Commission presented to the representatives of the Member States, from the data and information in its possession, an analysis of the situation, which showed in particular:

- that a major part of the requests did not receive any answer;
- that the average period for a response seemed higher than 6 and a half months, and that only half of the requests received an answer before the end of the 6 months;
- that recourse to mutual assistance was not as developed in all the Member States.

The delegations, which stressed the advantages of mutual assistance, and its generally positive operation, have, in the majority, reaffirmed that progress had been made, and that the operation of mutual assistance did not pose them major problems. Nevertheless, and given that not all the difficulties which prevent the effective operation of Article 7 fall within the competence of the Commission, progress in finding practical solutions was made, and this was deepened at a meeting of experts held in Stockholm on 11-12 September 1997. On this occasion the Commission made several suggestions, such as:



- the systematic use of a standardised request form,
- the search for languages to assist communication,
- the identification, in the requests, of the inspectors in charge of the files,
- the development of the direct contacts between these inspectors.

In addition, the Stockholm meeting was the occasion to assemble Member States bilaterally in order to solve contentious matters. Lastly, several Member States were able to set out the basis for a new special exercise, the development of which now rests in their hands, and other joint actions were envisaged.

The improvement of the operation of mutual assistance can be envisaged only over time: it requires the progressive development of mentalities and of working methods rather than changes in procedures. Broadmindedness and the desire for Co-operation expressed by the representatives of the various Member States are the surest way to make progress, and the Commission intends to continue playing an active role in this area.

### **5.3 Specific proposals for improvements in the operation of mutual assistance**

Some principles can be identified, the respect of which is likely to improve the operation of mutual assistance.

First of all there are the three recommendations made during the meeting of the group of experts of 20 November 1996, which remain valid:

- recourse to mutual assistance has to be justified (which implies a real interest in this type of action, and a precise formulation of the request);
- the Member State receiving the request can send, within the month which follows the receipt of the request, an acknowledgement of receipt to the requesting Member State specifying the service and the inspector responsible for the file, and the estimated period required for the answer;
- the Member State receiving the request can send to the applicant Member State, at the end of 3 months, information on the state of progress on the file.



## **6. CONSEQUENCES FOR THE REGULATION**

### **6.1 Need for Modification of the Regulation**

Regulation 4045/89 is an instrument which should enable the implementation of a posteriori controls in a way that is consistent with their declared aims and objectives. It is therefore important that R. 4045/89 should evolve at a pace and in a manner which is appropriate to assist and support developments in the performance of a posteriori controls. The Commission has met regularly with the services of the Member States to consider any modifications that may be considered necessary.

The modifications suggested by the Member States include:

- Extension of the right of access to commercial documents (Article 1(1)) to all relevant documents, including management accounts, quality analyses, audit reports, etc., with sanctions for undertakings who do not allow full access;
- Making explicit the right to carry out crosschecks (upstream and downstream checks) as part of the scrutiny procedures;
- Extending the deadline of three years for retaining documents where a scrutiny is ongoing;
- Improvements to Mutual Assistance provisions (Article 7) to encourage quicker and better responses.

The modifications proposed by the Member States were discussed in an experts group in Brussels on the 30 June 1998. At the end of this meeting, the Commission services concluded that there is at present no need to consider a revision to the Council Regulation. Firstly, it was not clear that any modifications would bring real benefits, and secondly the effects of the Agenda 2000 project on this Regulation are as yet uncertain.

However, in some situations which are causing difficulties in the Member States, improvements could be made by using more fully the existing Regulation. For the problems in Mutual Assistance, the best solution is not new legislation but improved co-operation. In other cases, changes to the Commission Regulations will be sufficient.

### **6.2 Exclusion of schemes from the scope of R4045/89**

The view of the Commission is that only where good pre-payment checks exist should measures be excluded from Regulation 4045/89 by a Commission Decision. The regulation should allow measures to be excluded based on a risk analysis, but not oblige them to be excluded, as excluding a particular measure deprives Member States of any legal basis to perform an ex-post control even if it is justified by the prevailing circumstances. This approach reflects the fact that the quality of pre-payment controls varies considerably between Member States.



