

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 13 final

Brussels, 25 January 1993

Report on the application of Regulation (EEC) No 386/90  
on the monitoring carried out at the time of export of  
agricultural products receiving refunds or other amounts

(presented by the Commission)

Report on the application of Regulation (EEC) No 386/90  
on the monitoring carried out at the time of export of  
agricultural products receiving refunds or other amounts

Table of contents

A. <u>Introduction</u>	1 C
B. <u>Part One</u> : The monitoring system instituted by Regulation (EEC) No 386/90	2
I. The main provisions of Regulation (EEC) No 386/90	2
II. The monitoring system resulting from Regulations (EEC) No 386/90 and No 2030/90	3
1. Scope	3
2. Exemptions	3
(a) Community food aid	3
(b) Certain deliveries similar to exports	3
(c) <u>De minimis</u> rule	4
(d) Application of such authorizations in the Member States	4
(e) National provisions to counter abuses	4
3. Determining the basis for calculating the scrutiny rate	5
(a) Customs office	5
(aa) Possibility of aggregation	5
(bb) Use of this authorization in the Member States	6
(b) Product sectors	6
4. Period during which the checks are to be carried out	6
(a) Normal cases	6
(b) Simplified procedures in accordance with Council Directive 81/177/EEC (Directive on exports of Community goods)	7
(c) Cases of payment in advance	7
5. Transitional measures	7
C. <u>Part Two</u> : Evaluation of the application of the monitoring system	8
I. The Member States' initial experience of the system	8
1. The system in operation	8
2. The number of inaccurate export declarations	8

II. Review of the monitoring system	8
1. Risk analysis as an alternative to the strict 5% rule	8
(a) General statement of reasons	8
(b) Member States' suggestions	9
(c) Comments	9
2. Problems when checking non-Annex II products	10
(a) Recourse to previous checks	10
(b) Comments	10
3. (a) Extension of the cases of non-application of the checking procedure as provided for by Regulation (EEC) No 2030/90	10
(b) Comments	10
D. <u>Part Three</u> : Conclusions	11

Annexes: Regulation (EEC) No 386/90  
Regulation (EEC) No 2030/90

Report on the application of Regulation (EEC) No 386/90  
on the monitoring carried out at the time of export of  
agricultural products receiving refunds or other amounts

A. Introduction

Article 7(2) of 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<sup>(1)</sup> lays down that the Commission is to submit a progress report on the application of this Regulation to the Council before 1 January 1992 and, in the light of experience gained, propose any necessary amendments to the monitoring system.

The Commission is presenting this report on the basis of the Member States' contributions and the experience which has now been gained. Unfortunately, some Member States replied<sup>(2)</sup> relatively late<sup>(3)</sup> while others<sup>(4)</sup> have not yet replied, despite several reminders<sup>(5)</sup>.

The report could not be submitted until now for the above reason.

---

(1) OJ No L 42, 16.2.1990, p.6.

(2) The letter in which the Member States were asked to make their comments or suggestions on the possible improvement of the monitoring system was sent on 11 June 1991. Replies were requested by 15 September, at the latest.

(3) The reply from the Netherlands was not received until 12 December 1991 and that from Luxembourg not until 21 January 1992.

(4) France and the United Kingdom.

(5) The last being in connection with the meeting of the Management Committee on Exchange Mechanisms held on 13 October 1992.

B. Part One: The monitoring system instituted by Regulation (EEC) No 386/90

I. The main provisions of Regulation (EEC) No 386/90

Regulation (EEC) No 386/90 was adopted to ensure that export transactions giving rise to payments of amounts funded by the EAGGF are actually carried out and are executed correctly.

To this end, the Regulation requires that at least 5% of the export declarations in respect of which applications for the payment of refunds or all other amounts in respect of export transactions have been submitted are monitored by spot checks conducted frequently and without warning. The scrutiny rate generally applies by customs office, by calendar year and by product sector. These checks are to be carried out at the time the customs export formalities are completed and before authorization is given to export the agricultural products qualifying for the abovementioned amounts.

In accordance with the Management Committee procedure, a higher scrutiny rate may, by way of exception, be fixed for specific cases on the basis of objective findings of an increased risk of fraud.

The Regulation also provides for transitional measures which however require an implementing regulation. The detailed rules of application were laid down by Commission Regulation (EEC) No 2030/90<sup>(6)</sup> of 17 July 1990 which specifies in detail:

- the exports to which the Regulation is applicable,
- the basis upon which the scrutiny rate is calculated,
- the period in which the checks must be carried out and
- the transitional measures for 1990 and 1991

particular account being taken of the declarations in the Council minutes<sup>(7)</sup> as regards the clarifications to be made in the detailed rules of application.

