COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.1998
COM(1998) 679 final

COMMISSION

FOLLOW-UP REPORT

on action taken in response to the Council recommendation on discharge in respect of the implementation of the general budget for 1996

MEMBER STATES' REPLIES

TO THE OBSERVATIONS CONTAINED IN THE COURT OF AUDITORS' ANNUAL REPORT FOR 1996

CONTENTS

Introduction

In accordance with Article 206(3) of the Treaty, the purpose of the Commission's follow-up report is to set out the measures it has taken in response to the Council's recommendations of 9 March 1998. Under this procedure, the Council recommends that Parliament grant a discharge to the Commission on the basis of the Court of Auditors' annual report for 1996.

This report is in response to the Council's request, in the introduction to the Recommendation of 9 March 1998, that a list be produced of the efforts made in the various sectors so that "lessons (may) be drawn for the future" and that steps be taken to achieve "sound financial management (which) should ensure that money is properly spent and accounted for".

In response to the Council's wishes, the Commission has focused these efforts on three main areas:

- Strengthening the evaluation culture. A number of evaluations are conducted during a project's life cycle (prior, during and *ex post*). While some are carried out directly by the Commission, in various sectors they are often the result of close cooperation with the Member States.

- Incorporation in Agenda 2000 of measures taken as a result of these evaluations. Consideration of the results does indeed supplement this evaluation culture.

- Simplification of regulatory frameworks. It is with this in mind that simplifications of complex legal systems have been proposed, in particular for the Structural Funds.

These few examples show the Commission's determination to improve project monitoring and control so that management may be improved in line with the provisions of SEM 2000.

In addition to these efforts to improve management, publication of the report on the functioning of the own resources system and the white paper on the recasting of the Financial Regulation mark stages on the way towards the budget discipline desired by the Member States and the Commission.

CHAPTER 1

OWN RESOURCES

1. Inward processing and suspension system (IP/S)

The Council

recommends that the criteria for assessing the economic conditions laid down for businesses to obtain authorisations should take account of the interests of all the parties concerned.

Commission's reply

The Council's recommendation is largely covered by present legislation.

2. Establishment and ex post facto recovery of traditional own resources

The Council

calls on the Commission to include a suspension clause in preferential agreements where the Community's financial interests have suffered.

Commission's reply

The Council is repeating an earlier request, to which the Commission has replied via its many communications concerning preferential agreements. The programme on the protection of the Communities' financial interests and the fight against fraud (1998-99), presented in May, also takes account of this type of concern in the field of customs and taxation.

3. Own resources deriving from gross national product (GNP)

The Council

urges the Commission to complete work, as announced, in 1998 for all Member States except Finland, Sweden and Austria, in respect of which work in respect of GNP should be completed in 1999.

Commission's reply

By Decision 97/619 (EC, Euratom), the Commission set the following deadlines for completion by the Member States of work still to be completed on reserves in respect of GNP:

- 1 October 1998 for twelve Member States,
- 1 October 1999 for Finland, Sweden and Austria.

As soon as it has received the results of this work from the Member States, the Commission will introduce the controls and procedures for the lifting of the reserves in question pursuant to Article 10(8) of the Regulation (EEC, Euratom) of 29 May 1989 on the system of own resources.

CHAPTER 2
BUDGETARY MANAGEMENT

1. Budget forecasting of agricultural expenditure

The Council

calls upon the Member States and the Commission to collaborate in further refining agricultural expenditure estimates. It will be important to ensure that the quality of such estimates does not deteriorate following agricultural policy reform in the context of Agenda 2000.

Commission's reply

The Commission endorses this request. Since April 1997 the budget authority and the Commission have agreed to take account of a revision of the agricultural budget forecasts in a letter of amendment presented before the second reading of the budget in October

2. Preparation of the 1999 farm budget

The Council

calls on the Commission to table in 1999, following the same procedure as in 1998, an agricultural budget that takes account of the over-estimates of the past.

Commission's reply

The Commission stepped up its efforts to avoid over-estimates in preparing the 1999 preliminary draft budget (see also reply to point 1 above).

CHAPTER 3
COMMON MARKET ORGANISATION - PLANT PRODUCTS

1. Arable crops

The Council

would like the IACS to be fully implemented in 1998.

Commission's reply

The integrated administration and control system (IACS), set up by Council Regulation No 3508/92 and Commission Regulation No 3887/92, was to be fully operational from 1 January 1997 for the old Member States and 1 January 1998 for the new ones.

The installation was broadly satisfactory given the scale of the work that the Member States had to undertake in particular for the "area" evaluation aspects. The Member States which did not have a land register or whose land register was not sufficiently reliable had more difficulties in setting up the system.

Today, with the exception of Greece and Scotland which have major problems, all the Member States have an operational system, even though some (Finland, Ireland and Belgium) still have to make improvements. All the components of IACS are in place, namely a computerised database, an alpha-numerical system for identifying agricultural parcels, requests for aid and an integrated control system which includes:

- administrative controls, in particular cross-checks of parcels in order to avoid any duplication in the granting of aid, and

- on-the-spot checks which can be carried out by visiting farms or by remote sensing techniques for areas.

For the new Member States it will clearly not be possible to say whether their systems are operational until after the 1998 harvest, as they had until 1 January 1998 to complete the installation of the IACS.

Because the IACS had proved useful and effective, it was extended to new schemes (Regulation No 3072/95) and grain legumes (Regulation No 1575/96). Other schemes are linked to it such as hops, agri-environmental measures, cotton and dried fodder. In addition, the olive oil and vineyard registers are based directly on the "area" part of the IACS.

This does not, of course, mean that no improvements are necessary, as there is always scope for improvement in any system. For this reason the accounts clearance departments are carrying out controls in the fifteen Member States and examining the operation of the IACS.

2. Common market organisations (CMO) in raw tobacco and wine

The Council

asks the Commission to take account of the Court's comments when drawing up its reform proposals in the context of Agenda 2000 in order to improve both the management and monitoring of these CMOs.

Commission's reply

1. Tobacco

The Commission's proposals for the reform of the common market organisation (CMO) were tabled on 28 January 1998. The proposals take extensive account of Parliament's opinion as expressed in the report on options previously drawn up on 18 December 1996.

2. Wine

The Commission recently adopted a proposal for the reform of the CMO in wine. This proposal incorporates in a single legislative document all the existing provisions adopted by the Council in the wine sector. From this point of view it should make a significant contribution to simplifying and improving the management of this CMO.

The prime objective of the proposal is to promote the competitiveness of the Community wine industry against the background of an expanding international market.

Some intervention measures will be withdrawn and the others redirected in order to eliminate artificial outlets for non-marketable products. Only intervention measures designed to ensure the quality of wines and measures to preserve traditional markets other than wine (wine alcohol, aromatised wines, grape juice, etc.) will be retained unchanged.

The main innovation concerns conversion measures designed to adapt vineyards to the market, and the administration of a new system of planting rights paving the way for the development of vineyards in areas where it is clearly necessary without bringing about an increase in production not justified by market conditions. To qualify for these two measures, an inventory of the vineyard will have to be produced (where appropriate based on the vineyard register), containing information on surface areas, varieties of vine and planting rights. Introduction of this inventory will tighten controls.

CHAPTER 4

COMMON ORGANISATION OF THE MARKET - ANIMAL PRODUCTS - BEEF AND VEAL PREMIUM SCHEMES AND SELECTED BSE-RELATED MEASURES

1. Beef and veal premium schemes

The Council

shares the Court's opinion that any future reform in this sector should be preceded by a detailed ex ante analysis of its impact on farmers' incomes, given the significant consequences for the Community budget.

Commission's reply

The Commission agrees with the Council and the Court that the likely impact of a reform should be studied beforehand. Such an analysis should also apply to the status quo.

The Commission's analysis "Situation and Outlook - Beef Sector" published in May 1997 showed that if beef policy remained unchanged, enormous domestic surpluses would result. These would clearly adversely affect farmers' incomes.

To deal with this problem the Commission, in Agenda 2000, proposes an integrated package of measures. The beef sector cannot be studied in isolation from other closely related sectors.

The Commission is therefore carrying out an income analysis of the Agenda 2000 proposals that take into account the interrelationships between different farm sectors including that of beef.

2. Measures taken in connection with the BSE crisis

The Council

emphasises the need for further close collaboration between the Commission and the Member States to ensure the effectiveness of the application, control and evaluation of the measures linked to the BSE crisis.

Commission's reply

The Commission fully agrees on the necessity for the Commission and the Member States to maintain close collaboration in order to secure the efficiency of the implementation, control and evaluation of the measures linked to the BSE crisis.

In the Commission's First Bi-annual BSE Follow-up Report presented to the Council and the European Parliament on 6 May 1998, the Commission gave a detailed outline of the actions taken by the Commission concerning BSE/TSE since November 1997 including the developments as regards the Clearance of Accounts procedures for BSE measures specific to the United Kingdom.

In the period after the presentation of this report the Commission services, in light of the deficiencies established in the application of the Over Thirty Month Scheme (Reg. No 716/96), have decided to propose to refuse financing of some of the expenditure declared for animals processed under this scheme. By letter of 26 May 1998 the UK authorities were informed that it was envisaged to propose corrections. The UK authorities now have the right to request a conciliation procedure for the proposed corrections. The deadline expires 30 working days after the receipt of the official notification.

The proposal of corrections for the first 15 months of the scheme does not mean that the Commission services have ceased to monitor the application of this scheme. Missions are carried out on a regular basis and recommendations for improvements continue to be made. A reserve on the financing for the period after 3 August 1997 has also been made.

As regards other BSE measures, such as the calf premium schemes and the supplementary aids (Reg. Nos 1357/96 and 2443/96), the Clearance of Accounts Unit has included these measures in missions undertaken in the framework of a bovine premiums enquiry, which will be completed in 1998. Missions have been made to a majority of Member States including the most important ones in terms of expenditure for these measures, i.e. France, United Kingdom and Germany. Where serious deficiencies have been detected in the implementation of measures financed by EAGGF, financial consequences will be proposed upon completion of the enquiry in an ad hoc decision in accordance with Art. 5(2)(c) of Regulation No 729/70.

CHAPTER 6
REGIONAL SECTOR

1. Budgetary and financial data

The Council

notes the progress made by the Commission in collaborating with the Member States with a view to improved implementation of budgetary appropriations and would like further progress to be made to avoid any increase in the amount still to be settled and the end-of-year concentration of commitments and payments. The Council invites the Commission and the Member States to make further efforts to this end.

Commission's reply

There has been a significant increase in cooperation between the Commission and the Member States following the introduction of the "budget network" for the Structural Funds. The main task of this network, made up of financial correspondents in the Finance Ministries, has been to provide the Commission with forecasts of requests for payment. The Member States are currently in the process of providing the Commission with their forecasts of requests for payment for 1998-2001, relating to the present programming period.

The level and rate of growth of commitments outstanding under the Structural Funds (of which almost 90% originated in the current programming period, measured on 31 December 1997) can be regarded as normal, given that they relate to multiannual measures where the payment of commitments is spread over several years. Under the present financial management system (commitment by tranches and payments on account), commitments generally increase much more rapidly than payments.

It should be pointed out that the ECU 1 000 million cut in payment appropriations made by the budgetary authority in the 1997 budget increased the volume of commitments outstanding at the end of 1997, since the funds available proved insufficient to meet the requests for payment. Payments amounting to ECU 1 200 million had to be postponed until 1998.

Finally, there has been a significant easing of the problem of the concentration of the implementation of commitments and payments at the end of the financial year: the proportion of payments made in December fell from 48% in 1994 to 20% in 1997, and for commitments the rate fell from 60% to 32%.

2. The closure of intervention schemes

The Council

nevertheless asks the Commission, in partnership with the Member States, to pursue a more active policy as regards closure of programmes, to optimise its checks, especially on-the-spot checks, and to make more effort to make long-term assessments of the impact of completed co-financed projects. It recommends that, in drawing up its proposals for the period beginning in 2000, the Commission should learn from experience, define simpler rules, and clarify the division of

responsibilities between the various administrative levels. In particular, the Council considers that overlapping objectives, programmes and programme periods, as well as extensions and closure procedures, have all contributed to the administrative overload.

Commission's reply

The Commission shares the Council's wish to see programmes closed as quickly as possible and is endeavouring to accomplish this task in the shortest possible time.

However, this plan occasionally encounters inevitable problems of implementation in the field, which can lead to programmes being extended. The Commission's response has been to set limits enabling these extensions to be kept within reasonable bounds.

The Commission takes full account of the various points raised by the Council in this connection in its legislative proposals for the period beginning in 2000.

Assessment will henceforth be incorporated ex ante in the compilation of plans and the quantification of objectives to be attained, mid-term in the case of reprogramming, and ex post in order to capitalise on the experience obtained.

As regards checks, the Commission carries out as many on-the-spot checks as staffing levels permit and tries to make them as effective as possible. The legislation proposed by the Commission for the new programming period clearly sets out the respective responsibilities of the Commission and the Member States for programme monitoring, financial management, checks and assessment.

Regulation (EC) No 2064/97 of 15 October 1997 on strengthening the management and control system for operations co-financed by the Structural Funds already requires that, on closure, the requests for final payment from the Member States should be accompanied by an independent statement on the validity of these requests.

In the Commission's view, the application of this Regulation, the gradual use of the model annual report and the details provided by the 22 statements on the eligibility of expenditure should in future significantly improve the closure operation.

As stated by the Commission in its reply to the Court of Auditors (paragraph 6.38 of the Annual Report for 1996), overlapping between programming periods did not cause any serious administrative problems in the Member States.

3. <u>The implementation of measures in favour of undertakings and of SMEs in particular</u>

The Council

invites the Commission to take steps to ensure that services offered to the SMEs correspond to their genuine requirements. It is pleased that the Commission in December 1997 launched an assessment of the impact of the Structural Funds on the SMEs and requests that the outcome be communicated to the two arms of the budgetary authority.

Commission's reply

The Commission confirms its intention of sending the two arms of the budgetary authority the findings of the thematic assessment of the impact of the Structural Funds on SMEs, launched in December 1997. The final report should be approved by the end of 1998.

CHAPTER 7
SOCIAL SECTOR

1. Execution of the budget of the European Social Fund

The Council

calls upon the Commission to simplify the legal framework for structural measures in future in order to speed up their implementation.

Commission's reply

The Commission agrees with the Court about the complexity of the financial channels set up to administer the Structural Funds and acknowledged this fact in the Explanatory Memorandum to the proposal for a Council Regulation laying down general provisions on the Structural Funds, adopted by the Commission on 18 March 1998. It feels that decisive improvements can and should be made to the present arrangements and therefore proposed a simpler system for financial commitments and a new mechanism for payments, based on the reimbursement of actual and certified expenditure.

Despite the complexity of the present system, the ESF's implementation rate for 1996 was 100%. The same take-up rate was measured in 1997.

The Commission will continue its efforts, in partnership with the Member States, to ensure that the funds given to the Member States are channelled towards the final beneficiaries as quickly as possible, thus keeping the use of prefinancing to a minimum.

2. Audit of particular aspects of the European Social Fund

The Council

shares the Court's desire for participation by the economic and social partners to be strengthened and for assessment of results to be expanded. Furthermore, it also calls on the Commission to simplify the legal framework for Community initiatives.

Commission's reply

1. The Court of Auditors' comments on participation by the economic and social partners in the monitoring committees are not specific to the ESF but relate to the Structural Funds as a whole. In the case of Objectives 3 and 4, for which the ESF is the lead fund, the Commission has succeeded in persuading the Member States, who are responsible for appointing the members of the monitoring committees, to ensure that these partners are adequately represented.

2. A mid-term assessment covering ESF programmes in the 1994-99 programming period was carried out and the results used in the reprogramming of operations in 1997. The lessons learned from this exercise and from the final assessment (completion expected in the first quarter of 1999) which will also be very useful when the next period of partnership with the national authorities is being presented, have not only led to an assessment of ESF operations but have also created a genuine "assessment culture" within the Member States.

3. One of the fundamental characteristics of the Community Initiative Programmes is the creation of transnational partnerships, yet projects continue to be selected at national level. For the second wave of selections of Employment and Adapt projects in 1997, the Commission avoided this problem by assisting promoters of projects pre-selected at national level in their search for foreign partners. This meant that final approval at national level could be given to the projects of all partners virtually simultaneously.

CHAPTER 8
EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND, GUIDANCE SECTION (EAGGF-GUIDANCE)

1. Control and assessment of aid under the EAGGF, Guidance Section

The Council

asks the Commission to spell out the rules for replacing ineligible expenditure. It wants the Commission and the Member States to make a greater effort to implement the IACS. It recommends that more care be taken with prior assessment of projects and that physical inspections be increased.

Commission's reply

The EAGGF Guidance Section part-finances expenditure associated with projects which implement the measures approved in the programming documents in accordance with the appropriate procedures.

Under the principle of subsidiarity, the Member States are in theory free to select these projects and are responsible for monitoring them. If these measures are judged ineligible part-financing is not granted.

However, the Member States may declare any other expenditure eligible that meets the part-financing conditions, provided that the commitment under the programme and the statement of expenditure are completed within the time allowed. Specific rules on substitution are not set out in detail since they are the same as the rules for the initial selection of the projects, with which the Member States are fully familiar.

The prior assessment of projects is the responsibility of the Member States, which also bear the main responsibility for physical inspections.

The checks carried out by the Commission are mainly to ensure that the monitoring systems set up by the Member States are operating satisfactorily.

CHAPTER 13

COOPERATION WITH DEVELOPING AND THIRD COUNTRIES (EXCEPT CENTRAL AND EASTERN EUROPE)

1. Implementation of the budget

The Council,

as far as humanitarian aid is concerned, calls on the Commission to continue taking the necessary measures to avoid, as far as possible, recourse to carry-overs of unutilised payment appropriations. It is pleased that the emergency aid reserve was not used in 1997 and hopes that recourse to mobilisation of payment appropriations from this reserve can also be avoided in future by making more use of transfers of payment appropriations from other budget lines under heading 4 of the financial perspective (External Actions).

Commission's reply

In accordance with the instructions contained in paragraph 15 of the Interinstitutional Agreement of 29 October 1993, the Commission asks to draw on the emergency aid reserve only when it has to cover specific aid requirements exceeding the amount entered in the budget as a result of events which could not be foreseen when the budget was established. It does not present a proposal until it has examined the scope for reallocating appropriations within heading 4.

While this reserve did not need to be drawn on in 1997 as the appropriations in this heading had been under-utilised to some extent, in 1998 the Commission was forced to ask for an increase of ECU 150 million in commitment appropriations and ECU 100 million in payment appropriations in a supplementary and amending budget presented as early as April. When it appeared that the Council would not establish a draft supplementary and amending budget before the summer, the Commission had to propose that the same amounts be drawn from the emergency aid reserve; the two arms of the budgetary authority accepted this alternative solution.

The Commission would also point out that it carries over payment appropriations in exceptional circumstances only and in accordance with the conditions set out in Article 7 of the Financial Regulation.