Currently Article 1(4) of the Regulation excludes all measures relating to the Integrated Administrative and Control System. A small number of other schemes (such as accompanying measures) were excluded by Commission Decision 96/284/CE<sup>13</sup>. All these exclusions will be carefully examined following the completion of the reform of the CAP under the Agenda 2000 proposals.

## **7. CONCLUSION**

The Commission believes that Regulation 4045/89 is an important weapon in the control over the regularity and reality of operations financed by EAGGF Guarantee section. Furthermore, the Commission considers that 4045/89 controls form an important element in the horizontal strategy of the fight against fraud in the agricultural sector. The results are there for all to see: almost 0.5bn ECU of irregularities discovered and reported to the Commission since the Regulation came into force. Enquiries under Regulation 4045/89 have led to the identification of 34% of all irregularities in EAGGF Guarantee reported to the Commission in the period of its existence. This, of course, reflects only the detective effect of Regulation 4045/89. The deterrent effect of the Regulation cannot be measured.

This Regulation is also one of the first to require a formal partnership between the control services of Member States. The provisions of Mutual Assistance were introduced to react to the increasing internationalisation of trade. The practical application of these provisions has given rise to a number of difficulties, which are only slowly being broken down. These difficulties include language and culture as well as a traditional reluctance to allow controllers from third countries access to documents and beneficiaries in a Member State. These difficulties are only slowly being overcome.

The Commission services recognise that they can play an active role in Mutual Assistance and will continue to do so within the limits of staff availability. Initiatives such as the co-ordination or monitoring of such actions can result in more or improved international scrutinies as well as improving the information flow between different services.

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<sup>13</sup> 96/284/CE: Commission Decision of 12 April 1996, establishing a list of measures to which the Regulation (EEC) n° 4045/89 of the Council does not apply (Official Journal n° L 107 of 30/04/1996 p. 0017 – 0018)



With regard to the operation of controls, there is still scope for improvement, as can be read in Section 3 above. The Commission is convinced that improvements can be made by the Member States themselves, without the need for major changes in legislation.

In particular, improvements are required of those Member States which do not implement the number of scrutinies required by the Regulations, and of those which do not adequately use the assistance of other Member States under the provisions regarding mutual assistance, or else do not adequately respond to mutual assistance requests. To different extents, all Member States need to improve the impact of the scrutinies carried by applying in practice the working methods required for the effective prevention and detection of fraud and irregularities.

The Commission services will continue to work with the Member States to improve the operation of Regulation 4045/89. However, where the Member State's operation of the Regulation 4045/89 controls is weak, the Commission must draw financial consequences, as it did for Italy under the clearances of the 1994 and 1995 financial years, for a serious and long-standing failure to carry out the necessary work.

It is now ten years since the Regulation has now been in operation, and five years since it was revised to take into account the experience of its practical application. The Commission services have provided a great deal of technical support for the development of best working practices. There can no longer be any excuse for inadequate implementation by the Member States.

The Council is asked to note this report on the operation of Regulation 4045/89.



**Council Regulation 4045/89: controls planned for scrutiny period 1993/94 and out-turn**

	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Portugal	United Kingdom	Total
Controls planned (scrutiny prog.)	198	441	1705	295	995	1229	104	1387	5	336	170	853	7718
Minimum number	198	177	1170	295	994	1211	94	1387	5	325	170	853	6879
Controls planned as % of minimum	100%	249,2%	145,7%	100,0%	100,1%	101%	111%	100,0%	100%	103,4%	100,0%	100,0%	112,2%
Controls completed or in progress	209	444	1465	295	988	1159	105	806	5	336	170	853	6835
- as % of minimum	105,6%	250,8%	125,2%	100,0%	99,4%	95,7%	111,7%	58,1%	100,0%	103,4%	100,0%	100,0%	99,4%

**Note:** see paragraph 2.1. in the report

**Source:** Member States' annual reports (scrutiny period 1993-94)



**Council Regulation 4045/89: controls planned for scrutiny period 1994/95 and out-turn**

	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Portugal	United Kingdom	Total
Controls planned (scrutiny prog.)	202	247	674	268	1130	1087	91	1490	3	326	227	546	6291
Minimum number	200	188	618	268	1115	1087	76	1490	3	326	227	464	6062
Controls planned as % of minimum	101%	131,4%	109,1%	100,0%	101,3%	100%	120%	100,0%	100%	100,0%	100,0%	117,7%	103,8%
Controls completed or in progress	183	265	698	218	1093	1069	92	846	3	336	228	550	5581
- as % of minimum	91,5%	141,0%	112,9%	81,3%	98,0%	98,3%	121,1%	56,8%	100,0%	103,1%	100,4%	118,5%	92,1%