---

(6) OJ No L 186, 18.7.1990, p. 6.

(7) Doc. No 4580/90, 2.2.1990.

11. The monitoring system resulting from Regulations (EEC) No 386/90 and No 2030/90

On the basis of these Regulations, the monitoring system is as follows:

1. Scope

The monitoring system covers all agricultural products attracting export refunds, monetary compensatory amounts (MCAs) and accession compensatory amounts (ACAs) upon export. Regulation (EEC) No 2030/90 clarifies what is meant by "exports": this term covers exports to third countries and similar operations as referred to in Articles 34 and 42 of Regulation (EEC) No 3665/87<sup>(8)</sup> (in particular deliveries within the Community to international organizations and to the armed forces as well as supplies for the victualling of ships or aircraft).

2. Exemptions

Exemptions from the monitoring system are provided for in the following cases (Article 1(2) to (4) of Regulation (EEC) No 2030/90):

- (a) Exports in the form of Community food aid as referred to in Regulation (EEC) No 2200/87<sup>(9)</sup>.
- (b) Furthermore, the Member States are authorized not to take into account deliveries under Articles 34 and 42 of Regulation (EEC) No 3665/87 (the deliveries mentioned in paragraph 1 above) if the exporter qualifies for the procedure referred to in Article 35 of Regulation (EEC) No 3665/87.

---

(8) OJ No L 351, 14.12.1987, p.1.

(9) OJ No L 204, 25.7.1987, p. 1.

- (c) A de minimis rule is also laid down whereby the Member States are authorized not to take account for scrutiny purposes of exports not exceeding 5 000 kg in the case of cereals or rice or 500 kg in the case of other products.
- (d) The following Member States apply the exemptions mentioned in (b) and (c) above:

	(b)	(c)
Denmark	(-)	(+)
Belgium	(-)	(+)
Germany	(+)	(+)
Greece	no concrete data	
Spain	(+)	(+)
France		
Ireland	(-)	(-)
Italy	(-)	(-)
Netherlands	(-)	(+)
Portugal	(-)	(+)
Luxembourg	(+)	(-)
United Kingdom		

(+ = yes / - = no)

(e) National provisions to counter abuses

- In the case under (b) above, the strict conditions for the authorization of more flexible procedures pursuant to Article 35 of Regulation (EEC) No 3665/87, in particular the obligation to maintain a register containing the particulars permitting identification of the products concerned, the means of transport and the date of loading, the obligation to facilitate the checks considered necessary and to keep the register for a certain length of time, guarantee in general that there is no abuse in this area, given that these procedures are only granted to credible operators.

- In the case under (c) above, the deliveries in question are usually checked, either sporadically and without warning or on the basis of a risk analysis using the documents accompanying the goods.

3. Determining the basis for calculating the scrutiny rate

The export declarations in respect of which applications for refunds, MCAs and ACAs are submitted form the basis for the determination of the scrutiny rate.

The rate is applied:

- by customs office
- by calendar year
- by product sector.

(aa) In general, customs office means all offices competent to accept an export declaration for the products in question. However, the Member States are authorized to aggregate the data relative to several customs offices where the number and volume of exports do not reach a significant level in a calendar year.

(bb) On the basis of the information communicated by the Member States, the application of this authorization is as follows:

Denmark	(-)
Belgium	(-)
Germany	(-)
Greece	no concrete data
Spain	(-)
France	
Ireland	(+)
Italy	(-)
Netherlands	(-)
Luxembourg	(-)
Portugal	(+)
United Kingdom	

(+ = yes / - = no)

(b) A product sector corresponds in principle to the scope of each common market organization. Nevertheless, rice and cereal products form a single product sector. This also applies to products not listed in Annex II.

4. Period during which the checks are to be carried out

(a) The checks are normally carried out in the period between the lodging of the export declaration and the issuing of the authorization to export the goods.

- (b) Particular rules are laid down to specify the monitoring period in the case of transactions carried out in accordance with the simplified procedures referred to in Articles 18 and 19 of Directive 81/177/EEC<sup>(10)</sup> (Directive on the export of Community goods) under which the export declaration may be replaced by other documents or formalities. In such cases, the replacement measures mark the beginning of the monitoring period.
- (c) Provision is made in exceptional cases to take previous checks into account in calculating the scrutiny rate. This applies in two cases:
- where the physical checks are carried out at the time of storage or processing, the refund having been paid in advance in accordance with Articles 24 to 29 of Regulation (EEC) No 3665/87;
  - where analyses or other physical checks are carried out prior to the completion of the customs export formalities under Community or national provisions governing the customs arrangements in question or the manufacturing processes which the products and goods have undergone.