The Council

as regards cooperation with Mediterranean countries, shares the Court's opinion that the procedure applied by the Commission, aiming to stagger over two or more years the commitment in the accounts of the total amount of a financing decision taken by the Commission on a project, does not comply with the Financial Regulation. It therefore calls on the Commission to ensure that the total amount for a project which was the subject of a financing decision is committed in the accounts as soon as the decision has been taken. The Council also asks it to set out the rules more precisely when the Financial Regulation is fully overhauled. The implementation of Community expenditure must respect the principles of the Financial Regulation and reflect the availability of appropriations.

Commission's reply

As it stated in its reply to the comments made by the Court of Auditors in its Annual Report for 1996, the Commission feels that the practice followed in this area respects the terms of the Financial Regulation, since the Commission's decisions are conditional on the availability of appropriations and this clause is included in the corresponding financing agreements.

In this connection, as part of the overall recasting of the Financial Regulation, the Commission intends to propose a better definition of the commitment of expenditure, taking account of the three basic components which must always be present in any such commitment, namely the commitment decision, the book commitment and the legal commitment.

It is the last of these (which is the act placing the Institution under an obligation in respect of third parties and which gives rise to its debt to them) which gives legitimacy to the inclusion in the financing agreements of the clauses making the implementation of projects conditional on the availability of funds.

2. Information technology and management information systems

The Council

calls on the Commission to notify it of the results of the information management strategic planning study for DG IB and to introduce better checks on the development of computer applications, in order to avoid in future unsatisfactory situations as in the case of MIS.

Commission's reply

A stocktaking of data-processing applications has been under way since the beginning of 1997. It has led to the development of guidelines for the use of the MIS system.

On this basis, an administrative and data-processing support structure has been set up. These developments have brought about a partial improvement in a highly unsatisfactory situation.

Major efforts are still required, however, if the data-processing applications are to be developed to an acceptable level.

3. "Fondo especial de promoción de las exportaciones de Honduras y Nicaragua" (FEPEX)

The Council

calls on the Commission to review its relations with the BCIE and to recover without delay the amounts unduly credited by the BCIE to its own accounts. The Council also notes with interest the measures taken by the Commission to improve monitoring of the BCIE's application of and compliance with the Financing Agreement.

Commission's reply

The Commission has reviewed its perspectives and relations with BCIE. This review has resulted in ECU 549 773.09 being transferred to the Commission in June 1998. A further analysis of the funds currently being used for development purposes and which will become free by the year 2010 is being carried out. This analysis will be completed before the end of the year 2000, when the destination of the funds remaining will be finalised. In the meanwhile, BCIE has been asked to maintain a separation between its funds and those advanced by the Community.

4. Bridging loans

The Council

considers that it should not be necessary, except in the most exceptional circumstances, to have recourse to bridging loans between projects to ensure the availability of funds. For that reason it calls on the Commission to give priority to improving internal procedures so that project funds are obtained in good time.

Commission's reply

The Commission has issued an instruction that recourse to a bridging loan must be exceptional and authorisation must be given before it is used. Those projects requiring a rapid disbursement of funds have been given a higher priority.

CHAPTER 14

MEASURES IN FAVOUR OF THE COUNTRIES OF CENTRAL AND EASTERN EUROPE, THE NEWLY INDEPENDENT STATES (FORMER SOVIET UNION) AND MONGOLIA

1. Budgetary implementation

The Council

reiterates its invitation to the Commission to pursue the measures aimed at improving budgetary implementation of programmes in general, assessing more accurately the size of commitments outstanding and, in particular, limiting their growth. It calls on the Commission to comply with the provisions of the Financial Regulation regarding the entering of advances in the accounts and to improve monitoring of the interest on such advances.

Commission's reply

The Commission is continuing the internal measures it introduced in January 1997 to reduce the backlog of budgetary commitments outstanding. Measures such as a reduction in the time allowed for concluding contracts once the financing agreements have been signed, automatic adjustments to programme's grants to reflect their stage of implementation, and the closure of the older programmes, have helped to improve the situation.

The Commission would also point out that in the "seventh series" of amendments to the Financial Regulation it proposed the introduction of total or partial automatic cancellation of commitments for operations not completed by the final date (Articles 1(7) and 36(2)). The Commission considers that adoption of this rule will also promote better management of current commitments and help clear the burden of the past.

As regards the entry of advances in the accounts, the Commission has always regarded the sums paid to contractors as final payments. However, it believes it will be possible to examine this question as part of the overall review of the Financial Regulation, which should include changes to Title IX on management of external aid.

Finally, as regards the monitoring of interest derived from advances, the Commission takes the view that the proposals introduced as part of the "seventh series" in the new Article 22(4a) offer an appropriate legislative solution providing a fully transparent means of dealing with such interest.

Major efforts have been made to improve the operation of the Phare and Tacis programmes and have led to a more rapid commitment of funds at programme level and a strict observance of the duration of financing agreements. The latter has led to a visible improvement in the situation as regards commitments outstanding, something the Commission monitors very closely. By the end of 1997, outstanding commitments in relation to Tacis (ECU 700 million at the end of 1996) had been reduced to ECU 550 million, and those of the Phare programme had been stabilised.

2. Observations on operations carried out in the agricultural sector in the Central and East European countries and the newly independent States

The Council

calls on the Commission to improve cooperation with the beneficiary countries, particularly with regard to coordination of national strategies with Community programmes, to facilitate access to credit through close collaboration with the banking sector and to regard land reform as a priority.

Commission's reply

In the case of the Tacis programme, coordination of national strategies with Community programmes has been strengthened since 1997 by the creation of the Joint Tacis Advisory Committee for the selection of projects.

In the agricultural sector, the question of access to credit is still a major problem in a number of countries (particularly in Russia, Armenia and Georgia) and is a priority objective for the projects designed to improve the land market and the land register currently financed under several programmes.

In the case of the Central and Eastern European countries, the Special Preparatory Programmes are responsible for coordinating national strategies with Community programmes on administrative questions. At operational level, this coordination has now been stepped up through the creation of the Central Financing and Coordination Units (see point 3 below).

Because of the unstructured nature of agriculture in several countries (Hungary, Slovakia and the Czech Republic in particular), farmers continue to find it difficult to obtain credit from the banking sector. Against this background, Community measures are aimed at improving the situation of the farming sector, particularly from an administrative point of view, ready for the introduction of the common agricultural policy, in accordance with the priorities adopted in the new Phare guidelines.

The main objective of the projects receiving finance is to improve land registration. Parallel projects are designed to make farmers more aware of these questions through the setting up of specific Funds for the financing of agricultural programmes (e.g. Rural Credit Guarantee Fund in Hungary).

The Council

stresses the importance of the Phare and Tacis programmes, the former particularly in the context of the preparation of these countries for accession, and calls on the Commission to take account of experience acquired in the evaluations aiming to improve the programmes.

Commission's reply

Over the last two years the Commission has initiated a number of assessments covering Community projects by country or by sector.

In some countries - Georgia, for example - these measures have been very successful.

Despite this success, the question of small farms still requires special attention and continues to be one of the priority problems for the Commission.

CHAPTER 15
COMMISSION

1. General subsidies (Title A-3 of the Commission budget)

The Council

asks the Commission, which broadly accepts the Court's recommendations, to speed up current reforms so that these arrangements are applied uniformly for the next financial year.

Commission's reply

The Commission has continued its reforms aimed at strengthening and improving the administration and management of Community expenditure, including in the area of Community financial assistance.

In July 1997 the Commission set up a working party to draw up minimum standards for the award and monitoring of grants. The working party confirmed the exemplary practices of the Commission's departments and summarised them in a Vade-mecum on Grant Management. The Final Report of the working group (SEC 1191 final) was adopted by the Commission on 14 July 1998 and sent to the two arms of the budgetary authority for information.

The new binding rules take effect from 1 January 1999.

The Court of Auditors' conclusions as set out in 15.1.23 (b) and (c) have been incorporated in the Vade-mecum on Grant Management. The content of the Court's recommendation in 15.1.23 (a) corresponds to the budgetary authority's instructions regarding grants under Titles A-30 and A-31, and to Commission practice. In addition, under the new rules all applications for Community grants must be assessed by Commission officials from at least two different departments in the light of the applicable provisions on content.

2. Office for Official Publications of the European Communities (Article A-342 of the Commission budget and Annex III)

The Council

calls for all the necessary reforms to be undertaken to improve the operation of the Office, in accordance with the Court's comments.

Commission's reply

In its conclusion the Court highlighted four points:

- unsuitability of the regulatory framework governing the Publications Office (point 15.2.52)

  A new draft Regulation which takes account of the Court's comments has already been drawn up by the Publications Office Management Committee and now has to be revised by the legal departments before it can be adopted as a formal Commission proposal.

- Requirement to present a complete operating account and balance sheet (point 15.2.53)

  These documents figured for the first time in the Publications Office's annual management report for 1997, which was presented to the institutions at the beginning of April 1998.

- Court's call for the widest possible competition, particularly for contracts for publication of the Official Journal (point 15.2.54)

  The contracts for the production of the Official Journal are currently being renewed and the institutions' representatives opted for the open tendering procedure with technical conditions which, while they call for sufficient experience to cope with a publication of this size, will open the way to a greater number of potential tenderers.

- Importance of a clearer distinction between publications pertaining to the Communities' information policy and those for which a more efficient commercial policy should be introduced, and the value of reducing free distribution of these publications in the interests of a more efficient commercial strategy (point 15.2.55)

  The Publications Office has reminded originating institutions of the importance of a sound and coherent policy in this field and will continue to work towards the aims set by the Court.

In short, the Publications Office has already taken positive action on most of the Court's recommendations and has taken account of the rest in its current activities.

CHAPTER 18
FINANCIAL INSTRUMENTS AND BANKING ACTIVITIES[1]

1. **Control of contributions in the form of subsidised loans in the regions of Italy affected by an earthquake**

The Council,

restricting itself to the budget discharge aspects, understands the difficulties inherent in implementing this type of action, in view of the conditions in which such action is carried out, and invites the Commission on the basis of this experience to coordinate its action better in future with the local authorities.

Commission's reply

The Commission has taken due note of the Council's observation and will try to coordinate closely its action with the local authorities.

2. **European Investment Fund**

The Council

is concerned at the persistence of this problem, which has been raised on many occasions, and invites the parties concerned to pursue their efforts to find an appropriate solution, perhaps based on the provisions of Article 248 of the Amsterdam Treaty, whilst respecting the Fund's legal status.

Commission's reply

The Commission has always been concerned to ensure that the Court's audit rights are respected, with due regard for the competences of the individual institutions and bodies concerned. It therefore very much regrets that the European Investment Fund and the Court have not so far been able to reach a satisfactory agreement on the procedures for audit by the Court.

In an attempt to mediate and to lay the foundations for cooperation in operational matters, the Member of the Commission with responsibility for the budget took the initiative of organising a meeting between the Chairman of the Fund's Finance Committee and the Member responsible for the Court of Auditors. In the course of this meeting held on 5 May 1998 it was decided to provide the Court of Auditors with further documents concerning the EIF. The Commission took on this task, which was completed by 7 May 1998. This process of discussion and opening up continued on 25 May with an exploratory meeting on working methods between the Fund, its private audit company (KPMG) and the Court of Auditors.

---

[1] In accordance with the provisions of the Treaty, the discharge covers only the implementation of the Community budget. Borrowing and lending operations are therefore not covered by the discharge, except as regards aspects linked to the implementation of the budget.

The Commission intends to continue doing all in its power to assist the Court in gaining access to sufficient information for it to fulfil its mission.

CHAPTERS 19 TO 21

STATEMENT OF ASSURANCE CONCERNING ACTIVITIES FINANCED FROM THE GENERAL BUDGET

1. Implementation of the budget

The Council

is concerned at the problem of "dormant commitments" and reiterates its request that the Commission follow this aspect of budget implementation vigilantly, endeavouring to abandon commitments which no longer represent obligations of the institution.

Commission's reply

The Commission is continuing its campaign to alert its departments to the problem of "dormant commitments". The authorising departments are accordingly kept abreast of developments in the overall situation on a regular basis and are requested to conduct a continuous examination of open commitments with a view to cancelling unjustified balances.

The Commission would also point out that in the "seventh series" of amendments to the Financial Regulation it proposed the introduction of total or partial automatic cancellation of commitments for operations not completed by the final date (Articles 1(7) and 36(2)).

The Commission considers that adoption of this rule will also promote better management of current commitments and help clear the burden of the past.

2. EAGGF Guarantee Section

The Council

asks the Commission to ensure that external control of paying bodies is carried out in an efficient and reliable way.

Commission's reply

The Commission has paid great attention to the quality of the external audits of Paying Agencies in the certification of accounts process. Every one of the 92 external audit reports for the 1996 and 1997 clearance of accounts was examined by two officials.

Between the submission of accounts and the clearance of these accounts all Member States were visited. During these visits the work of the external auditors was examined in detail to ensure that the quantity and quality of their work was adequate and that it provided a sound basis for the certificate. Where the work performed was inadequate the Commission insisted that extra work was carried out. The accounts of the Paying Agencies were not cleared until a valid certificate and acceptable audit report had been received and evaluated.

In addition the Commission has produced guidelines to assist the external auditors and to achieve a uniform standard and approach. In July 1997 guidelines for the audit of

debtors, stocks and securities were issued. In July 1998 new guidelines for the audit of delegated bodies, audit of on-the-spot controls and statistical sampling and error evaluation will be issued as well as revisions to the guidelines on the audit of debtors and stock. Expert groups have been organised in 1997 and 1998 with representatives of the Certifying Bodies to discuss these guidelines and other relevant issues.

Where there is evidence that the quality or independence of a Certifying Body is insufficient, the Commission will insist that a different Certifying Body is appointed. However, to date, no such evidence has been forthcoming.

3. Structural Funds

The Council

asks the Commission to continue the action it has undertaken in the framework of the SEM 2000 initiative and to ensure the effective and rapid implementation by the Member States of Council Regulation No 2064/97 of 15 October 1997 to improve the management and control of the Structural Funds; to propose solutions to the other problems, at the latest when the regulations for the next programming period are re-examined, placing the emphasis on simplification of the rules, on the strengthening of controls, in particular on-the-spot controls (art. 24 regulation n°4253/88), and finally on the focusing of Community aid on clearly identifiable projects.

Commission's reply

The Commission remains fully committed to pursuit of the SEM 2000 initiative.

The Commission attaches great importance to the full and effective implementation of Regulation No 2064/97 in the Member States. Its regulatory proposals for the new programming period include substantial improvements concerning financial control and financial corrections.

RELEVANT SPECIAL REPORTS

1. Special report No 3/96 on tourism policy and the promotion of tourism

The Council

requests the Commission to set up a reliable system for administering the appropriations concerned, paying particular attention to the eligibility of expenditure, project assessment and coordination with other measures financed from the Structural Funds.

Commission' reply

Significant improvements have been made since the Court's special report 3/96 as regards control structures and procedures for monitoring and evaluating direct actions in the area of tourism.

Interdepartmental coordination has also been reinforced and, in that context, particular efforts are being made to ensure fuller cooperation on tourism projects with the Directorates General responsible for the Structural Funds.

In July the Commission presented its final report to the Court of Auditors and European Parliament on its audit of past tourism actions.

2. Special report No 2/97 concerning humanitarian aid of the European Union between 1992 and 1995

The Council

attaches particular importance to the following aspects which are highlighted in the Court of Auditors' report and will look at them among others in the light of the evaluation referred to in the previous paragraph:

- **Strengthening cohesion of measures**

The Court recommends strengthening the cohesion of the measures undertaken on the basis of the different relevant Regulations with a view to enhancing operational effectiveness. In this regard, the Council took note of the Court's recommendations concerning a general policy document.

Commission's reply

On the question of the drafting of a general policy document to lay down the guidelines and principles of humanitarian action, the Commission is of the opinion that the adoption by the Council on 20 June 1996 of Regulation No 1257/96 concerning humanitarian aid, and the Commission communication on the links between relief, rehabilitation and development, fill the gaps criticised by the Court of Auditors and constitute a clear legal framework.

The Council Regulation clearly sets out the objectives and principles of humanitarian aid, the operations eligible for financing and the criteria applicable to NGOs. It also lays the foundations for further cooperation and coordination with the Member States, international organisations and donor third countries.

The Commission also feels that the political line followed by the European Community is clear and forms an integral part of the Commission decision establishing the European Community Humanitarian Office, established procedures and the Framework Partnership Agreement approved by the Commission itself, which includes political aspects as well as administrative and legal provisions.

It should also be noted that, since the publication of the Court's report, the Commission now has a "Strategy Paper" (an annual working document) describing the guidelines the Commission will follow in the humanitarian field.

Finally, the Commission deplores the fact that the Treaty of Amsterdam contains no mention of or specific provision on humanitarian aid.

– Coordination of EU policies and activities

Though linked to the abovementioned issue, the Council is convinced of the need for further improvement of the coordination of policies and activities and in particular for ensuring the linkages between relief, rehabilitation and long-term development. It will follow closely the Commission's efforts in this field and will at its meeting in November 1997 have a further exchange of views aiming at developing detailed guidelines on strengthening the linkages between relief, rehabilitation and development, as provided for in the relevant Council conclusion of 28 May 1996.

Commission's reply

Despite the major improvements already achieved in the field of interdepartmental cooperation, the Commission agrees with the Council that coordination of policies needs to be further improved in order to rationalise Commission action.

With the aim of creating a synergy between its departments, on 30 April 1996 the Commission adopted its Communication on linking relief, rehabilitation and

development. The enactment of the principles set out in this Communication continues to be one of the Commission's main priorities.

The Commission has already set up a number of interdepartmental Task Forces and/or coordinating structures whose work has led either to the creation of comprehensive action frameworks integrating all aspects of external aid (e.g. Afghanistan, Guatemala, Bosnia-Herzegovina), or to the withdrawal of ECHO, to be replaced by the Commission departments in charge of rehabilitation and/or development (e.g.: Liberia, Haiti).

- Coordination and cooperation between the various actors in the field of humanitarian aid

The Council acknowledges the need for greater coordination and cooperation within the Commission and between the Commission, the Member States, the United Nations and other relevant international organisations, as laid down in Article 10 of the basic Regulation, and, whenever possible, the recipient countries, as well as for strengthening cooperation with NGOs. The Council in particular noted the suggestions concerning the use of the instrument of global plans to improve coordination and complementarity, and the need, in general, to promote harmonisation of donor procedures to improve the effectiveness and efficiency of humanitarian assistance.

As far as coordination and cooperation between the Commission and the Member States are concerned, the Council highlights the role of the Committee on Humanitarian Aid set up by the basic Regulation and welcomes the initial discussions in this Committee on the relationship with the United Nations and other international organisations.