**Note:** see paragraph 2.1. in the report

**Source:** Member States' annual reports (scrutiny period 1994-95)



**Council Regulation 4045/89: controls planned for scrutiny period 1995/96 and out-turn**

	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Portugal	United Kingdom	Total
Controls planned (scrutiny prog.)	172	288	703	270	766	654	118	898	2	264	182	460	4777
Minimum number	172	143	551	270	752	636	111	849	2	264	177	324	4251
Controls planned as % of minimum	100%	201,4%	127,6%	100%	101,9%	102,8%	106,3%	105,8%	100%	100%	102,8%	142,0%	112,4%
Controls completed or in progress	184	307	658	234	750	683	118	666	2	252	178	463	4495
- as % of minimum	107,0%	214,7%	119,4%	86,7%	99,7%	107,4%	106,3%	78,4%	100,0%	95,5%	100,6%	142,9%	105,7%

**Note:** see paragraph 2.1. in the report

**Source:** Member States' annual reports (scrutiny period 1995-96)



## Council Regulation 4045/89: controls planned for scrutiny period 1996/97 and out-turn

	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
Controls planned (scrutiny prog.)	156	122	562	345	617	597	121	885	2	254	30	128	20	52	354	4245
Minimum number	156	112	434	327	601	597	121	785	2	236	24	125	18	31	279	3848
Controls planned as % of minimum	100%	108,9%	129,5%	105,5%	102,7%	100%	100%	112,7%	100%	107,6%	125,0%	102,4%	111,1%	167,7%	126,9%	110,3%
Controls completed or in progress	151	129	475	254	605	597	119	771	5	257	30	127	19	52	354	3945
- as % of minimum	96,8%	115,2%	109,4%	77,7%	100,7%	100,0%	98,3%	98,2%	250,0%	108,9%	125,0%	101,6%	105,6%	167,7%	126,9%	102,5%

Note: see paragraph 2.1. in the report

Source: Member States' annual reports (scrutiny period 1996-97)



**Council Regulation 4045/89: controls planned for scrutiny periods 1997/98 and 1998/99**

1997/98	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
Controls planned (scrutiny prog.)	144	121	441	270	715	531	83	750	2	222	57	104	29	50	355	3874
Minimum number	142	96	349	270	712	461	59	704	2	175	53	90	27	40	351	3531
Controls planned as % of minimum	101,4%	126,0%	126,4%	100,0%	100,4%	115,2%	140,7%	106,5%	100,0%	126,9%	107,5%	115,6%	107,4%	125,0%	101,1%	109,7%

1998/99	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Luxem- bourg	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
Controls planned (scrutiny prog.)	176	111	495	290	660	562	78	905	2	254	62	98	33	58	304	4088
Minimum number	137	87	350	283	612	493	52	835	2	225	54	84	30	48	191	3483
Controls planned as % of minimum	128,5%	127,6%	141,4%	102,5%	107,8%	114,0%	150,0%	108,4%	100,0%	112,9%	114,8%	116,7%	110,0%	120,8%	159,2%	117,4%