#### 5. Transitional measures

For a two-year transitional period, the 5% rate is reduced to 3% in 1990 and 4% in 1991.

These reduced rates apply to all sectors taken together for each customs office, or for all customs offices in one region where aggregation has been applied.

Nevertheless, on the basis of the information supplied by the Member States, it can be seen that the reduced scrutiny rates have been exceeded by some Member States.

---

(10) OJ No L 83, 30.3.1981, p.40.

C. Part Two: Evaluation of the application of the monitoring system

I. The Member States' initial experience of the system

1. The system in operation

At the present stage, it is difficult to make a firm judgement on the difficulties encountered during this period of progressive implementation of the new system.

Nevertheless, some Member States have indicated that compliance with the scrutiny rates, particularly following the introduction of the strict 5% rule by customs office and by sector, has - or will have - a negative effect on the other customs inspection tasks, given that budgetary constraints do not permit an increase in the number of inspectors.

2. The number of inaccurate export declarations

On the basis of the information supplied by the Member States, only about 1% of all exports scrutinized under the monitoring system was inaccurate.

II. Review of the monitoring system

1(a) Risk analysis as an alternative to the strict 5% rule

In the context of the remarks made under C.I.1., the most significant criticism made by some Member States was the fact that observance of the strict requirements of the scrutiny rate in each sector did not meet the aims of the system. The Regulation as it stood would thus result in a

mobilization of monitoring resources, even in the sectors not at risk.

A system based on a prior "risk analysis" would result in a more targeted monitoring operation and a more efficient use of resources as the check would be centred on the sectors and exports which should be considered especially at risk.

(b) Some Member States proposed replacing the strict 5% rule by sector:

- either by Commission guidelines given to the Member States and allowing them to determine for themselves at national level a plan for priority checks on the basis of a "risk analysis" drawn up by the Member States themselves,
- or by making it possible for Member States to carry out the checks on the basis of the results of a risk analysis at national level and to concentrate, where appropriate, their efforts on a particular sector while not observing the scrutiny rate in other sectors, as long as the 5% rate for all exports is observed.

(c) Comments

Aside from the general conclusions set out at the end of the report, the Commission would stress that risks exist with all sectors, although for certain of them the 5% threshold could be too high.

2. Problems when checking non-Annex II products

(a) Recourse to prior checks

Some Member States propose that a special provision should be laid down for the products not included in Annex II which derogates from the principle that a physical check is required when the classification or quality cannot be verified by means of a simple visual check, but only by a detailed check or an analysis.

For such products, a reliable check as to their quality is possible only at the time of their manufacture.

(b) Comments

The Commission will examine whether it is appropriate to make specific provisions for products not included in Annex II.

3. Extension of the cases of non-application of the checking procedure provided for by Regulation (EEC) No 2030/90

(a) Some Member States propose not to limit the flexibility provided for in Article 1(3) of Regulation (EEC) No 2030/90 to cases of deliveries within the Community similar to export (supplies for victualling), but to extend such flexibility to all cases which are exempt from the requirement to submit goods to a customs office.

(b) Comments

Exemption from the requirement to submit goods to a customs office concerns a procedure which is not comparable with the case of specific deliveries similar to an export operation. Furthermore, such exemption could in itself constitute an element of risk.

D. Part Three: Conclusions

1. For a number of Member States the introduction of the monitoring system has not resulted in major difficulties, apart from the transitional problems associated with introducing a new system.
2. The main criticism of the Regulation concerns the strict 5% rule. In the view of certain Member States, the inflexibility of this rule could jeopardize more effective checking based on risk analysis, their staff resources being geared to compliance with the 5% rule.
3. It should be noted that, from 1 January 1993, the abolition of customs formalities in intra-Community trade in Community products, which will involve the discontinuance of a substantial number of checks, is likely to affect staff availability levels in the Member States.

In addition, the principle is laid down in the Community customs code whereby the export declaration must be submitted at the customs office responsible for surveillance at the place where the exporter is based or where the goods are packed or loaded for transportation. The application of this provision should facilitate physical checking of the products.

4. The EAGGF is currently carrying out checks to verify the implementation of Regulation (EEC) No 386/90. Once conclusions have been drawn and in the light of the changes referred to in paragraph 3, a supplementary report, possibly containing an amendment to Regulation (EEC) No 386/90, will be sent to the Council.

ISSN 0254-1475

COM(93) 13 final

# DOCUMENTS

EN

03

---

Catalogue number : CB-CO-93-017-EN-C

ISBN 92-77-52094-9

---

Office for Official Publications of the European Communities  
L-2985 Luxembourg