Commission's reply

As regards complementarity and coordination between EU and national aid, the Commission has undertaken a great many coordinated or joint actions, including ground operations, mostly involving the mutual exchange of information at the level of headquarters and the Delegations or Embassies; this includes, in particular, the systematic dispatch of a 14-point telex to the Department of Humanitarian Affairs in Geneva and the creation of a database covering almost three quarters of Member States' interventions, systematic coordination with Member States' representatives on the spot in the course of field operations, as well as the coordination provided by the "task forces" on the ground, and working as far as possible with the EU Member States concerned and others involved in relief work.

In May 1998, the Commission organised the first Humanitarian Aid Committee mission to Bosnia-Herzegovina. From 12 to 17 May 1998, representatives of all the Member States (with one exception) therefore had the opportunity to visit a large number of humanitarian projects financed by the EU and to meet representatives of local authorities and others involved in humanitarian aid.

This joint mission was so successful that the Commission is planning to repeat the experiment in the future.

– Revision of the Framework Partnership Agreement (FPA)

The Council takes note of the Court's recommendation to differentiate the FPA according to the different types of partners and operations in order to reflect the respective roles and mutual commitments of ECHO and its partners as well as the Commission's intention to further examine this question. To facilitate effective project identification, preparation, implementation and monitoring, the FPA should be clear in objectives and criteria, adjusted to volatile conditions on the ground, and promote cooperation with local partners. In this regard, the Council took note of the Court's comments on the control and monitoring of the global aid programmes and on the need to strengthen effective control of funds and results of operations while, at the same time, allowing operational flexibility.

Commission's reply

The revision of the Framework Partnership Agreement was conducted in consultation with ECHO's humanitarian partners, meeting in an informal discussion group at which the United Nations humanitarian organisations and the Red Cross were present as observers.

This new text was adopted by the Commission on 13 March and will enter into force on 1 October 1998. To meet calls from the Court of Auditors and the Council to differentiate the agreement according to the different types of partners, the Member of the Commission with responsibility for humanitarian aid has been authorised to make changes to the text to include the specific areas of interest and the nature of the mandate of certain international relief organisations (UN Agencies and Red Cross bodies) and to take account as required of the results of negotiations between the Commission and the United Nations on financing arrangements.

This new Framework Partnership Agreement, which offers greater simplicity and flexibility combined with an appropriate degree of control, makes more effective use of humanitarian aid in line with the wishes of the Council. Moreover, the possibility of working with local partners is specifically provided for in Article 11.

– Visibility of humanitarian aid

While reiterating the importance of highlighting the Community character of humanitarian aid and of maintaining public support, the Council takes note of the Court's comments on visibility policy and underlines the need to further balance and examine this issue.

Commission's reply

The Commission would point out that ECHO was originally set up to ensure the visibility of Community action in the field of humanitarian aid. In line with the Court's suggestion, the Commission has diversified its activities in the area of visibility and is trying as far as possible to use non-traditional media for these activities in order to stand out from the other partners and donors.

– Budgetary procedures

The Council notes the Court's comment and the Commission's reply on the budgetary procedures governing the financing of humanitarian aid, the mobilisation of the budgetary reserve and carry-overs from year to year. This question requires further consideration.

Commission's reply

On this point, the Commission can only repeat its concerns regarding the inadequacy of the present mechanism for mobilising the reserve for emergency aid.

The Commission nevertheless hopes that a solution will be found in the Trialogue as part of the process of renewing the Interinstitutional Agreement.

– Organisation and procedures for the evaluation of humanitarian activities

While recognising the specificity of humanitarian activities, the Council takes note of the Court's suggestion regarding the integration of the evaluation function concerning humanitarian, rehabilitation and development aid outside the operational services in order to ensure its autonomy, and the need for proper feedback mechanisms based on achieved results.

Commission's reply

The Humanitarian Office is structured in such a way that assessments are supervised by a non-operational unit.

Moreover, assessments are carried out by independent experts chosen on the basis of selection procedures (invitations to tender) in accordance with the rules governing public service contracts.

– Staffing

The Council, whilst recognising the Commission's responsibility for allocating staff, also notes the Court of Auditors' statement that ECHO is inadequately staffed, taking into consideration the nature of its work and the need for a stronger field supervision.

Commission's reply

At 31 December 1995, the ECHO establishment plan consisted of 71 permanent posts and 12 temporary posts. In 1997 the total came to 107, of which ten were temporary. ECHO staff has thus been increased in the course of time, in line with the Court of Auditors' observations.

However, the introduction of new committee procedures, the need for on-the-spot inspections, increased coordination, increased monitoring and the analysis of requirements would, as the Council observes, require an increase in staff.

3. Special report No 3/97 concerning the decentralised system for the implementation of the PHARE programme (1990-1995)

The Council

asks the Commission to limit the scope of the action and target it more effectively, with the tasks involved being more clearly defined. The terms of reference should be aimed more at improving efficiency. It seems necessary to strengthen the management units in the PHARE countries. Actions must be properly monitored.

Commission's reply

The Commission has begun to rationalise the management structures of the Phare programme in the light of the new programme guidelines. The management units (PMUs) are gradually being abolished: by the middle of 1998, 62 units had been integrated into the administration of the countries concerned.

They will be replaced by a small number of Implementing Agencies in each country (Central Financing and Coordinating Units - CFCUs) designed to continue to implement actions in the same sector after accession. These agencies are already operational in five countries (the three Baltic States, Slovakia and Slovenia) and are expected to be up and running in all the other countries by the first quarter of 1999.

The Commission has therefore acted on the Court of Auditors' criticisms and suggestions in Special Report No 3/97 and has improved the monitoring of the Phare programme in the field and laid a solid basis for decentralised implementation.

4. Special report No 4/97 on the audit of certain aspects of German reunification measures involving EAGGF compensation payments and export refunds

The Council

although agreeing that there is no inconsistency between aid granted for different objectives, nonetheless asks the Commission to carry out a thorough analysis of the effects of aid cumulation. It agrees with the Commission that matching export refunds to the quality of the products exported would cause practical difficulties. It calls upon the Commission to pursue the recovery of amounts paid out in error as a result of the excessive claims identified in the audit.

Commission's reply

The Commission finds that the question of multiplication of subventions is already thoroughly dealt with in the Commission's reply to the Court of Auditors' Special Report on the reunification. The Commission is of the opinion that it would not be a correct allocation of resources available to launch further analysis of the impact of aids granted for a specific purpose for a short period of time in the beginning of the nineties.

The Council

calls upon the Commission to pursue the recovery of amounts paid out in error as a result of the excessive claims identified in the audit.

Within the clearance of accounts procedures, the Commission has established a recovery order of DM 6.9 million which will be fully recovered by the end of 1998.

5. **Special report No 5/97 on management of the Community cereals trade involving export refunds, special import arrangements and regional aid schemes**

The Council

stresses the need for constant improvement of control systems in compliance with the principle of the free movement of goods. It particularly recommends that the quality of the physical checks on cereals exports be improved. Member States should carry out a critical review of their own control systems. It asks the Commission to take on a more active role in the coordination of measures for the scrutiny of multinational companies as provided for in Regulation (EEC) No 4045/89, notably in the case of companies situated in third countries, and suggests that it examine the possibility of incorporating an anti-fraud clause in future trade agreements with third countries. It wants the procedures governing the use of refund credit notes to be implemented in a clear, appropriate and uniform manner. It expects the Commission to rationalise the management of the export refund system for cereals, and hopes that the Commission will keep it regularly informed of the outcome of measures taken to recover amounts paid out in error.

Commission's reply

The Commission recognises the importance of controls over multinational companies. The Commission led two special exercises to control this type of company. It is now up to the Member States to continue these types of controls, although the Commission will continue to participate if it is deemed necessary.

As part of the codification of the horizontal conditions relating to the export refund scheme, the Commission is proposing more detailed and binding conditions to enable the customs authorities to inspect products declared for export with payment of the refund. In particular, special conditions are planned covering the place, time and content of the export declaration.

Another important question examined as part of this same exercise is the event giving entitlement to a refund. The set of conditions governing this matter, contained in the proposal currently under examination by the group of experts of the Committee on Trade Mechanisms, will make it easier to decide how much importance to place on the credit notes found in the exporters' accounts.

Recoveries in progress form an integral part of the communications referred to in Articles 3 and 5 of Council Regulation (EEC) No 595/91.

6. **Special report No 6/97 concerning TACIS subsidies allocated to the Ukraine.**

The Council

asks the Commission to take steps to ensure that the programmes can be more efficiently implemented by clearly defining the roles of those involved in the work and improving coordination. Monitoring and assessment of the projects should be carried out in the light of the objectives to be attained and the results achieved. The

Council also agrees with the Court's comments concerning redeployment of Commission staff to its delegation.

Commission's reply

The Commission has made progress on the management of the Tacis programme:

- A record number of contracts were launched in 1997, enabling the backlog to be reduced (from ECU 700 million at the end of 1996 to ECU 550 million at the end of 1997) for the first time since the programme began.

- The process of increasing staffing levels at Commission Delegations has begun with the employment of outside experts to increase the Delegations' capacity for management and monitoring. This measure will reduce the number of operators involved in the management of the programme identified by the Court of Auditors. As regards posts covered by the Staff Regulations, a category A post has been transferred to the Delegation in Kiev.

Although the Tacis assessment report, transmitted to Parliament in 1997, indicates where improvements might be made to the management programme, it paints a largely positive picture of the effects of Community intervention in a region where the political situation is particularly difficult.

On the question of political priorities, the Commission is already tending to concentrate on larger-scale projects:

- the decision to part-finance the Chernobyl programme coordinated by the EBRD will concentrate up to ECU 100 million on a project of major importance

- the average size of projects is increasing; for example, the nuclear safety programme in Ukraine was completed with 40% fewer contracts in 1997 than in 1996.

However, the present Tacis Regulation imposes limits, notably on the financing of investments, and the Commission is planning to table new legislative arrangements for Tacis by the end of 1998. This proposal will take account of the approach put forward in Agenda 2000:

- measures financed by Tacis must be more closely linked to the political priorities laid down in the cooperation and partnership agreements and less "demand-driven".

- Tacis financing must play a catalytic role to mobilise significant investment in small businesses and infrastructure.

EUROPEAN COMMISSION

MEMBER STATES' REPLIES

TO THE OBSERVATIONS CONTAINED IN THE COURT OF AUDITORS' ANNUAL REPORT FOR 1996

19 MAY 1998

CONTENTS

INTRODUCTION

In December 1996 the Dublin European Council called on the Member States to present their replies to the observations made by the Court of Auditors in its annual report. This document collates the replies of the following countries to the annual report for 1996 (OJ C 348, 18 November 1997):

- Germany
- Belgium
- Denmark
- Spain
- Finland
- France
- Greece
- Ireland
- Italy
- Netherlands
- Portugal
- United Kingdom
- Sweden

Austria and Luxembourg are not directly concerned.

ANALYSIS OF THE REPLIES BY MEMBER STATES TO THE OBSERVATIONS MADE IN THE 1996 ANNUAL REPORT OF THE COURT OF AUDITORS

1. Two thirds of the Court of Auditors 1996 annual report deals with policies carried out by the Commission in partnership with the Member States, covering both the collection of own resources and expenditure incurred under the EAGGF-Guarantee section and the Structural Funds. In these areas the Court's principal complaint to the Member States is as follows: ***they fail to comply strictly with Community legislation and consequently commit serious errors when establishing management and control systems.***

2. As was the case for 1995, the Commission forwarded the observations to the thirteen Member States affected[1] to give them an opportunity to reply and, by doing so, to contribute to the Commission's follow-up report which will be submitted to the budgetary authority during the discharge procedure.

3. ***All the Member States*** replied to the request that they make a contribution by 15 March 1998. Analysis of the contributions reveals

- ***with regard to form***, the replies are generally ***exhaustive*** (dealing with most of the points selected), ***self-reading*** (in certain cases the Court's criticisms are summarised before the response is given: F, P, S, UK, I, NL) and in most cases are presented in an ***overall uniform document***,

- ***with regard to substance***, most replies are ***clear and frank***, either in acknowledging the criticism, sometimes challenging it or explaining how certain situations have arisen. Descriptions of remedial action already taken, in progress or still to be adopted are generally ***detailed*** and the replies are ***constructive*** in that they highlight some of the negative effects of Community legislation.

  Compared with last year they show a ***greater readiness*** to accept a ***share of responsibility***, as can be seen in the way

  – they are more prepared to accept the Court's criticisms, even if some of them are strongly disputed,

---

[1] No specific criticisms were levelled at Austria and Luxembourg for the financial year 1996.

- they state exactly what remedial action has been taken,

- they attempt to examine the cases in greater detail, asking the Court to be more explicit in certain cases,

- they seek to improve Community mechanisms by indicating the difficulties encountered in implementing some of the provisions owing to loopholes or contradictions in the regulations in relation to national legislation.

However, some replies (particularly F, IR, NL, B) call on the Court to report the facts more accurately, taking more account of the replies and/or explanations given when the audits were carried out and thereby avoiding the impression that the difficulties raised have not been resolved.

4. Some examples will illustrate this ***generally constructive approach***:

- Criticism has been explicitly accepted because there is full acknowledgement of:

  - ***infringements of Community Regulations***, e.g. producing a more favourable calculation of livestock units than permitted under the EAGGF-Guarantee section (P) or reducing the base area overshoot for maize because of a failure to obtain up-to-date information (F), or ***delays in meeting the requirements of the regulation***, e.g. in connection with remeasuring vessels over 24 metres long (F),

  - ***shortcomings in monitoring and control activities***, which were identified in the field of own resources during operations in the Tilbury Freeport (UK) or in connection with the ERDF, in Trieste free zone (I) and the European Social Fund during the examination of declared expenditure (IR, UK, E),

  - ***the complexity of some local systems***, such as the systems employed for recording requests for investment aid under the EAGGF-Guidance section (IR), or the unduly large number of databases in the EAGGF-Guarantee Section, making for incompatibility and errors in exchanges, even though the number is the result of the federal structure of the country (D).

- Remedial action is clearly explained, for example:

  - with regard to ***own resources,*** that the audit method based on risk analysis has been introduced for customs checks (IR), that instructions have been given to customs departments either to make operators working in free zones aware of the need to comply with Community rules (E) or to improve *ex post* checks of inward processing operations (F), and, in the same sector, that national provisions have been adapted to the requirements of Community law (D, NL),

  - with regard to the ***EAGGF-Guarantee section***, that Directive 92/102/EEC has been implemented enabling beef farmers to be provided with the registers necessary for the identification and registration of livestock (IR), that a sophisticated system of risk assessment for controlling large holdings is being developed (UK), that an alphanumeric system for identifying agricultural parcels has been created in response to the need for a new integrated control system (P), that computerised databases have already been set up in five regions to ensure

proper management of aid (D) or that a committee has been set up specifically to consider suspected cases of fraud involving tobacco exports (G),

- with regard to the ***Structural Funds***, that, within the framework of the ERDF, the non-justified part of expenditure in the final declaration of expenditure may be reimbursed (UK), that a study of methods of auditing ESF expenditure is underway (IR), that *ex post* checks have been introduced to ensure that beneficiaries receiving subsidised loans comply with Community and national legislation concerning investment projects (F), that fishing aid has been frozen because the intermediate objectives of the third multiannual operational programme for fishing fleets were not pursued (F),

- Contributions to the possible improvement of Community regulations have been made by replies which, for example, emphasise:

  - the ill-adapted nature of certain provisions, such as those in the Community Customs Code concerning *ex post* recovery and the obligation to provide a guarantee or the obligation to use a logbook to establish fishing capacity (F),

  - the vagueness of Community regulations regarding the calculation of, for example, the overshoot for the maize base areas (F),

  - the unduly rigid and complex nature of aid mechanisms for tobacco (I),

  - the need to harmonise rules for veterinary procedures (IR) or fishing capacity at Community level (F, IR, UK).

5. Lastly, the replies are ***useful*** for everyone concerned:

- ***for the Commission***, which has obtained relevant information for simplifying or improving Community regulations, wherever necessary,

- ***for the Court of Auditors***, which can learn from the comments made and improve its methods, notably by taking more account of the explanations supplied by the Member States,

- ***for the Member States themselves.*** Reporting remedial action clearly acts as an additional incentive to improve financial management.

6. In view of these results the Council could approve conclusions in which it would:

- clarify its position in relation to the proposal made by Parliament's Budgetary Control Committee requesting that "Member States' replies are available early enough in the future to be given proper consideration during the discharge procedure."

- ask Member States to continue their efforts to make genuine contributions. They could be encouraged to reply to the specific criticism contained in the Court's annual report rather than, as is often the case, sending the Commission complete replies to earlier sectoral letters,

- emphasise, as was stated in its comments accompanying the decisions giving discharge in 1995 (Ecofin of 10 February 1998), "the importance it attaches to dialogue between the Court of Auditors and the Member States, particularly in the exchanging of sectoral letters and Member States' replies." It could also stress that it "wishes to see such dialogue continue in a spirit of equity."

- encourage the Commission, when preparing the planned reforms, to look into the aspects of Community legislation which cause difficulties for the Member States.

GERMANY

Court of Auditors report for the year 1996

Follow-up action taken in Germany

1. Own resources

Late establishment of own resources

Paragraph 1.10

Germany shares the Court's concern regarding the late establishment of customs duties assessed from post-clearance examination. Possible remedial measures and ways of avoiding delays in the making available of own resources are now being discussed with the Commission.

Paragraph 1.12

The Court's objections concerning the late entry in the accounts of import duties in the context of the simplified procedures relate to one-off cases, not to errors attributable to the system. Fundamental measures are therefore unwarranted. The cases raised and appropriate remedial action will be discussed with the Commission.

Paragraph 1.14

Germany has notified the Commission that the procedure for writing off amounts provided for in Article 17(2) of Regulation (EEC, Euratom) No 1552/89 will be complied with. Germany will provide notification of all amounts written off since 1 January 1989 which exceed the threshold of ECU 10 000 stipulated in the Regulation. The question of the justification of individual writing-off procedures will be resolved in consultation with the Commission.

Paragraph 1.17

Germany would refer to the clear division of responsibilities between Member States and Commission and fully shares the Commission's position.

Paragraph 1.28

Germany takes note of the Court's misgivings. However, in our view, not all goods transferred to the free zone have to be recorded immediately in the stock records. Goods which, for reasons of transhipment, are stored for only a short period are not subject to any recording requirement (Art 176(2) Customs Code). The departmental instructions concerning free zones stipulate that storage periods in excess of 45 days may no longer be regarded as "short" and therefore, in the case of longer periods in storage, stock records must be kept. The Hamburg main customs inspection office ensures that the requirement to keep stock records is complied with by applying appropriate customs supervision measures and carrying out external inspections of firms' premises in the free port.

Paragraph 1.30

Germany takes note of the Court's observations. In Bremen in 1993, the *Bremer Lagerhausgesellschaft* (BLG) was granted three licences for stock records, which were extended in 1995. In Bremerhaven in 1993, the BLG received one licence. In March 1997, the Bremen main customs inspection office was instructed to begin systematically inspecting the premises of all licence-holders, i.e. including the BLG.