**Note: see paragraph 2.1. in the report**

**Source: Member States' annual programs (scrutiny periods 1997-98 and 1998-99)**



### Number of irregularities reported 1991-98 following a 4045/89 control

Secteur	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
10 Cereales et riz	14	26	212	9	17	35		18	51		27	1	2	12	424
11 Sucre et isoglucose	1		31	1	5	22		1	27					4	92
12 Matieres grasses	1	1	3	171	61	9		160	1		25			2	434
13 Proteagineux		7	8		69	45		0	59		1			3	192
14 Plantes textiles et vers a soie				27	2			0	0						29
15 Fruits et legumes		2	5	17	71	7		63	15		21			1	202
16 Produits du secteur viti-vinicole			1	6	61	65		36	1		41				211
17 Tabac	1		0		3	1		117			12				134
18 Autres sect. et prod. h.a. II	5	35	61	1	23	11	5	8	49		5		2	41	246
20 Lait et produits laitiers	33	7	246	18	215	60	15	13	114	1	13		5	104	844
21 Viande bovine	9	12	39		13	15	15	7	24	11	2		1	12	160
22 Viandes ovine et caprine			1		29			131	1					9	171
23 Viande porcine	4	10	8		2	2	1	0	22			1	1	2	53
24 Oeufs et volailles	6	3	5		1	20		1	12		1			1	50
27 Montants compensat. adhes.					1	2					2			2	7
28 Montants compensat. monet.				6		9								6	21
39 Aides agro-alimentaires											25				25
40 Produits de la peche					10	2					1				13
69 Aides speciales d'urgence				2											2
99 Secteurs non precises			18	2	88	2			27		3			6	146
<b>Total</b>	<b>74</b>	<b>103</b>	<b>638</b>	<b>260</b>	<b>671</b>	<b>307</b>	<b>36</b>	<b>555</b>	<b>403</b>	<b>12</b>	<b>179</b>	<b>2</b>	<b>11</b>	<b>205</b>	<b>3456</b>
<b>As % of all 4045-cases</b>	<b>2,1%</b>	<b>3,0%</b>	<b>18,5%</b>	<b>7,5%</b>	<b>19,4%</b>	<b>8,9%</b>	<b>1,0%</b>	<b>16,1%</b>	<b>11,7%</b>	<b>0,3%</b>	<b>5,2%</b>	<b>0,1%</b>	<b>0,3%</b>	<b>5,9%</b>	<b>100%</b>

Note: This table shows the number of cases (only > 4000 ECU) communicated to the Commission. See paragraph 2.2.

Source: IRENE-database of irregularities maintained by UCLAF.



## AMOUNTS

## ANNEX 7

## Total amount of irregularities reported 1991-98 following a 4045/89 control

Secteur	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
10 Cereales et riz	323 082	1 369 681	4 839 687	919 040	3 234 515	4 331 065		107 436 444	5 641 162		1 542 936	23 408		683 422	130 344 442
11 Sucre et isoglucose	31 429		1 187 430		173 386	985 176			474 573					146 618	2 998 612
12 Matieres grasses	485 216	10 024	120 178	8 406 840	4 804 558	280 864		46 103 117	3 789		1 384 828			22 086	61 571 500
13 Proteagineux		58 191	76 856		11 048 878	11 904 875			1 844 785		74 367			95 843	25 103 795
14 Plantes text. et v. a soie				56 103 375	158 273										56 261 648
15 Fruits et legumes		79 803	46 342	498 804	8 143 110	69 549		35 863 061	664 228		5 377 315			11 700	50 753 912
16 Prod. du sect. viti-vinic.				156 371	5 309 437	1 858 287		14 320 670	24 693		6 819 177				28 488 635
17 Tabac	475 429				329 565	28 190		16 836 498			2 372 283				20 041 965
18 Aut. sect. et prod. h.a. II	513 226	960 960	2 332 938	4 508	3 867 685	93 164	100 017	1 071 096	1 612 986		65 314		20 474	1 790 769	12 433 137
20 Lait et produits laitiers	887 311	53 283	10 867 099	13 963	3 386 626	18 411 757	6 781 850	5 180 457	8 677 145	22 698	1 583 162		29 018	7 620 213	63 514 582
21 Viande bovine	755 243	1 288 096	5 961 197		1 679 752	2 240 696	3 462 467	909 795	2 254 820	14 172	32 857			1 774 887	20 373 982
22 Viandes ovine et caprine					554 728			1 592 792						86 876	2 234 396
23 Viande porcine	62 823	84 105	135 073			27 563	676 769		3 312 124			31 689	5 442	10 221	4 345 809
24 Oeufs et volailles	37 115	69 611	158 970		6 415	842 056		1 091	341 336		281 840				1 738 434
27 Montants comp. adhes.					5 557	266 683					55 511			49 685	377 436
28 Montants comp. monet.				49 740		162 037								185 753	397 530
39 Aides agro-alimentaires						0					3 763 397				3 763 397
40 Produits de la peche					443 288	12 838					4 524				460 650
69 Aides spec. d'urgence				74 248		0									74 248
99 Secteurs non precises			216 826		5 068 231	11 998			937 871		69 652			173 008	6 477 586
Total	3 570 874	3 973 754	25 942 596	66 226 889	48 214 004	41 526 798	11 021 103	229 315 021	25 789 512	36 870	23 377 163	55 097	54 934	12 651 081	491 755 696
As % of all 4045-cases	0.73%	0.81%	5.28%	13.47%	9.80%	8.44%	2.24%	46.63%	5.24%	0.01%	4.75%	0.01%	0.01%	2.57%	100%