Paragraph 1.39

In our view, the second subparagraph of Article 205(3) of the Customs Code is not applicable where goods are shown to have been stolen in free zones. Such proof provides a satisfactory explanation of the disappearance of the goods and the customs authorities may not assume that the goods in the free zone have been illicitly consumed or used by the last known owner.

Paragraph 1.42

Germany takes note of the Court's remarks and refers to the Commission's comments.

Paragraph 1.53

The national instructions for reviewing the economic conditions for participation in inward processing have been brought into line with the requirements of Community law.

Paragraphs 1.56, 1.57 and 1.58

The administrative practice objected to by the Court has been brought into line with Community rules. We also refer to the position adopted by the Commission.

Paragraph 1.61

Germany takes note of the Court's observations and refers to the position adopted by the Commission.

Paragraph 1.63

The cases raised are being examined in consultation with the Commission.

Paragraph 1.104

In the matter of systematic checks and computerisation of customs clearance operations, various areas of improvement are being examined in consultation with the Commission.

Chapter 3 - Market organisations - Plant products

Paragraph 3.19

Germany understands the Court's misgivings because of the potential for error in the case of manual exchange of data between different databases. The existence of these various databases is, however, attributable to Germany's federal structure. The sources of error in

the exchange of data are being reduced further and further by means of appropriate administrative procedures and better technical equipment.

Paragraph 3.22

The average wheat yields of the new German Länder were adjusted in cooperation with the Commission in order to take account of the actual circumstances which could not be ascertained at the time when the Regulation was introduced. One of these is the fact that the database for the new Länder was the statistics of the Socialist planned economy, which did not lend themselves to comparison with the average values of the old Federal Länder.

Paragraph 3.23

In the new Federal Länder, the regionalisation plan was based exclusively on the figures for winter oilseeds since no other data were available. The procedure was adopted with the approval of the Commission. To avoid discriminating between the old and the new Länder, account was taken solely of winter oilseeds in the old German Länder too. The regionalisation plan drawn up on this basis met with no objections from the Commission.

Paragraph 3.29

Germany agrees with the Commission about the reliability of statistics.

Paragraph 3.36

In cooperation with the Länder, Germany will strive to ensure that applications for aid are as transparent as possible.

Paragraph 3.39

The number of regional databases in Germany is attributable to the country's Federal structure. Talks took place with the Commission with a view to making the databases compatible. Furthermore, five German Länder use the same PROFIL program for managing aid.

Paragraphs 3.51, 3.53, 3.58, 3.59

The questions raised as to the effectiveness of administrative checks are currently being examined in consultation with the Commission in connection with the accounts-clearance procedure.

Paragraphs 3.73, 3.77, 3.89, 3.91

We refer to the position adopted by the Commission.

Chapter 4 - Common organisation of the market - Animal products - Beef and veal premium schemes and selected BSE-related measures

Paragraph 4.45

The introduction of the Integrated Administration and Control System entails serious technical and administrative problems. Considerable investments will be required along with far-reaching administrative reorganisation. For this reason, at the proposal of the Commission, the Council has extended the deadlines for the system's introduction.

Paragraph 4.48

We refer to the Commission's observations on the introduction of a system for the identification and registration of cattle.

Paragraph 4.55

We agree with the Commission that the sample-based checks on the ear-tags of suckler cows objected to by the Court are adequate.

Chapter 5 - Certain procedural aspects of export refunds on beef and veal

Paragraph 5.35

UCLAF has been looking into the case referred to under E with the authorities of the Member States for some months. We refer to the position adopted by the Commission.

Chapter 8 - European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF - Guidance)

Paragraph 8.13

To the best of our knowledge and belief, the approval authority also examined each individual project from the point of view of its viability on the basis of the documents which have to be submitted with the aid application. The documents to be submitted included balance sheets, business reports, technical documents and development plans. Approval was given only to projects which promised to be economically viable once investment was completed.

This does not alter the fact that the extraordinary situation which obtained after German unification made inspection difficult. The situation at that time was marked by the transition from the planned to the social market economy. On the whole, firms involved in the processing and marketing of agricultural products were in a very poor state. The unemployment rate - precisely in agriculture - soared. Furthermore, the establishment of a new administrative system was not yet complete.

For the overwhelming proportion of firms which were newly established, it was impossible to refer back to management results and growth trends of previous years. Moreover, market turbulence and the sudden change in consumer behaviour added to the difficulty of assessing firms' economic prospects.

Later deviations from viability predictions are to be attributed mainly to failure to reach turnover targets and the resultant cash-flow problems. Enormous difficulties in listing product offers by the commercial sector connected with costs and revenue shortfalls, could not be foreseen at the time of the approval.

Paragraph 8.20

Germany takes note of the Court's observations. Eligibility is examined everywhere and without exception on the basis of the accounting documents submitted. The results of the inspection are set out in a memorandum. Non-eligible costs are generally eliminated. We thus do not share the Court's views in this matter.

Paragraph 8.23

The payment of a grant equivalent to the investment costs already actually incurred as well as the costs anticipated within the next two months is a national statutory requirement.

In one case, the EAGGF grant was paid to a beneficiary in advance. This is inconsistent with Community law and represents a regrettable exception. However, no financial damage was involved because the beneficiary used the EAGGF grant paid in advance in accordance with the Commission decision.

Paragraph 8.42

Germany takes note of the Court's observations concerning the level of the checks carried out by the Member States under the Integrated Administration and Control System and endorses the position adopted by the Commission.

Paragraph 8.49

This merely concerns a general statement of the situation without any evaluation.

Paragraph 8.50

Germany takes note of the Court's observations. According to the national budget regulations, however, approval can only be given for projects not yet begun. Consequently, local authority measures have to be approved on the basis of cost estimates. The grant can be reduced on grounds of lower costs only after award of the contract.

Under the national regulations, engineering works, forming, as they do, part of the drafting of the village development plan, are not covered by the public contracts act. However, since the corresponding contracts are performed on the basis of the *Honorarordnung für Architekten und Ingenieure* (Remuneration of Architects and Engineers Act), the costs are generally the same. However, in the award of contracts, the criterion of "close proximity" has to be taken into account as the planner basically also assumes a service function in the implementation of projects in the field.

Paragraph 8.51

From 1 January 1998, the funding of "farm/countryside holiday" projects will be slanted towards improving the quality of the overall offer, i.e. the accommodation, meals, services and entertainment aspects.

Paragraph 8.52

We do not share the view of the Court that the viability of the "farm extensification" measure is uncertain because of insufficiently frequent checks. In the new Land inspected, an inspection was performed on 5% of all grants on similar lines to the Community rules on "farm extensification". The results of the inspections did not warrant any greater frequency of checks. It should be borne in mind, moreover, that in the early part of the first round of grants (1991-93), it would have been virtually impossible to increase the frequency of checks owing to the general teething problems and the attendant staff difficulties.

Chapter 9 - Common policy on fisheries and the sea

Paragraph 9.14

The statement of eligible expenditure under the Community PESCA initiative, the absence of which is highlighted by the Court, was submitted to the Commission (DG XIV) by the coastal countries concerned between April 1995 and July 1996.

2. Statement of assurance

Chapter 20 - Analysis EAGGF-Guarantee and fisheries expenditure

Paragraph 20.4

Germany takes note of the Court's objections and shares the position adopted by the Commission on the accreditation of paying agencies and the certification of the annual accounts.

Chapter 22 - Statement of assurance and supporting information concerning the activities of the sixth and seventh European Development Funds

Paragraph 21.10

Germany takes note of the Court's observations. With regard to c), we would point out that Germany shows no arrears as regards its EDF contributions. With regard to the amount of ECU 112 000, by letter of 23 February 1996, Germany set out its legal

position to the Commission, i.e. that it did not owe this sum. The Commission has not contradicted this view.

BELGIUM

Belgian reply to the comments of the European Court of Auditors

A procedural point should be made by way of introduction. Under Article 188 of the Treaty, the European Court of Auditors questions the European Commission, not the Member States. The Court of Auditors does not, therefore, conduct an adversarial discussion about its Annual Report with each individual Member State. Accordingly, when the Commission is called to account by the Council, i.e. by the Member States, under the discharge procedure, the idea is surely not for each Member State to give a point by point commentary on every passage of the Annual Report in which it is mentioned. In other words, the Commission should not be allowed to evade its own responsibility here.

Nor can the idea be to wait until the discharge stage to confirm or deny the relevance of the facts referred to. The European Court of Auditors is expected to verify its observations in the course of its audits in the Member States and immediately afterwards, working with the national audit offices and allowing them the right of reply, **before** finalising its annual report. In practice this is done by means of sector letters in which the competent member of the Court of Auditors requests further information or communicates the provisional conclusions reached by the auditors. A constant problem is that sector letters are either not sent at all or are sent months after the audits were carried out, by which time the draft annual report has already been drawn up, and the Court of Auditors, in contrast to normal practice at national level, fails to explain why it sometimes retains certain remarks despite refutations by the competent departments of the Member States. Only effective communication and systematic compliance with the agreed procedures can remedy the current failings. Introducing new procedures would be superfluous, however, and might prove counterproductive.

This does not prevent steps being taken to help the Commission to indicate what significant improvements have been made to systems whose performance has rightly been called into question by the European Court of Auditors.

Unfortunately, this task has not been made any easier for the 1996 discharge procedure by the uneven, not to say fragmentary character of the annual report in question. In the case of Belgium, and in so far as the chapters of the annual report specifically criticise Member States by name, references are relatively few and far between. This might lead to the conclusion that the situation in Belgium is satisfactory and that no changes of any note need to be mentioned.

Given that the main criticisms of Belgium this year result from imperfect European legislation and, in some cases, the unfamiliarity of certain European auditors with the national systems, we support the Commission's initiatives to improve the relevant rules, and further efforts will be made to provide all the intermediate organisations with better information about the existing systems.

Permanent Representation of Belgium
to the European Union

Dear Sir,

Subject: Follow-up report to observations contained in Court of Auditors report on the 1996 financial year

Your letter 00573

I am pleased to enclose:

the reply from the Belgian Customs and Excise Authority to the summary of the European Court of Auditors annual report concerning the 1996 financial year;

the observations of the Flemish Community concerning point 7.27 of Chapter 7.

Permanent representative
F. van Daele

From Ministry of Finance to
Permanent Representative of Belgium
to the European Union

Dear Sir,

RE: Commission annual report concerning 1996 financial year.

We enclose replies to the observations contained in the annual report concerning the 1996 financial year, in particular points: 1.10, 1.16, 1.17, 1.56, 1.58, 1.60, 1.110, 5.12, 5.17, 5.18, 5.35.

Point 1.10 b)

The Belgian Customs and Excise Authority rejects the observation that the delays in the making available of own resources recorded in Antwerp are true of all Belgian offices. §681 (5) of the *Instructie Comptabiliteit* (Accounting Rules) Part I (D.I. 410) urges officials to speed up collection in cases of *ex post* recovery, (secured) provisional establishments which have been confirmed and amounts due under the general preferences system. Officials are also reminded that if amounts made available prove to be less than what should be transferred, the Member State will be charged default interest.

The Belgian Customs and Excise Authority moreover takes the view that the working method applied by the management and the Antwerp office is compatible with the terms of Articles 222 et seq. of the Community Customs Code. There may be some inconsistency between these provisions and Article 2 of Regulation (EEC) No 1152/1989.

As far as bookkeeping is concerned, it was established that the files relating to *ex post* inspection of certificates were not entered in the B accounts as required by Article 218 of the Community Customs Code. However, Article 219 does allow recording to be deferred for up to 14 days.

However, since 1 January 1997, recoveries in connection with *ex post* inspections in Antwerp have been entered in the B accounts immediately after service of notice to the debtor.

Point 1.10 c)

In figures 27 to 29 of its report (Ref. Nos RT0304N2 of 14 November 1996 and RT00014fl of 10 January 1997), the Court of Auditors recorded findings made at the Brussels-Entrepot and Ghent customs offices concerning the submission of a commitment to import goods where the principal requested the preferential tariff but was unable to produce proof of the origin of the goods concerned at the time of importation.

It emerges from these findings that in a number of cases (summarised in the tables attached as annexes 5 to 7 to the aforementioned report) the provisions referred to in

figures 147 to 149 of the Instructie Gemeenschappen en Preferenties (Communities and Preferences Rules) had not been complied with.

To remedy the shortcomings observed by the Court of Auditors as regards the terms of Articles 256(1) and 258 of the Regulation implementing the Community Customs Code, the necessary instructions were issued to all departments by means of Circular No D.D. 111.357 of 23 June 1997 on Communities and preferences - Ex post submission of certificates (D.I. 520.5) - See Annex.

Point 1.16

The Belgian Customs and Excise Authority is currently revising the fixed rates to be applied as well as the distribution key between the various taxes.

Point 1.17

This point does not concern the Belgian authorities

Point 1.56

This point does not concern the Belgian authorities

Point 1.58

The Ghent customs departments concerned will be asked to release the file concerning the delay in the clearance of an inward processing declaration presented by NV Polyweave. The data concerning the processing of the file will be forwarded to the Court of Auditors.

The relevant customs departments in Ghent examined all files concerning delays in the clearance of inward processing declarations presented by NV Polyweave, from which it emerged that, in accordance with the procedure applied in this matter, all the declarations had been extended by the time required either by the chief inspector in charge or, under his instructions, by the regional director of customs and excise. Since the Court of Auditors did not specify which inward processing declarations were concerned, it is impossible to provide any further particulars.

Point 1.60

In most cases, the inward processing authorisation stipulates that the rate of yield must be based on the authorisation recipient's industrial accounting records. As far as possible, the minimum yield recorded on the processing of the imported products is applied in order to prevent a proportionately excessive amount of imported goods from being cleared when the processed goods are exported. Under the 1988 Inward Processing Rules (figures 395 and 45 of the *Comptabiliteitsnota schorsingssysteem* - Accountancy Notes on the suspension system) the inspection departments are required to check the accuracy of the yield actually obtained when verifying the clearance account.

Where inward processing provides for discharge on the basis of the number of items, the rate of yield will depend on the number of items actually to be found in the processed products at the time of export. The number of items imported must appear on the export

declaration or, where it exists, the prescribed basic list detailing the composition of the processing product previously verified by the customs.

If the authorisation stipulates a precise rate of yield, this is because a standard rate of yield is applicable or because the production figures submitted by the applicant on the basis of company figures are assumed to be an average rate of yield.

Apart from the flat rates, the rates of yield stated in the applications can, where there is any doubt, always be compared with the yield rates mentioned in the inward processing authorisations for similar processing operations. The applicant can always be requested to provide further explanations. In some cases, the "Value and External Audit" department requests a check on the rate of yield when the authorisation is issued. In the case of chemical products, the department laboratory is almost automatically asked for its opinion on the rate of yield and, in some cases, the identity of the products.

It is to be deduced from the foregoing that the rate of yield stated by the applicant is not simply repeated in the inward processing authorisation.

It should be added that *ex post* verification of the rates of yield is provided for in §§ 42 and 56 of the Inward Processing Rules (D.I. 551.001).

All in all, the provisions of §§ 42 to 56 and 395, figure 46 of the Accountancy Notes on the suspension system attached to the aforesaid rules combine to ensure effective monitoring of the rates of yield in the area of inward processing. These provisions warrant no particular comment and are directly applicable by the external departments with the result that the Belgian authorities see no need for special measures regarding the ex post verification of rates of yield for inward processing.

Point 1.110

A "procès-verbal" is an official report, drawn up by competent officials who produce chronological, accurate and objective accounts of their findings and investigations and declarations made and information gathered in the area of evidence and detection of offences and their perpetrators.

The official report concerns not only the facts discovered but also the connection established by the inspector between the facts, which are a component of the offence, and the law. The official producing an official report is in a sense obliged to define the offence.

The official report also names the suspects.

An official report has to be made out immediately or as soon as possible after the facts have been discovered. Consequently, any additional circumstances relating to the same offence which emerge as and when investigations progress will necessarily give rise to various official reports. In exceptional cases, following Community inspections or *ex post* checks, a long period may elapse between the date of the first report (initial observation) and the payment demand, which can only be sent after the investigations have been completed and all evidence has been gathered.

An official report states the facts and the results of investigations, names the suspects and states the criminal and civil consequences of the acts committed. The provincial director of customs and excise is the authority with the power to officially establish the existence of the customs debt, decide who is liable and calculate the amounts of duties. It is he who takes the first administrative decision, keeps accounts and notifies the person liable of the amount of the debt and requests him to pay.

The provincial directors have been reminded on several occasions that priority should be given to files involving own resources and that the first administrative decision has to be taken upon receipt of the official report closing the investigations, if appropriate with establishment of the customs debt. The central authorities are confident that these rules are being obeyed. In some particularly complicated or legally delicate cases, delays may occur, mainly due to a shortage of (sufficiently qualified) staff.

Point 1.110 contains too few practical data to be able to pinpoint the file concerned, thus making it impossible to supply more detailed information on the case in question.

Point 5.12

This point relates to measures concerning a check on the aid granted to the Canary Islands and is therefore no concern of the Belgian authorities.

Points 5.17 and 5.18

The issue of certificates for meat from adult male cattle in Belgium is a matter falling exclusively within the terms of reference of the Veterinary Institute (Ministry for Social Affairs, Public Health and the Environment).

Point 5.35

The problem of agricultural products refused entry to a non-member country and temporarily returning to the Community before being re-exported to another third country is currently being discussed by the "Trade Mechanisms" management committee.

Director-General,
(s) C. VAN WALLEGHEM

MINISTRY OF FINANCE

Customs and Excise Department

CUSTOMS PROCEDURES

COMMUNITIES AND PREFERENCES	D.I. 520.5
EX POST PRESENTATION OF CERTIFICATES	D.D. 111.347

Brussels, 23 June 1997

Distributed by the provincial directors to

- all departments required to keep files up to date
- all staff in Grades 1 et 2+

CONFIDENTIAL

1. An own resources inspection was carried out by officials of the Court of Auditors from 15 to 19 April 1996.

   The main focus of the inspection was the procedure for submitting a commitment to import goods where the principal requests the preferential tariff but is unable to produce proof of the (preferential) origin of the goods concerned at the time of importation.

   This inspection took place in the Brussels - Entrepot and Ghent customs offices.

   O.S.D Voucher No 232/97

2. In the inspection report, the Court of Auditors claims that the deadline laid down in Article 256(1) of the Regulation implementing the Community Customs Code (RCCC) for the submission of documents lacking at the time when the import declaration was accepted was not respected in a number of cases.

   The Court of Auditors also stated that the security lodged in the aforesaid cases in accordance with Article 207(4)(a) of the RCCC was not recorded (Article 258 of the RCCC) on expiry of the aforesaid deadlines.

3.

4. The tasks of the import office, the deadlines for their completion and the obligations regarding the recording of the security are summed up below.

Deadlines

5. Where the principal requests the preferential tariff but was unable to produce proof of the origin of the goods concerned at the time of importation, the import declaration may be validated if the principal submits a *commitment* (in duplicate) to produce the certificate (or proof of origin) required (Article 147 of Rules on Communities and Preferences) within one month of the date of acceptance of the aforesaid declaration.