ECUS (MI) at the rate of exchange of May 1998.

Note: only cases > 4000 ECU are included. See paragraph 2.2.

Source: IRENE-database of Irregularities maintained by UCLAF.



## RECOVERIES

## ANNEX 8

## Total amount of irregularities recovered 1991-98 following a 4045/89 control

Secteur	Belgique- België	Danmark	Deutsch- land	Ellas	España	France	Ireland- Éire	Italia	Neder- land	Öster- reich	Portugal	Suomi- Finland	Sverige	United Kingdom	Total
10 Cereales et riz	127 123	1 360 348	2 070 971	4 662	502 585	2 937 256		9 217 108	1 920 442		230 159	23 408		627 371	19 021 433
11 Sucre et isoglucose			1 129 572		63 519	918 568			417 600					15 421	2 544 680
12 Matières grasses		10 024	43 382	1 283 811	293 965	107 008		1 506 043	3 789		228 003			22 086	3 498 111
13 Proteagineux		58 191	44 788		1 980 120	8 252 952			1 067 585					95 843	11 499 479
14 Plantes textiles et vers a soie				33 070											33 070
15 Fruits et légumes		79 803	32 802	91 150	201 815	31 618		739 982	112 259		256 609			11 700	1 557 738
16 Produits du sect. viti-vinicole				42 201	1 517 444	1 619 597		337 588			88 148				3 604 978
17 Tabac	475 429							1 213 430			848 530				2 537 389
18 Autres sect. et prod. h.a. II	208 554	948 814	806 872		1 059 636	81 894	39 575	439 745	653 509		36 376		12 190	1 527 418	5 814 583
20 Lait et produits laitiers	313 572	50 364	3 567 819	13 963	573 762	540 788	6 762 320	260 496	5 097 241	22 388	45 157		3 340	6 579 089	23 830 299
21 Viande bovine	107 323	1 288 096	1 608 077		35 036	119 121	1 428 418	74 306	592 334	1 058				919 578	8 173 347
22 Viandes ovine et caprine					63 693									62 026	125 719
23 Viande porcine	31 121	84 105	80 534			27 563	580 811		189 851			31 689		5 305	1 030 979
24 Oeufs et volailles	30 912	69 611	142 723		6 415	140 977			311 413						702 051
27 Montants compensat. adhes.						266 683								49 685	316 368
28 Montants compensat. monet.						136 208								31 200	167 406
39 Aides agro-alimentaires											184 667				184 667
40 Produits de la pêche					91 938						4 524				96 462
69 Aides spéciales d'urgence				3 616											3 616
99 Secteurs non précisés			178 995		88 447	11 998			379 620					75 910	734 970
<b>Total</b>	<b>1 294 034</b>	<b>3 949 356</b>	<b>9 706 535</b>	<b>1 472 473</b>	<b>6 478 375</b>	<b>15 192 231</b>	<b>8 811 124</b>	<b>13 788 698</b>	<b>10 745 643</b>	<b>23 446</b>	<b>1 922 173</b>	<b>55 097</b>	<b>15 530</b>	<b>10 022 632</b>	<b>83 477 347</b>
4045-recoveries as % of 4045-irregularities reported	36.2%	99.4%	37.4%	2.2%	13.4%	36.6%	79.9%	6.0%	41.7%	63.6%	8.2%	100%	28.3%	79.2%	17.0%

ECUS (MI) at the rate of exchange of May 1998.

Note: See paragraph 2.2.

Source: IRENE-database of irregularities maintained by UCLAF.



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# DOCUMENTS

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