   It is only on the *explicit request* of the principal having signed the aforesaid commitment that the recipient can extend this one-month deadline *by a maximum of three months* (Article 148 of Communities and Preferences rules).
   At the time when the aforesaid commitment is signed, a security must be lodged to cover the duties and VAT payable if the certificate is not produced by the set deadline or if it is produced after duties have been restored or when any tariff quota in effect has been exhausted (Article 152 of Communities and Preferences rules).

Entry in the accounts

6. If the principal fails to produce the required certificate by the said deadline, the amount of the security must be recorded in the accounts forthwith.

*

* *

7. Failure to abide by Articles 256(1) and 258 of the RCCC implies grave consequences. The authorities may be held responsible for any failure to recover or delay in recovering of own resources.

   It is for this reason that the superiors of the recipients are obliged to ensure strict compliance with the procedures and deadlines laid down.

For the Director-General
Auditor in Chief
W. BAERT

Comments on the observations of the Court of Auditors concerning the application of Article 5(3) of Regulation (EEC) No 2084/93 in Belgium (Flanders)

In Chapter 7, point 7.27, of its 1996 annual report, the Court of Auditors refers to a Flemish project cofinanced under ESF objective 4. During an inspection of the project, private agreements were discovered but it emerged that they did not come from firms directly benefiting from the training

The Court of Auditors proceeds from the principle that there has to be a direct link between the enterprise and the worker and that, in other terms, the cost of training a particular worker can only be financed by his own firm.

In the project concerned, the private inputs came from subcontracting firms in the shape of staff released to work on the design of training modules and the training of instructors. In Flanders, the private inputs are considered in terms of the operational programme rather than the individual worker, a fact mainly to be explained by the difficulties experienced by the SME in obtaining the resources and the time needed to provide training.

Flemish SMEs are very small and do not yet have any real training culture. They have not yet become genuinely aware of the importance of human investments. Even before solving the difficulties attributable to the financial implications and the investment in time, businesses have to become aware of the importance of training, the concept of continuing training and the systematic provision for training in the shape of training plans. Various schemes set up in Flanders under point II of Objective 4 are designed to heighten such awareness and to introduce a training culture into SMEs. The eventual effect of these measures should be to impel SMEs to increase their efforts and financial input in the training field.

In the main, firms respect the obligation to make a contribution of their own at the level of the operational programme. Indeed, the Monitoring Committee for Objective 4 notes the compliance with the obligation to make a private contribution. By contrast, there does not always appear to be a direct relationship between the private contribution and the individual employees of the firm.

DENMARK

Ministry of Taxation
Office of the Permanent Undersecretary Ref. no 98-229-12

6 March 1998

Contribution to follow-up on the Court of Auditors' annual report for 1996
Own resources

Paragraph 1.7

The Court of Auditors refers to a case involving delay in paying the Commission interest on late payments of anti-dumping duties.

The case arose because the Danish authorities, when reviewing the accounting systems, discovered an error which had led to delays in making anti-dumping duties available. Some of the delayed payments dated back to 1991. The outcome of the delays was that Denmark was required to pay interest on late payment under Article 11 of Regulation No 1552/89.

The first part of the interest on late payments after 1991 was paid by the end of December 1995, while the remaining part was held back pending clarification of whether a time-bar applied, as per the usual administrative practice in such cases.

After discussing the outstanding problem with the Commission, the Danish authorities made the remaining part of the interest available to the Commission on 20 August 1997. The case is therefore closed.

Paragraph 1.17

The Danish authorities have no immediate observations on this paragraph, as there is no reference to specific Danish cases. We would, however, observe that the procedures followed for establishing and collecting own resources are designed to ensure that own resources are established and collected on time.

SPAIN

Ms Edith Kitzmantel, Deputy Director-General of DG XIX (Relations with Parliament, the Court of Auditors and the Member States) wrote a letter (ref. 00573) to the Spanish Permanent Representative to the EU, forwarding a series of observations concerning Spain from the 1996 Court of Auditors Report. Having examined the observations and to supplement the Commission replies set out in the Report, we have produced the replies set out below, following the order of the Report, except for the chapters relating to the common agricultural policy, which the Ministry of Agriculture, Fisheries and Food has promised to forward as soon as possible.

PART 1: OWN RESOURCES

Chapter 1: Own resources

Traditional own resources

Financial management in the Member States

Late establishment of own resources

Paragraphs 1.10 and 1.17: When the Commission discovers delays in making own resources available, it charges the Member State default interest. The Member State is notified of this in a separate letter and the amount of default interest is calculated by the Commission.

Control of flow of goods and approval for free zone activities

Paragraph 1.33: Following the 1996 visit of the Court of Auditors, the customs authorities held a meeting with all the operators in the free zone of Barcelona, who were informed that they must respect Community legislation in accordance with Article 176 of Regulation No 2913/92 and Article 807 of Regulation No 2454/93.

At present, 29 operators have applied for the relevant authorisation from the Customs & Excise Department, and their situation is as follows:

- stock records approved by the Customs & Excise Department: 6 companies.
- approval by the Customs & Excise Department pending: 10 companies.
- report by the supervising customs office pending: 13 companies.

Please find attached a model authorisation and approval request form from this executive centre.

Inward processing:

Presentation of returns, establishment and making available

Paragraph 1.55: Up until the end of 1995 the authorities carried out auditing manually, which led to considerable delays in making own resources available, particularly in the case of the customs authorities which had a large number of inward processing operations to handle. Since that time a computerised system has been in use, which makes the job of auditing easier and means that there should no longer be such delays.

Equivalent compensation and prior exportation

Paragraph 1.63: There currently exists a software application called "**Tendencies**" which would prevent the recurrence of a situation such as that discovered by the Court of Auditors in its visit.

This application is being installed to improve checks as regards the inward processing procedure.

The following points can be noted regarding the inward processing authorisation No 63-01039972 for *Sands Ago S.A.*, where unauthorised prior authorisation had occurred and for which the Auditors discovered a declaration of prior exportation corresponding to 4 imports (the following IMS 5s: 044169 of 7 September 1995, 062902 of 27 December 1995, 030813 of 30 November 1995 and 014853 of 25 March 1996):

(a) The Barcelona Customs Office sent a letter, dated 25 April 1996, to the operator concerned stating that prior exportation was not covered by the inward processing authorisation.

(b) The operator has not replied to the letter of 25 April 1996.

(c) The inward processing procedure has not been used for this authorisation since 25 March 1996.

(d) Payment of duties for failure to comply with the procedure were recorded in 5 communications ("acts"), with the following amounts incurred and dates made available:

SAD No	"ACTT" No	Payment of compensatory EEC duties		Date incurred	Made available
0811-5-44169	0811-5-373451	673 732		19.10.95	December 95
	0841-6-953382	198 378	8 486	5.12.96	February 97
0811-5-62902	0811-6-953364	142 935	6 596	5.12.96	February 97
0841-5-30813	0841-6-953355	2 398 086	107 973	5.12.96	February 97
0811-6-14853	0811-6-953373	209 859	8 071	5.12.96	February 97

PART III - STRUCTURAL MEASURES

Chapter 6 - European Regional Development Fund

The closure of intervention schemes

Observations concerning programmes and measures that were closed

Eligibility of the expenditure

Paragraph 6.30: The measure referred to by the Court of Auditors in this paragraph was implemented during the first period in which the Spanish State applied for co-financing of measures from the Structural Funds.

In other words, at the time when the measures co-financed with Community funds were being managed, the procedures for administering and monitoring Community funds were

still being designed and launched, with a particular emphasis on accounting for the money spent in quantitative terms with documentary support to prove it.

As time has gone on, considerable improvements have been made to the coordination, management and evaluation procedures for co-financed measures, so that the information provided on the measures is now based on qualitative as well as quantitative criteria.

Concentrating on the point referred to by the Court of Auditors, we would point out that what was proposed to the European Commission as part of the RESIDER 1 programme was the refurbishment of a disused industrial building, which, at the time when the joint financing application was made, was intended to be used as a skilled trades centre.

The supporting documents sent to the Commission for this measure strictly related to expenditure incurred on the refurbishment of the disused building under the RESIDER 1 programme.

The change in the intended use did not come about until much later.

Here it should be noted that after 29 July 1988 when the RESIDER programme for the Basque country was submitted to the Commission, including under its measures sub-measure 1.1 "Restoration of unused industrial buildings", a series of events occurred which resulted in the reports to the Commission being altered, referring in November 1990 to the Elkartegi project in Bilbao, which was included under measure 1.1.2 "Restoration of disused industrial buildings" following on from the previous RESIDER programme for the Basque country.

The documentation relating to the measure stated that it was intended to house the skilled trades sector and make this sector productive by providing the resources needed for its production and market structure. Furthermore, providing public money for premises for business services activities was to contribute towards the economic rejuvenation of the Bilbao area, where the location of activities of this type is determined by the speculative effects of the land market.

The adopted RESIDER programme was approved by the Commission on 26 September 1991, at which time the regional authorities in Bizkaia were planning to use the building, once refurbished, to house the Elkartegi centre for small businesses in Bizkaia.

It was not until much later on that, owing to a straightforward administrative oversight, the European Commission was not notified of the latest change in use of the building, which is currently the head office of *Lantik S.A.*

The upshot of all this is that in connection with this measure:

- there was no fraudulent activity on the part of the Bizkaia regional authorities;
- the Bizkaia regional authorities and the body responsible for implementation, Azpiegitura, acted in good faith throughout;
- the operating methods of the company responsible for managing the funds received did not involve any abuses of rights.

THE IMPLEMENTATION OF MEASURES IN FAVOUR OF UNDERTAKINGS, SMEs IN PARTICULAR, IN THE CONTEXT OF THE ERDF

Support for the activities of undertakings

Concurrent drawing and overlapping of aid

Paragraph 6.61: The case referred to here involves the ALFAGRAN project, which did receive funding from a variety of sources at the same time.

The sources of funding included a loan of PTA 20 million, approved by the Murcia Regional Development Institute on 24 April 1992. At the time, the Institute was aware of all the different sources of aid the project was receiving. These were compatible with each other and did not total more than the net equivalent subsidy. The only exception was the aid later granted by the European Commission under the LIFE programme.

The RIOP subsidy, which was granted on 6 May, was also within the net equivalent subsidy margin, although when it was realised that there were other sources of aid, it was decided to exclude the case from the certification of expenditure under the programme.

It should be pointed out that the LIFE aid, which was the last to be granted, was granted directly by the European Commission without first asking the Spanish authorities for information about other sources of aid granted to the project. Furthermore, to our knowledge when the LIFE aid was granted, the Commission did not tell the company receiving it that it was incompatible with other Community aid.

We assume that the steps to be taken, apart from the exclusion from the RIOP referred to above, would involve reviewing the LIFE aid, but this is totally dependent on what action the Commission takes.

In view of the advantages to be gained from setting up a system to prevent the repetition of cases like this, the Commission asked the Spanish authorities to put into effect measures to ensure transparency in cases where aid is being drawn concurrently.

Further to this, on 21 July 1997 the Spanish authorities notified the Commission of their commitment to introducing monitoring arrangements of this type in connection with the Castilla and León Development Agency Global Subsidy. The arrangements include the following features:

- separate accounts, making it possible to identify the funds by source, by Fund and by type at every administrative level;

- accounting procedures, whereby the operations recorded in the accounts can be cross-checked against each other to identify co-financing (amounts, percentages etc.) and other factors relating to the programmes in question.

Once these arrangements have been finalised, they will be submitted to the Commission to be checked. They will serve as a pilot experiment, which could in due course be extended to other Autonomous Communities that do not already have a similar system.

Paragraphs 6.62 and 6.63: There are often doubts about where to draw the line between first-level and second-level processing when dealing with investments relating to the

marketing and processing of agricultural and forestry products. One of the reasons for this is the lack of any national or Community legislation clearly defining the difference. This does not mean that the Fund from which a project gets its Community co-financing is decided on the basis of whatever is most advantageous to the interested parties. On the contrary, Community rules are strictly applied, which here means the EAGGF-Guidance rules which lay down the criteria for selecting agricultural and forestry product processing projects.

It should be pointed out that the Murcia Regional Development Institute is working on reconciling the different aid schemes and applying them properly. This is particularly relevant to aid provided by ERDF and EAGGF, since they are not compatible with each other, which is why a framework for cooperation and mutual notification has been set up between the Development Institute and the Regional Ministry of the Environment, Agriculture and Water, which are the bodies responsible for managing these Funds.

As regards the Directorate-General for Regional Economic Incentives, coordination between the different aid schemes is provided for at the highest legislative level. Article 4 of the Inter-Regional Economic Imbalance Correction Act No 50/1998 of 27 December 1985 makes the Regional Incentive Guidance Board responsible for coordinating sectoral aid with regional impact. This responsibility is further developed in Article 20.18b) of Royal Decree 1535/1987 which lays down the implementing provisions for Act No 50/85. Article 23.1(d) of the same Royal Decree stipulates that the Autonomous Communities must report on financial aid granted in their region, and in particular EAGGF aid. The meetings of the Guidance Board to decide on the aid proposed to be charged to the Programme are also attended by a representative from the Ministry of Agriculture, Fisheries and Food connected with the EAGGF management unit acting in full coordination with the RIOP.

This means that appropriate arrangements are in place to prevent the overlapping of aid from these two Funds.

Support for the financing of businesses

Obtaining loans

Paragraph 6.80: The global subsidy referred to here is being modified in line with the conclusions of the Audifors' report concerning the financial inspection carried out between 6 and 17 May 1996. In the meanwhile payments of Community funds have been suspended. This involves the interest rebate provided for under the global subsidy being fully transferred to the small businesses, thus bringing the approved payment into line with the payment actually made. The intermediary body has also been given instructions concerning the eligibility of expenditure, so as not to book amounts corresponding to bad loans, which were referred to in the programme approved by the Commission, to eliminate any possibility of this expenditure being certified for Community co-financing.

The implementation of measures

Paragraph 6.83: As regards PITMA, the programme to which this observation refers, it is true that amounts relating to failed projects had to be deducted from the final expenditure declaration for the environment and water resources OP, which meant that the total certified amount was adjusted down by about ECU 9 million.

However, we feel that the way the Court formulated its observation made it sound as if this state of affairs were the rule, whereas it is in fact an exception, since similar cases have been discovered by the authorities in the course of checks by sampling and duly rectified.

We do not agree with the Court's observation on the fulfilment of the jobs condition.

Under the RIOP, the granting of the aid allows a certain period, which is normally two years, within which all the required conditions have to be met. Once this period of validity is up, if the conditions (which include job creation) have been met, then the aid can be paid. But, if the job is not a fixed post, it is required to last for at least three years calculated from when it was created, which may take it past the expiry of the period of validity. In other words, it may happen that when the period of validity expires, there are some non-fixed posts, which have not yet existed for three years from when they were created, in which case they are required to be conserved until the end of the contracts. To take account of this and various other factors, Article 33.2 of the implementing provisions of Act No 50/85 states that monitoring and inspection duties may be carried out up to five years from the date on which the period of validity of the aid in question expires. In this way and by requiring certain types of employment contracts and excluding others, it is possible to ensure that posts are conserved several years after the end of the programme, regardless of whether they are occupied by the same person or several successive employees.

It should also be pointed out that in accordance with Articles 81 and 82 of the Consolidated Text of the General Budget Act, Article 37 *et seq.* of the above-mentioned Regulation lay down the procedure for recovering aid where the conditions of the grant have not been complied with as well as a system of penalties in cases of fraud, fault or negligence.

CHAPTER 7: EUROPEAN SOCIAL FUND

Audits of particular aspects

The partnership

Paragraphs 7.18 and 7.19: The monitoring committees are a key instrument for the UAFSE (European Social Fund Administration Unit) in strengthening cooperation, as one of the forums providing the necessary interaction between all the parties involved in the management of ESF operations in Spain.

Given the nature of ESF objectives and the purposes its operations are meant to serve in terms of developing human resources and improving the operation of the labour market, it is extremely valuable for social partners, including representatives of businesses and trade unions, to participate in the monitoring committees, since they can contribute to the discussions and work of the committees by presenting considerations and points of view that are representative of the businesses and workers who are the final beneficiaries of ESF operations.

This is why representatives of the major business associations and trade unions were invited to all the 1994, 1995 and 1996 meetings of the monitoring committees responsible for ESF and were provided with the same documentation and advance information as all the other bodies attending the meetings. The committees' rules of

procedure also give the social representatives the same rights to speak and vote as the other members.

The ESF monitoring committees in question are:

- The Objective 1 Multi-Regional Sub-Framework Monitoring Committee;
- The Objective 2 Multi-Regional Sub-Framework Monitoring Committee;
- The Objective 3 Framework Monitoring Committee;
- The Objective 4 Framework Monitoring Committee.

During the first three years of the 1994-99 Community Support Framework the Objective 1 Committee held two meetings a year. The other three committees only had one meeting a year, although things improved and in 1997 they had two.

The number of members depends on the various partners involved in each Objective. The Objectives 1 and 3 Committees have the most members, bringing together 30 bodies, including the Commission, the social partners and the UASFE itself.

The Objective 2 and 4 Committees are much smaller. The Objective 2 Committee contains six partners and the Objective 4 Committee only one.

Concerning the Court's observation that the monitoring committees had not reviewed and developed the impact indicators which measure the effectiveness of the ESF effort, with the agreement of the Commission and following discussions in the monitoring committees, it was decided that in order to assess the effectiveness, efficiency and impact of the various types of ESF intervention outside teams of independent experts would be commissioned to carry out the assessment, monitoring and evaluation duties laid down in the relevant provisions (such as Article 6 of Regulation 2081/93).

These teams have already produced preliminary and interim evaluation reports on all the Community Support Frameworks, analysing and assessing the indicators referred to in the OPs and the SPDs and proposing new ones, prior to the full assessment of the measures and consequent conclusions and recommendations. These reports were submitted from the end of 1996 and in 1997. All the monitoring committees that have met since then have taken note of the reports and incorporated insights from them into their work.

There is no doubt that the monitoring committees that examine ESF measures in conjunction with the other Structural Fund measures (Objective 1, 2 and 5b regional sub-frameworks) should be the ideal forum for implementing the necessary coordination of efforts between Funds. To date they have concentrated more on analysing the economic resources of each Fund rather than on the desired framing and planning of measures requiring a greater degree of integration and coordination between the Funds.

The private sector, Objective 4 and ADAPT

Paragraph 7.27: It is difficult to reach the original target in the Objective 4 programming, whereby 80% of participants in the measures should be from small businesses. However, the June 1997 interim report noted the enormous efforts that had been made from the beginning of the period: in 1994 representatives of small businesses

accounted for 22% of participants, whereas this went up to 50% in 1995. Subsequent developments continue to point in this direction.

As regards the problem of small businesses co-financing projects, it is true that businesses of this size in Spain do have difficulty coming up with the money for training plans, which is why not so many of them are beneficiaries of this aid, as explained above.

However, the real level of additionality with which these companies contribute to training plans is considerably higher than shows up in the available data, but it is not possible to produce evidence for this because, for one thing, the businesses do not provide supporting documents on the whole plan, but only for the measures for which they receive co-financing and, for another, some of the expenditure does not qualify as eligible expenditure for which evidence has to be produced.

For example, the assessment referred to above showed that 44.8% of the companies that organise staff training (by now over 50% of these may be small businesses) do so during working time. This time spent on training constitutes an opportunity cost and does have a value. In addition, in 12.6% of the cases where the training is organised outside working time, the time is paid as overtime, which constitutes a direct cost for the companies and, therefore, does not show up either.

Additionality

Paragraph 7.31: Spain is deeply committed to ensuring the principle of additionality in the Structural Funds. This is why it has been one of the aspects most keenly pursued in the various aid monitoring and inspection operations which have been carried out in greater numbers and more extensively over recent years. These operations generally involve verifying the overall cost of measures that operators have declared completed by checking the supporting documents (such as invoices or other documents with equivalent probative value) that bear out the implementation certifications in order to establish clearly that the national co-financing percentages laid down for each type of intervention have been complied with.

The findings of the inspections carried out have revealed only negligible irregularities in connection with additionality and we believe that the Commission would have arrived at the same conclusion if the examination of the matter it started had been completed.

Examination of systems

Paragraph 7.39: It is true that, in addition to the portion of the ESF aid co-financing FPE (special vocational training) measures carried out as part of the national education system, some of this aid in Spain is used to co-finance a particular area of secondary education, although only that part which LOGSE, the Education System (Regulation) Act, defines as FPB (basic vocational training), which is distinguished from FPE and consists of know-how and skills related to working life providing the scientific and technical basis for the vocational skills to be acquired under subsequent FPE.

FPB, which is part of secondary education and receives ESF aid, is, however, restricted to the technology modules taught to pupils at the compulsory secondary education level and taking the *bachillerato*.

Paragraph 7.41: Article 13 of Royal Decree 631/93 of 3 May 1993 concerning the National Vocation Training Plan lays down the system of aid for the centres running the

courses covered by the plan and paragraph 2 of this article states the following: "*The aid shall cover the costs of teaching, accident insurance for pupils, teaching resources and materials, depreciation of installations and fittings, and general expenditure actually incurred and documented. The amount arrived at may be increased by 10% to cover costs for which it is difficult to provide evidence, without under any circumstances the amount of the aid being allowed to exceed the total costs of the corresponding module.*"

In the light of this, in order to keep within the Community rules concerning the notion of real costs for determining which expenditure is eligible, the INEM, which is the body that handles the operational programmes under which the National Vocational Training Plan measures are co-financed, has, in the requests for final payment for 1996, deducted 10% from the implementing costs of the cooperation centres. INEM has also instructed all its expenditure centres that in the future no amount for expenditure for which it is difficult to provide evidence should be charged to ESF aid.

Paragraph 7.42: Since the end of 1996 Spain has been making numerous efforts on coordination between the main programme operators, UAFSE and the Commission to improve the system of applications for final payment and bring it as closely into line as possible with Regulation 2082/93 and the financial implementation provisions annexed to the OPs so that it is based on expenditure actually incurred by those implementing the measures.

As a result of this process, a methodology for drawing up applications for final payment was agreed on and approved by the Commission on 11 March 1997, on the basis of the P or K accounting phase, so that they correspond exclusively to final payments of expenditure actually incurred and paid out on the basis of invoices or accounting documents of equivalent probative value for measures actually implemented.

This system was used for drawing up the applications for final payment for 1996, which were submitted in June 1997, having also carried out checks on the 1994 and 1995 applications to ensure that they genuinely corresponded to expenditure actually incurred during the year of implementation.

SPANISH REPLY

ANNEX 1

Annual report paragraph reference	**1.33**
Ref. sector letter:	**RT0451E1** **Sections 14-16**
Conclusions for which the Member State is responsible	**C3.D2**

Point C3-D2

Following the 1996 visit of the Court of Auditors, the customs authorities held a meeting with all the operators in the free zone of Barcelona, who were informed that they must respect Community legislation in accordance with Article 176 of Regulation No 2913/92 and Article 807 of Regulation No 2454/93.

At present, 29 operators have applied for the relevant authorisation from the Customs & Excise Department, and their situation is as follows:

- stock records approved by the Customs & Excise Department: 6 companies.
- approval by the Customs & Excise Department pending: 10 companies.
- report by the supervising customs office pending: 13 companies.

Please find attached a model authorisation and approval request form from this executive centre.

RÉPONSE DE L'ESPAGNE

Agencia Tributaria **Services des douanes et accises**

ANNEXE I

Paragraphe du rapport annuel : **1.33**

Réf. lettre de secteur : **RT0451E1** **Paragraphes 14-16**

Incidences pour l'État membre : **C3-D2**

Point C3-D2

À la suite de la visite de la Cour des comptes en 1996, les autorités douanières ont eu une réunion avec tous les opérateurs de la zone franche de Barcelone, au cours de laquelle ces derniers ont été informés de leur obligation de se conformer à la réglementation communautaire, en application de l'article 176 du règlement (CEE) n° 2913/92 et de l'article 807 du règlement (CEE) n° 2454/93.

Actuellement, 29 opérateurs ont entamé les démarches nécessaires en vue d'obtenir l'agrément adéquat auprès du service des douanes et accises. Leur situation est la suivante :

- Comptabilité matières déjà approuvée par le service des douanes et accises : 6 entreprises.

- En attente de l'agrément du service : 10 entreprises.

- En attente du rapport de la douane de contrôle : 13 entreprises.

Veuillez trouver ci-joint les modèles de demande d'autorisation et d'agrément établis par notre direction.

Agencia Tributaria **Service des douanes et accises**

Madrid, le 19 septembre 1997

Réf. : Service des régimes douaniers particuliers
Dossier 8/97
Objet : Agrément de comptabilité matières - opérateur en zone franche

À l'attention de l'Administrateur principal des douanes et accises de Barcelone (08071)
et de l'intéressé

Je me réfère à votre lettre du 11 juillet dernier dans laquelle, en application des dispositions de l'article 176 du règlement (CEE) n° 2913/92 (Code des douanes) et de l'article 807 du règlement (CEE) n° 2454/93 (Dispositions d'application), vous demandez l'agrément de votre comptabilité matières, afin de pouvoir exercer des activités de stockage et de distribution de marchandises tant communautaires qu'originaires de pays tiers.

Compte tenu de l'avis favorable rendu par le service des douanes et accises de Barcelone au sujet de la demande introduite en ce qui concerne le système de comptabilité matières, en vue de pouvoir utiliser un programme spécial, présenté et géré par l'opérateur lui-même;

vu les dispositions précitées ainsi que l'arrêté du 2 décembre 1992 et la circulaire n° 1/1994 du 22 mars 1994 (Boletín Oficial del Estado du 30 mars 1994),

le service de douanes et accises a décidé d'accéder à cette demande.

Agrément communiqué à l'entreprise pour information et pour effets et transmis à la douane de contrôle.

(s) Le Directeur

ANNEX 2

Annual report paragraph reference: 1.63

Ref. sector letter: 3 February 1997
Section 27

Conclusions for which the Member State is responsible C4.D3

Point C4

There currently exists a software application called "**Pendencias**" which would prevent the recurrence of a situation such as that discovered by the Court of Auditors in its visit.

This application is being installed to improve checks as regards the inward processing procedure.

Point D.3

The following points can be noted regarding the inward processing authorisation No 63-01039972 for Sandoz Agro S.A., where unauthorised prior authorisation had occurred and for which the Auditors discovered a declaration of prior exportation corresponding to 4 imports (the following IMS 5s: 044169 of 7 September 1995, 062902 of 27 December 1995, 030813 of 30 November 1995 and 014853 of 25 March 1996):

(a) The Barcelona Customs Office sent a letter, dated 25 April 1996, to the operator concerned stating that prior exportation was not covered by the inward processing authorisation.

(b) The operator has not replied to the letter of 25 April 1996.

(c) The inward processing procedure has not been used for this authorisation since 25 March 1996.

(d) Payment of duties for failure to comply with the procedure were recorded in 5 communications ("actas"), with the following amounts incurred and dates made available:

SAD No	"Acta" No	Payment of compensatory EEC duties		Date incurred	Made available
0811-5-44169	0811-5-373451	673 732		19.10.95	December 95
	0841-6-953382	198 378	8 486	5.12.96	February 97
0811-5-62902	0811-6-953364	142 935	6 596	5.12.96	February 97
0841-5-30813	0841-6-953355	2 398 086	107 973	5.12.96	February 97
0811-6-14853	0811-6-953373	209 859	8 071	5.12.96	February 97

REPLIES TO OBSERVATIONS IN THE CHAPTERS OF THE COURT OF AUDITORS REPORT RELATING TO AGRICULTURE

Paragraph 3.19: The FEGA has issued instructions reminding the Autonomous Communities that they must keep copies of the databases used to compile the information sent to the Commission and to calculate any penalties for the overshoot of base areas.

Paragraph 3.39: As regards the homogeneity of databases, we have asked for more details concerning this observation in the course of various visits, but, to our mind, have yet to receive clarification. We believe that homogeneity has been achieved by means of the specifications and criteria which were sent to the various producers'organisations and are updated before the beginning of each marketing year to bring them into line with the legislation in force.

Paragraph 3.40: For the recovery of data in the event of computer failure, a fire-protection system has been installed, together with a continuous power supply, and access has been restricted to authorised staff only, with daily back-ups of data which are then stored in fireproof cupboards located away from the computer room.

We are studying the possibility of introducing an electronic system to restrict access to the computer room to authorised staff only.

Work on a contingency plan is at a very advanced stage.

Paragraph 3.46: The geographical scope of cross-checks with the official land register in Spain was extended between 1993 - when such checks were already carried out in some Autonomous Communities - and 1996, when they covered the entire national territory.

Over the same period cross-checks were also introduced with bases other than the land register containing data on aid and other information held by the Autonomous Communities.

Despite the problems involved in exchanging data between the Autonomous Communities, the data transfer system is improving and becoming faster.

Paragraph 3.47: We assume that, as far as Spain is concerned, the Court of Auditors is referring here to cross-checks with databases other than the land register which are used by the Autonomous Communities (cf. Paragraph 3.46) to compare parcels with other sources of information. This is an example of administrative controls at their best, since they are not confined to the land register, but include cross-checks on all available information on the territory in question in a bid to avoid any undue payment of compensation in respect of land parcels.

Paragraph 3.48: We believe that the Court of Auditors has either misinterpreted or misunderstood the situation, as Spain allows a tolerance of 1 are and not 50 ares when comparing the surface areas declared for each parcel with the official surface areas in the land register. Since the official surface area is expressed in centiares, i.e. hectares followed by four decimal places, and the declared surface area is expressed in hectares to two decimal places, the tolerance allowed is one unit in the last decimal place, i.e. 1 are.

Paragraph 3.54: As regards the field inspections in the Balearic Islands in 1995 and 1996, it must be stressed that this is a very special case, as explained below.

Since 1992 Spain has been introducing the system of remote-sensing checks advocated by the Commission. At first the photographic images used to interpret and measure cultivated areas were obtained only by satellite. However, in 1995 an attempt was made to improve the system by combining satellite images with a high-resolution orthophotograph obtained from the air in the course of that year, so that surface areas could be measured more accurately. For this operation a region had to be chosen where there was little division into parcels, if possible with scattered trees and a reasonably high density of cases, this last requirement being necessary to make remote-sensing of the area worthwhile. On the basis of these criteria the Balearic Islands were selected, although the region would not have been a candidate for remote-sensing checks had there not been special circumstances.

As part of this exercise the Balearic Islands Autonomous Community was required to carry out 872 inspections (equivalent to a rate of 23.5%, i.e. much higher than the mandatory 5%), for which it had to increase the physical and human resources available.

It is worth stressing the physical problems and the difficulties regarding staffing and timetables faced by a regional authority in increasing the overall percentage of its inspections beyond 20%. Nevertheless the number of actual checks carried out in districts, regions and administrative units can be increased.

It was possible to reach this inspection rate in the Balearic Islands in 1995 because the conditions were suitable for remote-sensing checks. For that reason - and bearing in mind the commitments made the previous year - the minimum number of checks in the Balearic Islands was reduced in FEGA's National Inspection Plan for 1996.

As for Rioja, the reduction in checks in 1996 was not representative. For the Court's information, we would add that, in view of the findings in previous years, 35% of cases processed in Rioja were checked in 1997.

Paragraph 3.55: To tighten its scrutiny of all declared parcels and make it easier for farmers to declare surface areas, Spain pressed ahead with the integrated system, including from the first year parcels of grain legumes declared in aid applications for "surface areas". However, the requirements on field inspections laid down in Regulation (EEC) No 762/89 differ from those in the integrated system, so that the National Inspection Plan had to combine both sets of requirements.

Paragraph 3.63: FEGA has reminded the Autonomous Communities that inspection reports must specify which of the accepted agricultural parcels are measured; this is also laid down in the National Inspection Plan for field inspections.

Chapter 8: In 1996 the Court of Auditors examined the reliability of the main systems employed to manage and control expenditure on aid from the EAGGF Guarantee Section, on the basis of Regulations (EC) No 951/97 (former Regulation (EEC) No 866/90) and (EEC) No 867/90.

Checks were carried out at the Directorate-General for Food Policy and the Agricultural and Food Industries in the Ministry for Agriculture, Fisheries and Food in Madrid, as the body responsible for justifying EAGGF Guidance Section expenditure, and at central and provincial departments of the Directorate-General for Livestock Production and Agro-Food Industries in the Galicia Regional Government.

The Court studied ten cases in great detail, of which two were the subject of field visits.

A report on the findings of the inspections was sent to the Spanish National Audit Office on 21 February 1997. According to the National Audit Office, this was a preliminary report, as it allowed scope for replies from the authorities to the management bodies on the facts and comments it contained.

Paragraph 8.13: Regarding the Court's observation that "no written assessment reports were provided by certain national authorities", we would point out that under the established division of responsibilities in Spain, the task of assessing the viability of firms receiving aid falls to the regional authorities rather than the national authorities. For each individual project the regional authorities make a declaration, in which they undertake, among other things, to "examine the financial position of the recipient and assess its revised annual accounts or financial reports in order to guarantee that the investment will be profitable."

On the subject of the criteria for assessing the profitability of investments, it is worth noting that firms sometimes make these investments in order to comply with environmental requirements or specific regulations, where this is an essential condition for continuing their activities. In this case the investments do not contribute to improving the firm's financial results, but help achieve other objectives which are difficult to quantify but nonetheless important.

In the case of cooperatives and groups of producers, profitability is not normally measured in terms of profits obtained at the end of the year, but in the prices paid to members compared with the market average, which reflect the degree of success in managing the processing and marketing of the members' products.

In any event, losses recorded in the accounts relate to the year following the start of activities and cannot therefore be taken as representative.

None of the inspected firms has ceased to exist or stopped trading, or even suffered serious financial problems which might raise doubts as to its survival.

Paragraph 8.20: The certificate issued by the competent regional authority which accompanies each of the supporting documents presented by recipients for the payment of outstanding aid indicates the personnel number of the official who checked on the spot that the investments were indeed made and corresponded to the supporting documents submitted by the recipient. Such on-the-spot checks have been carried out at least once for each approved project, independently of the deskwork which involves meticulous and exhaustive checks on the documents presented by recipients in support of declared expenditure.

As regards the statement that "there was little evidence of ineligible expenditure being excluded from grant claims", it appears that in none of the ten cases it examined did the Court of Auditors find any budget items that were not eligible for assistance, so that it seems difficult to come to the conclusion that there was ineligible expenditure. If the Court did find such expenditure, we feel that it should have recorded the fact in its report of 21 February 1997, which would no doubt have enabled the authorities to tighten up control and monitoring procedures.

It is worth noting here that the Court's observations in its report of 21 February 1997 were forwarded to all regional management bodies, as they could serve as an extra reminder of the rules to be applied - or the measures laid down at central level - for the management of aid, and because, even though in most cases their absence does not affect the eligibility of expenditure, they can improve and facilitate the *ex post* audits to be carried out by the authorities responsible.

Paragraph 8.36: Since most measures for the modernisation of agricultural structures have been transferred to the Autonomous Communities, financial control now forms part of the functions and powers which are shared.

According to this division of powers, the national authorities scrutinise applications for the various types of aid and conduct additional field inspections on selected agricultural holdings, on basis of a sampling plan. The number of checks represents at least a significant sample of payments and they are carried out by means of coordination between representatives of central government and the Autonomous Communities.

The control measures cover both the procedure for granting aid (documents furnished by applicants, etc.) and field checks on the holding in question.

The entire procedure is carried out independently of joint audits with other institutions such as the *Intervención General* (State Public Accounts Department) and the National Audit Office. It is therefore based on specific criteria enabling it to cover a broad geographical area and assume significant proportions.

The parameters, reliability, accuracy and percentage of errors are determined using the sampling charts of the *Intervención General* for auditing subsidies.

With the entry into force of Commission Regulation (EC) No 2064/97 establishing detailed arrangements for the implementation of Council Regulation (EEC) 4253/88 as regards the financial control by Member States of operations co-financed by the Structural Funds, the criteria for selecting recipients for inspection have been changed, so that at least 5% of total eligible expenditure must now be covered.

The provisions of the Community Regulations have been incorporated into the Spanish rules, which also take account of the philosophy of *ex post* checks on aid.

Ex ante checks

Annual *ex ante* checks are carried out by officials of the Autonomous Communities, in each case following the model application form proposed for this purpose, which contains - in summary form - the following information:

- applicant's details;
- signed original of the application form;
- photocopy of the applicant's national identity card;
- photocopy of the national identity card of the applicant's spouse;
- evidence of ownership of the holding;
- income declaration;
- agricultural social security card and receipts;
- details of the holding;
- applicant's address if different from address on identity card;
- certificate of registration;
- livestock card;
- title deeds, tenancy agreement and other supporting documents relating to the applicant's holding.

None of these documents necessarily constitutes official accreditation of either the existence of the movable or immovable property or that of the owner or tenant, so that the inspection proper takes place at this stage.

Inspections are carried out in two stages - the administrative review of cases and on-farm visits.

During the first stage the documentation contained in the file, which must be complete, is subjected to scrutiny.

Each of the departments (*Consejerías)* whose technical teams are permanently engaged in assessing, monitoring and processing aid of all kinds under both the EAGGF Guarantee and Guidance Sections take as their point of departure the direct knowledge which their staff have of agricultural holdings. There are around 800 of these offices where the actual files are compiled and the verification and control system operates.

Some farmers are known to staff personally, whilst others are identified by means of documents.

Additional checks are carried out by means of interviews with applicants to verify the documents they are required to submit, particularly where the direct knowledge of the persons concerned is rather incomplete.

Interim assessment

This is a key component of the monitoring system as it serves to improve management and allows for the necessary adjustments during implementation.

At the informal meeting of Ministers in Madrid on 30 November to 1 December 1995, the Spanish Presidency presented a questionnaire on national practices as regards interim assessment. Some Member States with more experience in this field wanted to see the methods they had developed being incorporated more directly, which shows the extent to which national rules and evaluations in this field have evolved.

Responsibility for this type of assessment falls directly on Member States, and assessments should be carried out by outside staff, i.e. by institutions which are independent of the authorities involved, as is the case in connection with the improvement of agricultural structures.

The interim assessment for the year covered by the report was performed by the Monitoring Committee, which makes regular appraisals of the scope of each programme.

Over the financial year a number of meetings were held by the Directors-General responsible for agricultural structures in each of the Autonomous Communities, as well as special meetings and bilateral meetings between the Monitoring Committees and each Autonomous Community.

As regards the alleged anomalies detected by the Court, it should be borne in mind that the income per MWU or ALU (agricultural labour units) may be lower than that initially indicated in the improvement plan because of disastrous events in a given sector in that year, such as a fall in prices. As for the inaccuracies in the calculation of ALU, it is worth pointing out that the reference income in an agricultural holding is an indicator that must be taken into account in the granting of aid, which is always paid later, and that for various reasons the harvest or production of the holding may be much higher than was expected when the aid was granted. As a consequence, the final financial results may be at odds with the reference income used as an indicator on the date when the aid was granted.

Economic factors such as these may affect the particular year which happens to be the one in which checks are made by the units responsible, but this does not necessarily mean that the aid was granted unduly, since other, more reliable factors will have been taken into account in the calculation, such as average production over a number of years.

Aid is approved with a view to a particular task or activity (a specific irrigated surface area of a particular crop corresponds to a reasonably stable workload measured in ALU) and the management bodies assign the workload or quantity of ALU required for each agricultural activity (including stock-farming) accordingly.

Because of the criteria applied, the party concerned must be asked to produce reliable documentary evidence of the workload (e.g. agricultural social security documents).

If the agricultural holding is family-run, it is sometimes impossible to identify the workload of a particular activity if the various criteria applied by the management and

control bodies are taken on board. The proportions of work done by the farmer himself and by his family may not coincide with the official documentation which they are asked to produce at a given time, so that in some cases the ALU are not supported by documentary evidence although the workload is correct or even higher than required.

As regards the lack of transparency in justifying investments, a distinction should be drawn between movable and immovable property. In the case of movable property (acquisition of machinery or livestock) there have, as a rule, been no inaccuracies and the quantity of goods acquired corresponds to the amount entered in the invoice for the supply of the goods in question.

In the case of investment in immovable property, the amount invested will also coincide with the invoice in respect of installations where no labour is required for assembly (electricity supplies, transformers, mobile pump units, refrigeration systems, etc.). However, in rural areas there are many types of investment which constitute immovable property but, coming under the category of civil construction work, also incorporate a great deal of labour on the part of the farmer and his family (e.g. digging ditches, building walls, helping construction workers, transporting materials by own means such as tractor and trailer, and direct or auxiliary building work). Accordingly, in determining a unit of labour no account has been taken of the value added by the farmer himself, his own machinery or the family contribution where perhaps only some of the documentation and invoices demanded could be produced, without arriving in most cases at a total figure for the construction work in question.

Ex post evaluation

Ex post evaluation is carried out systematically by the Ministry for Agriculture, Fisheries and Food. The system is being improved at present: the technical and human resources required for implementation are being revised and changes are being made in line with the new Regulations which have already entered into force.

Programme 94ES06016 under budget item B2-1000 (EAGGF Guidance Section) is at present managed by the Subdirectorate-General for Training and Innovation in the Ministry for Agriculture, Fisheries and Food.

Since the Ministry was restructured in 1997, the compensatory allowances part of the programme has been run by the Subdirectorate-General for Rural Development and the remaining measures under Regulation (EEC) 950 by the Subdirectorate-General for Training and Innovation.

There are various methods for defining a significant sample, but the one laid down in the sampling charts of the *Intervención General* was deemed to be the most appropriate. Thus, a statistically significant sample is obtained, with an appropriate degree of significance and accuracy, taking into account the percentage of cases found wanting in previous years.

However, under Article 3(2) of Regulation (EEC) No 2064/97, the representative sample must cover at least 5% of total eligible expenditure, a figure that was reached in 1998 in relation to payments made the previous year.

Paragraphs 8.42-8.45: In 1996 inspections were made on the compensatory allowances for both 1994 and 1995, as the 1994 allowances had not been checked in 1995.

Inspections for both years were carried out on 1 621 randomly selected recipients, corresponding to 1% of the total number of claims received from farmers who actually received the allowance. The inspections were made in various Autonomous Communities.

Castile-La Mancha had conducted its own inspections, but not the requisite 1%, so that it had to carry out more to attain the same percentage as the other Communities.

The table below shows the number of inspections carried out in the various Autonomous Communities in 1994 and 1995.

AUTONOMOUS COMMUNITY	1994	1995
ANDALUSIA	81	81
ARAGON	122	122
ASTURIAS	128	128
BALEARIC ISLANDS	1	1
CANARY ISLANDS	9	9
CANTABRIA	46	46
CASTILE-LA MANCHA	218	218
CASTILE-LEON	489	489
CATALONIA	79	79
EXTREMADURA	88	88
GALICIA	288	288
MADRID	5	5
MURCIA	11	11
RIOJA	6	6
VALENCIA	50	50
TOTAL	**1 621**	**1 621**

Once the Autonomous Communities had submitted the findings of their inspections, these were reviewed and in some cases mistakes were found.

The numbers of cases in which the inspections were not up to standard and payments had to be reimbursed were as follows:

Canary Islands	1
Castile-La Mancha	2
Catalonia	3
Galicia	2
Murcia	1
Valencia	1
Andalusia	1
Castile-Leon	6

The Director-General sent a letter advising these Communities that they must annul the decision to grant aid in order to request repayment from the recipients concerned.

The number of cases in which the allowances were repaid by recipients and returned to the Treasury in 1997 are given below (number of recipients and amounts repaid):

1994		
Andalusia	1	(PTA 35 000)
Murcia	1	(PTA 18 918)
Catalonia	1	(PTA 38 038)
1995		
Andalusia	1	(PTA 36 750)
Murcia	1	(PTA 19 287)
Catalonia	3	(PTA 39 942, PTA 36 979 and PTA 64 056)
Valencia	1	(PTA 37 949)

The remaining Autonomous Communities have yet to annul the decisions to grant aid.

Paragraph 8.58: From 15 to 19 July 1996 the Court of Auditors made an inspection visit to Galicia to audit the management of the EAGGF Guidance Section.

In response to the observations on operational programmes at point 6 of the final report on Operational Programme 90.ES.06.013, a document was drawn up indicating the amounts which had been paid in each case in each year of the programme's operation and which had then been included in the relevant annual reports.

a) The list of projects carried out thus covers all investments paid per case during the eligible period. The cases were incorporated as and when the planned investments were made, including any changes approved during implementation for various reasons, which are duly substantiated in the relevant administrative file.

b) Responsibility for monitoring the implementation of projects falls to the provincial departments. For each project an expert is appointed project supervisor and given the task of ensuring that the work is properly executed, in accordance with the contract specifications. To this end he or she produces the documentation required in each case: monthly certification of work completed, order book, tests on materials, load tests, measurements, etc. For example, in one of the cases inspected (XR-2715), the technical documentation which was requested and supplied related to tests on residual bitumen on asphalt roads, the resistance of concrete and the degree of compaction.

Paragraph 8.59 A): Case XR-2715 (Reparcelling in Santa María de Dodro) concerns a project to build roads as part of the plan of works and improvements in connection with reparcelling in Dodro. The project is being implemented at a time when the actual process of reparcelling has yet to be completed.

Given the stage reached in the reparcelling process in the area visited by the Court, all that is visible are the old farms made available by their owners and the projected routes

of the network of roads which will serve the newly distributed properties. The new parcels have still to be allocated.

In view of the scattered population in Galicia it is perfectly normal that the owners should have houses on the plots they have made available.

It is not possible that parts of the parcelled land could have been sold for industrial purposes for the simple reason that there are no reparcelled plots in that region.

Furthermore, Article 26 of the supplementary provincial planning rules (*Normas complementarias y subsidiarias del Planeamento Provincial)*, referring to the Regulation on designated green areas for the protection of farming, states that,

"Plots of land shall be so defined where they merit special protection because of their actual or potential productive capacity for farming and must therefore be preserved for these uses.

This category shall include at least:

– areas which have been reparcelled or will be reparcelled in future."

Paragraph 8.59 B):

1) The minutes of the meeting on 5 July 1993 of the Monitoring Committee for the Operational Programmes coming under priority 4.4 of the regional sub-framework for Galicia include a request "for the inclusion in programme No 1 (Reorientation and improvement of wines) of a sub-programme covering assistance for fairs to promote quality, including the expenditure needed to set up stands for that purpose, the representative of the Commission of the European Communities being prepared to accept any type of exhibition/tasting of local Galician wines at national level, excluding any advertising."

2) Galicia is unable to produce goods for the outside market mainly because of its remote location, poor communications, large rural population and other factors, so that much of its production is for internal consumption and, as a result, it does not have much experience in other markets. There is therefore a need to promote measures aimed at **improving the process of integration into the market**, such as visits to specialised fairs, the identification of productive land-uses, designations of origin, brands, qualities which constitute commercial assets with a significant competitive value, capable in themselves of offsetting any competitive disadvantages in terms of cost and price.

3) The aims of this sub-programme were to develop certain economic activities or certain brands and to promote the marketing of their products, to encourage products which are not in surplus and alternative products and to diversify production. **Investment or expenditure under this sub-programme was designed to promote quality rather sales** within collective measures or schemes relating to products with a specific, quality-conscious market and agricultural products of proven quality.

FINLAND

FINANCE MINISTRY
Budgets **10.3.1998**

COURT OF AUDITORS' ANNUAL REPORT CONCERNING THE FINANCIAL YEAR 1996

Points concerning Finland - Finland's replies

In its letter of 22 January 1998 (ref. XIX/01/AP D(97)), the Commission's DG XIX (Budgets) asked for the replies to the comments concerning Finland in the Court of Auditors' Annual Report on 1996.

- Chapter 3 – Market organisations - plant products; reliability of the statistics – paragraph 3.29
- Chapter 6 – European Regional Development Fund; the new Objective 6 – paragraphs 6.7-6.8

The Finance Ministry contacted the Ministry of Agriculture and Forestry and the Interior Ministry about these matters. The following replies are based on the information they provided.

Chapter 3 – Market organisations - plant products; reliability of the statistics – paragraph 3.29

(Reply based on information provided by the Ministry of Agriculture and Forestry)

Finland is surprised at the idea that the yield from Finland's base area is derived from a base area whose size was initially incorrectly estimated. The Finnish base area was calculated using the same criteria as for the other Member States. The base currently in use in Finland is smaller than the base agreed in the accession negotiations. This is because, before accession, long-term contracts to limit production were concluded which were counted as part of the base in accordance with Regulation 1765/92. But not all the areas went back into production after accession. However, the rate of utilisation of the base area has increased over the last few years. In Finland's view, decisions to start cutting out the unused area should not be taken without due consideration, given that the size of the area was agreed during the accession negotiations and the utilisation rate of the base area has been steadily growing in Finland. If the size of base areas is to be estimated, then it should be estimated for all Member States, in which case it would be necessary to examine whether the production requirements for land laid down in Article 9 of Regulation No 1765/92 have been observed.

Chapter 6 – European Regional Development Fund;
the new Objective 6 – paragraphs 6.7-6.8

(Reply based on information provided by the Ministry of the Interior)

The annual report criticised Finland and Sweden for being slow to implement the Objective 6 programme.

In its report on 1996 the Court of Auditors found that, on balance, implementation of the programme was progressing reasonably well with regard to business projects.

Finland has been investing heavily in developing this area through national measures since the 1960s. There is therefore a well developed infrastructure, which serves as a good starting point for more varied economic-development measures.

The strategic aim of the Objective 6 programme is to promote enterprise, enhance business's competitiveness and safeguard the quality of life in remote rural areas. Finland's Objective 6 area, the sparsely populated northernmost region in the European Union, is at a permanent competitive disadvantage compared with all other European regions. As a result of its position the region has suffered from low output and high structural unemployment and increasing depopulation.

As stated in paragraph 6.5, the Commission adopted a single planning document for 1995-99 on 11 July 1995. Consequently actual implementation of the programme, based on Finland's development plan, did not start until the second half of 1995. At the same time as reshaping regional development structures, the programmes generate new cooperative structures at both central and regional level. The administrative systems for the programme were being set up at the same time as the programme was actually starting. Furthermore, some of the national support systems to be used in the programme were not reported until summer 1996. Moreover, since implementation of the programme is progressing in accordance with the chosen development strategy – through small development projects rather than through big infrastructure projects – it has taken longer to launch the programme.

However, in spite of this, the current state of implementation can be deemed satisfactory. In late-1996 and throughout 1997, there was a marked increase in the rate of implementation in both commitments and payments provided for by the programme. By the end of 1997, 52.5% of EU funding for the whole programme had been allocated to projects by the relevant authorities. The figure for ERDF funding was 48.6%. Payments at that time amounted to ECU 159 million, with 28% coming from the EDRF.

However, payments for some projects have been slow. Those involved are trying to solve the problems and are learning how to budget with EU funds. Finland is trying to ensure that EU appropriations allocated to business projects are used productively during the period covered by the programme.

FRANCE

NOTE FROM THE FRENCH AUTHORITIES

Subject: **Comments from the French authorities on the Court of Auditors' annual report**

Chapter 1: Own resources

Paragraph 1.60

Failure to retrospectively verify the rates of yield in inward processing operations

A reminder of the need to ensure that the rules on inward processing are strictly observed has been sent to all departments of the Directorate-General for Customs and Indirect Taxation.

It was pointed out that:

- the rates of yield specified by the companies concerned must be checked by customs laboratories before any authorisation (or renewal of authorisation) is granted;
- samples of the goods being imported and the compensating product must be taken on a regular basis;
- the existence of any secondary compensating products must be investigated;
- rates of yield must also be checked in the company records.

Paragraphs 1.74, 1.75 and 1.77

The "Ivory Coast tuna" case: Recovery measures

The provisions of Protocol No 1 of the Lomé Convention lay down a procedure for checking EUR 1 certificates which requires importing countries to wait for the exporting country's reply before initiating recovery measures.

During the six-month period allotted, therefore, the French customs were unable to act between the date on which a request for a check was sent and the end of the 6th month following the reiteration of the request. The order was therefore suspended, and the case is before the French courts.

Moreover, the importers concerned have appealed to the Customs Conciliation and Arbitration Committee (CCED), as they are entitled to do under Article 450 of the national customs code. This appeal cannot be regarded as an unnecessary prolongation of procedures constituting an administrative obstacle to the recovery of the duty evaded.

Article 450 of the customs code is a legal provision which gives operators an opportunity to seek the opinion of the CCED if the tariff description, value or origin of the goods is contested. This Committee is chaired by a judge and may order any interviews, investigations or analyses it considers necessary. The CCED must inform the parties

concerned of its opinion within twelve months, during which time the running of periods of limitation is suspended.

Once the CCED had ruled that the disputed certificates of origin were invalid, the customs authorities requested that the parties concerned be asked to pay the relevant duties, and that consideration of the surplus be deferred until the ACP-EEC Customs Cooperation Committee, which is responsible for ruling on disputes on the interpretation of the Lomé Convention, had reached a decision.

Textile imports from Jamaica

Investigations by the National Directorate for Information and Customs Investigations (DNRED) of several importers of textiles declared as originating in Jamaica showed that the stamps on the certificates of origin were not official stamps.

The suspect stamps were sent to the Jamaican authorities for verification, but they found that the majority of them were in order.

Consequently, it was decided that the amounts received should be reimbursed and that ongoing court action and any pending cases should be dropped.

Paragraph 1.107

The Court's assertion that the production of a report is equivalent to the communication of the amount of the customs debt and stops the running of the period of limitation needs to be qualified. The establishment of an infringement by the production of a report is usually confined to complex cases discovered during *ex post* checks. In such cases, only the final report containing the description of the infringement and the amount of the debt constitutes the communication of the customs debt to the debtors. However, reports made during the course of investigations, which help to establish that an infringement has been committed (concerning the communication of documents, interviews etc.) are not equivalent to the communication of the customs debt.

Paragraph 1.09

The French authorities systematically suspend implementation of the recovery procedure

A. This paragraph contains two assertions:

1. The request to pay the debt within 10 days should be entered in the report. (Article 222 (1) of the Community Customs Code).

   As indicated to the Court in the reply to the findings of the audit carried out at DNRED and at Le Havre between 2 and 7 June 1996, instructions will shortly be given on this point.

2. So long as the customs debt has not been recognised by the debtor or upheld by the courts, the French authorities suspend the recovery procedure while the conditions for such suspension, as laid down in Article 244 of the Community Customs Code (particularly the requirement of a guarantee), have not been met.

This assertion is untrue. As indicated in the above reply to the Court, the lack of a request for payment in the report does not mean that the authorities have suspended the recovery procedure. At the end of the 10-day period mentioned above:

- if the debt is not contested, steps are taken to recover the debt through legal channels, by means of enforced recovery, for example (see Article 345 of the national customs code), and if the recovery of the amounts due is likely to compromise the debtor's financial situation, the customs authority may allow the debt to be paid through a staggered payment plan, with the provision of a guarantee.

- recovery is suspended if there are difficulties in establishing the exact amount of the debt because it is being contested by the debtor, that is:

    - when the debt is forcibly collected, the basis for it may be contested and it may be cancelled by a judge,

    - when the CCED is the competent body (see Article 441 onwards in the national customs code), the debtor has two months to refer the matter to that body following a deferred or *ex post* check (Article 450). In this case, the recovery is deferred and entered in the separate account.

B. With regard to the conditions under which a deferment can be granted, the following general remarks can be made:

The French authorities have pointed out on several occasions the problems with the application of Article 244 of the Community Customs Code on *ex post* recovery proceedings. Under Article 243(2)(a) (first phase), the obligation to provide a guarantee in the case of post clearance establishment is difficult to justify: the guarantee is the equivalent of the goods, which in this case are no longer in customs storage and no longer constitute security against duties. Furthermore, requiring a guarantee infringes the rights of defence of the debtor, in that the disputed debt has not yet been established.

This is why, under French law, if the debtor refuses to recognise the debt, the obligation to provide a guarantee is subject to the authorisation of a judge.

Under Article 243(2)(b) (second phase), the appeal is brought either before an independent authority, the Customs Conciliation and Arbitration Committee, or a judicial authority. In this case, the appeal must be conducted in accordance with the law of the Member State.

However, there is no provision in the national customs code requiring a guarantee to be lodged when a matter is referred to the Customs Conciliation and Arbitration Committee as a result of an *ex post* check. When the matter is brought before a judicial authority, the latter has sole competence to decide on the safeguard measures proposed by the customs authority.

The principle of the guarantee requirement is rendered all the more questionable by the fact that financial institutions will not provide a guarantee when, as the basis for it is being contested, there may or may not be a customs debt. This also holds true for cases brought before the courts, where judges are reluctant to order a guarantee except where there are clear grounds.

Chapter 3: Market organisations - Plant products

Paragraph 3.17 (b) (c) (f)

(b) It is true that France did not include maize forage areas for small producers in 1994 as the application form did not provide for this information. The Court concludes from this that the absence of the figure led to an underestimate of the overshoot in 1994. This is true, but these areas are incorporated in the national base area for other crops. If they are to be attributed to the maize base area, they should be removed from the national base area, which lessens the overshoot for that base area.

(c) It is also true that France used a percentage set-aside figure of around 15% for maize.

It should be noted that Community legislation is not very explicit with respect to the set-aside rates to be used for the maize base; from 1995 onwards, the Commission EAGGF departments specifically asked us to adjust set-aside to area on a pro rata basis, France immediately put this request into practice.

Moreover, French practice in this area has not resulted in additional budgetary expenses but rather penalised France itself in financial terms.

If the average departmental rate is taken as the set-aside rate for the maize base, the maize base area increases but must be subtracted from the area for other crops. The result is that if the overshoot of the maize base increases, the national "other crops" overshoot will decrease.

The maize payments will fall, but this will be compensated by the increase in payments to producers of the national "other cereals" base.

On points (b) and (c), France has produced a simulation of the financial impact of the provisions contested by the Court in 1994; by attributing an average departmental rate of set-aside to the maize base, not generalising the overshoots of bases and taking the number of hectares of small producers' maize forage areas for 1995 (8000), the total overshoot for the maize bases would be 8.3%, rather than the 2.7% applied, but only 1.0% for the large base (rather than the 1.3% applied).

These figures show that the adjustment to the maize base overshoot for 1994 goes hand in hand with a shortfall for the other cereals base. In view of the payments made for each of the bases, the overall effect of the French method is in the Community's rather than France's favour.

The same point could be made for the 1995 harvest, where Community budget interests did not suffer.

Paragraph 3.22

The Court points to the increase in the average national cereals yield between August 1992 and 31 March 1993, from 5.95 tonnes/hectare to 5.97 tonnes/hectare. This increase is not without justification, as the Court suggests. France has already explained that between August 1992 and March 1993, the figures include the area and production of sweetcorn, and that the figures submitted to Eurostat incorporate the areas used for game, while the production figures sent to Eurostat are actual production figures, which consequently do not include the production on game areas. This is why the production from game lands had to be reincorporated into the total production figures. The incorporation of sweetcorn (eligible for compensatory payments) and the production from game areas explains the 0.2 tonnes/hectare difference. These figures have been sent to the Commission.

Also, the Member States' yield statistics are based on the 1986-1990 figures. In accordance with the levelling-off principle, different years should be excluded according to the yield regions indicated in the regionalisation plan, which leads to slight differences at national level.

Paragraphs 3.23, 3.24, 3.26 and 3.28

The customary French yield of 59.7 quintals/hectare has always been maintained, whatever the amendments to the plan.

With respect to the practices of equalisation and applying ceilings, these were approved by the Commission.

Overshoots certainly did occur in France. During the 1994/1995 marketing year, the overshoot for the maize base was 2.7% and the overshoot for other crops was 1.3%. In 1995/1996, the overshoot for the dry maize base was 0.4%, that for the national irrigated base 3.8% and that for the national dry base 1.5%.

The yield stabiliser was not introduced to penalise Member States which adopted a simpler plan, but those which adopted a complicated regionalisation plan.

The yield of 6.02 tonnes/hectare is the average yield resulting from the regionalisation plan applied in 1993, in accordance with the fifth indent of Article 3 (1) of Regulation No 1765/92. This yield was fixed by Regulation No 1237/95 of 31 May 1995.

Paragraph 3.29

As indicated in reply to paragraph 3.22, there is a difference between the statistical data sent to Eurostat and that which was used to establish reference yields and base areas. To use the standard error figures on the figures sent to Eurostat and conclude that there has been an under or overshoot of the base areas seems somewhat suspect.

Paragraph 3.36

In France, the forms do not allow the linking of fields, which are split into two or more crops, to the cadastral location of the parcels involved.

This assertion is false: there are two forms of declaration in France

- the simplified arrangements for small producers;

- the general arrangements for producers who are obliged to set aside land;

For the simplified arrangements, the farmer declares the crop for each cadastral parcel. If a cadastral parcel includes two or more crops, the area of each is detailed for each parcel.

For the general arrangements, the declaration is made by production block, in accordance with Article 3 of Regulation (EEC) No 3887/92. A production block is defined as an entity made up of cadastral parcels, which is uniquely identified in the alphanumeric identification system common to both forms of declaration: the official land register (cadaster).

The identification system cannot operate at the level of agricultural parcels; the boundaries of these are variable by nature when a field is divided into two agricultural parcels (different uses of the land). So whether the declaration is by production block or cadastral parcel, when a management unit (a cadastral parcel or production block) is divided into two or more agricultural parcels, it is impossible to know where they are situated, except that they are located within a particular management unit (production block or cadastral parcel).

So there is nothing to choose between declaring the area in production blocks or cadastral parcels. If the management unit and the agricultural parcel are identical, the latter can easily be located. However, if the management unit has two different agricultural uses, the entity covering these two uses is easily located, although it is impossible to know where exactly each of the two is located within the management unit.

Paragraph 3.37

The observation relates to the fact that the preprinted MSA (Mutualité sociale agricole) form was not systematically submitted by all the applicants, although for the last year under consideration, the document was submitted by a majority of them. France has taken steps to ensure that this situation does not weaken the checks carried out on the areas declared. To this end, appropriate measures were taken in accordance with Article 17(1) of Regulation (EEC) No 3887/92, including requesting that farmers justify their right to farm the land they have declared as a precaution against dual declarations, and doubling the rate of on-the-spot checks.

The officials from the Court of Auditors who carried out extensive investigations to ensure that French farmers had not declared greater areas than they were actually farming in 1993 and 1994 - with a view to changing attitudes for 1995, when the automatic checking of parcels was introduced on a general basis - were able to set their minds at

rest: no case which could possibly justify the doubts expressed by the Court has ever come to light.

Paragraph 3.40

The French authorities have never been able to identify the weaknesses referred to by the Court.

Paragraph 3.42

"In France,..... final design of the land parcels register was not ready until mid-1995, too late for being used before 1996."

The French authorities wonder what the reason is for this remark, which ends a purely descriptive paragraph on the methods of listing parcels used in the various Member States as the alphanumeric system for parcel identification recommended by the integrated control system.

It seems more logical to us that this observation, which we do not contest, should be made in paragraph 3.46, in which, after it is stated that Italy is the only Member State in which cross-checks have been carried out since 1993, it is pointed out that:

- in England, computerised cross-checking has been carried out each year since 1993, but the programme required for exhaustive area checking needs further improvements.

- the regions visited in Germany and Spain were ready in 1996, except for the exchange of data at national level (while in France, the up-to-date check on the 26 million parcels declared was carried out at the end of 1995).

- at the end of 1996, the database and the alphanumeric system were still not sufficiently developed in Greece, Ireland and Portugal, which made efficient administrative checks such as cross-checks impossible.

Paragraph 3.47

During the development of the computerised cross-checking programme, a bug was unfortunately detected after the programme had been released nationally. This error was identified and corrected immediately by means of additional lists which were distributed to the farmers concerned and to the departmental services (DDAFs) on 22 March 1996. These lists included all the parcels for which alerts were raised during initial processing (the programme was unable to check duplication when the parcel was located in a merged local authority, where the prefix of the section is required to differentiate the two parcels of the same names in the merged local authorities). While this error complicated the task of the administrative departments, it was identified and corrected as quickly as possible, in such a way that the overall quality of the checks was maintained. France is surprised that the Court is casting a lingering doubt over the quality of the checks carried out on the areas declared for 1995, when the malfunction identified by an official of the

Court during the audit of the system at Bar le Duc on 20 March 1996 was explained to him at the time and the proof he requested was sent to him in Luxembourg on 22 March 1996.

Paragraph 3.48

In France, for the comparison of the surfaces declared with the land register, tolerances of up to 50 ares are allowed.

Checks on parcels in France allow a tolerance of no more than 2 ares, which is the lowest measure which can be used, given that declaration rules specify that the measurement be rounded to the nearest are.

Paragraph 3.49

France pays a large proportion of the area aid (almost all, in fact - 90-95%) on 16 October. This excludes the industrial set-aside payments, which are only paid on 16 October to those producers for which the checks needed to carry out administrative controls have been completed. Moreover, the completion of the adjustments which follow the checks on parcels, which is by nature a long procedure and most often involves small sums, has not been possible in some cases until after the main payment at the end of October, either through an advance on the oilseeds payment or a repayment order.

There is clearly no question of fraud, and all significant anomalies which are detected during the administrative checks result in non-payment.

Paragraph 3.52

In France, the majority of the subjects for on-the spot checks are selected on the basis of a computerised risk analysis system which makes a random selection of applications based on an algorithm which carries out a simultaneous selection of high risk applications and a random selection from other groups of applications categorised according to risk factor.

The applications are then checked by the relevant department.

It is inevitable that when the software selection of cases to be checked is made, all the applications will not necessarily be available. If this were the case, the on-the-spot checks would be carried out too late in the year. To remedy this, the DDAFs ensure that a certain number of targeted checks are carried out, either the same year or the next year.

One of the departments mentioned was checked using remote sensing in 1996, so the risk analysis software was only required to provide a limited sample, as most of the selection was based on the results of the remote sensing. Some applications were also targeted for on-the-spot checks following the administrative checks.

Given the modest size of this sample, the software selection was carried out in July, at a time when 1000 of the applications were not, indeed, available (8% of the total).

Paragraph 3.56

It may have been the case in the early years that the 48 hours advance warning was not respected in some instances. This was not the case in 1996.

The producers could not have requested advance warning of 48 hours, as the period is fixed and is due to the time required by the postal service. A request for an inspection to be deferred is not normally accepted by the authorities. It may have happened in some cases. In exceptional cases where the farmer is unavailable, the inspector will carry out an immediate check on the parcels set-aside, and may delay the rest of the measurements and checks for a few days.

Paragraph 3.57

During the financial audits of 1995 in the departments of the Ardennes and the Vosges, cases were found where students reported on checks which were, in reality, not performed.

This is a very serious accusation, as it suggests that French checks may have been bogus. The French authorities have no recollection of the Court of Auditors' reaching such a conclusion during their missions in 1996.

In view of the seriousness of the charge, France requests that the Court produce the evidence on which it is based, so that the French authorities can initiate an immediate administrative inquiry - which they would already have done if the reports had been brought to their attention, either during an end-of-mission meeting or in a note.

Paragraph 3.62

In France, respect for the rule which states that the area set aside must have been farmed by the applicant during at least the previous two marketing years was not checked administratively, nor even during field inspections.

This is not true. The obligation to check that a parcel which has been set aside must have been farmed by the applicant during the two previous years is explicitly set out in the instruction manual used by the regional divisions of the ONIC (*Office national interprofessionnel des céréales* - National cereals board) and in the inspector's instructions distributed to every field inspector. In particular, of all the findings of on-the-spot checks that all or part of an area declared as having been set aside in 1995 could not be identified, 65 cases covering a total surface area of 148.4 hectares resulted from failure to observe the two-year rule (1996 data: 49 cases covering 61.92 hectares).

Chapter 4: Common organisation of the market - Animal products - Beef and veal premium schemes and selected BSE-related measures.

Paragraph 4.43

The statement regarding animals which are excluded from entitlement in France is incorrect. The calculation of the density for suckler cows is based on the number of animals declared, subject to an individual entitlements ceiling.

Paragraph 4.55

As the Commission emphasises in its reply, the suckler cow premium scheme does not require that each animal be identified. The on-the-spot check should establish that all the animals for which the premium has been requested are present. The check must therefore include a full head-count. As regards the recording of the identification numbers of the cattle, it is legitimate, as the Commission points out, not to carry out exhaustive checks, as a sample will show that the herd is indeed the one for which the application has been made, and the cows are registered on the cattle list.

Chapter 5: Certain procedural aspects of export refunds on beef and veal.

Paragraphs 5.28-5.29

Although the port of Caen had not yet been approved as a frontier inspection post in 1994-95, it must still be emphasised that that the goods referred to in the Court of Auditors' report were of French origin. These products were exported to Egypt and returned by the Egyptian authorities to France.

Moreover, by decision of 26 July 1995, the port of Caen was added to the list of frontier inspection posts approved for veterinary checks on goods coming from third countries.

Chapter 6: European Regional Development Fund

Paragraphs 6.24, 6.27, 6.28

These points relate to the Basque country 02 OP, and therefore concern Spain.

Paragraph 6.66

With respect to the fact that the firm repaid ECU 100 000 in January 1996 and that this sum was still on the list of eligible expenditure incurred in March 1996, it should be pointed out that this list was adopted on 31 December 1995, after which date repayments could no longer be taken into account.

With regard to the sum of ECU 6 million in additional national aid, the procedure initiated by the Commission on 17 January 1995 refers to aid of FRF 160 million in

regional planning and ERDF grants and FRF 40 million for pollution control of the site. No other aid procedure was initiated. In any event, of an investment of more than FRF 840 million, it should be noted that the ceiling for aid (FRF 285 million, or 34%) is nowhere near being reached.

Paragraph 6.69

The aid of FRF 2 million granted under the RESIDER 1 programme was used to buy 742 m^2 of office space in the Metz technology park, to house the Apeilor association.

This association works for the benefit of Lorraine, and is entirely covered by the Structural Funds (Resider or Objective 2 or 5b).

In any case, the subsidy rate of 25% corresponds to the part of the territory covered by the RESIDER programme (50% of Lorraine), at the 50% ERDF rate. Moreover, it can hardly be claimed that the purchase of office space counts as "current expenditure of general government".

Paragraph 6.75

As Eurefi is a transnational Franco-Belgian-Luxembourg structure, the French component cannot reply to the Commission's comments on practices observed in Belgium.

Paragraph 6.95b)

Nord-Pas-de-Calais

The analyses referred to by the Court are taken from a study on the restoration of industrial wasteland in mining areas, and a more general analysis, based on UNEDIC employment statistics in areas which may or may not have benefited from grants for the restoration of derelict industrial land.

The original report shows that 62% of the jobs created were lost in the two years following the setting up of the project - not 65% of the jobs in a single year.

Direct investigations at the firms and the Onnaing local authorities also showed the marked volatility of the firms set up on the restored land.

To avoid this unfortunate result, the policy on the restoration of industrial wasteland was targeted more towards "environmental" restoration, which would ensure more sustainable growth (minimum 75% of grants) rather than restoration aimed solely at economic activities.

Chapter 7: European Social Fund

Paragraph 7.18

France - and the Commission - set great store by consultation and partnership. Membership of the monitoring committees covers regional councils and representatives from the two sides of industry, besides State representatives (ministerial departments concerned by Objective 3). Participation by associations and NGOs was also considered, but the proposal was dropped in the end.

Paragraph 7.19

The Court feels that the role of the monitoring committees should be enhanced and, in particular, that the committees should be involved in planning. It is true that when the 1993 regulations were implemented, the monitoring committees had not been set up when planning took place. Since then, despite the unwieldy nature of these committees, they have met regularly and receive all the information which concerns them. Unusually, the committees only met once in 1995, because the delay in the implementation of the programme meant that another meeting was not necessary, but they have met twice a year since 1996.

Moreover, the committees for the four big programmes which account for 80% of the funds (Objectives 3 and 4, ADAPT and EMPLOYMENT) receive all the detailed reports and studies. Important subjects are often discussed informally with individual members of the committees. Nevertheless, the supply of information to and the role of the monitoring committees could probably be improved.

Paragraph 7.27

While it is undeniable that large firms benefit more than SMEs from Social Fund grants under Objective 4, the same is also true for the state aids which are the counterpart of the ESF. There are three possible reasons for this:

- the complexity of drawing up applications;
- the difficulties with replacing employees during their training;
- the need to advance funds for a period of several months, which is more easily borne by a large firm than a small one.

With regard to the first two reasons, it is true that large firms with up-to-date human resources departments have an advantage.

To compensate for such disparities, technical assistance has been arranged with partners such as the Chambers of Commerce and Industry, AGEFOS-PME etc.

Paragraph 7.42

While claims may have been made in previous years on the basis of administration transfers, such cases should have been significantly reduced because all administrations making the first declaration are regularly reminded of the principles; reminders are also given during checks.

Paragraph 7.51

The case referred to by the Court has led to the measures concerned being dropped. The eligible expenditure and the corresponding payments were suspended by the Commission.

Paragraph 7.52

The correction has been made for France.

Chapter 8: European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF-Guidance)

Paragraph 8.37

1) It should be pointed out that decentralised agriculture services in each department have started, on the instructions of the Ministry, to carry out *ex post* checks on whether beneficiaries of subsidised loans granted in the framework of investment projects abide by Community and national rules.

Such checks are carried out on a number of loan applications and plans defined by European regulations. Each year:

- a number of checks on invoices (at the loan establishment and possibly at the farm) equivalent to at least 5% of the number of loan authorisations granted the previous year,

- a number of checks on plans (development plans and provisional installation studies) equivalent to at least 3% of the number of plans approved the year before. These *ex post* checks are in addition to the checks carried out when the application is processed.

2) The purpose of the checks is to identify and penalise irregularities or infringements of the relevant regulations, which provide that farmers who change their activities must inform the relevant authorities.

Chapter 9: Common policy on fisheries and the sea

Paragraph 9.11

The Court of Auditors criticises France for making a request for advance payments for 1994 and 1995 equivalent to the amount of the budgetary appropriations, with a view to making payments to the final beneficiaries.

In a letter dated 22 September 1995, the Commission (DG XIV) asked the French authorities to request advance payments for 1994 and 1995.

In view of the delays in the implementation of the programme, due both to the late notification of the programme (end of December 1994) and the setting up of the administrative and financial machinery to manage the FIFG at national level, it was impossible for France to comply with the Commission's request.

However, wishing to expedite these advances to ensure that the programme's progress was not impeded, the Commission proposed that France should certify the projects for which a legal and financial commitment had been made by the French authorities.

The Commission, therefore, had full knowledge of the situation when it paid the 1994 and 1995 advances. DG XIV was fully aware that the French authorities could only certify the commitments made. This resulted from the Commission's insistence on making advance payments under the FIFG.

That situation has now been corrected to a large extent. The second payment for 1995 and the first advance on payment for 1996 were made on the basis of actual eligible expenditure incurred by the final recipients, in accordance with Community regulations.

Paragraph 9.14

The French authorities share the Court's opinion on the unsatisfactory startup and slow rate of implementation of the PESCA programme. It also endorses the Commission's position on the complexity of multi-fund mechanisms.

The French authorities would also point to the delay in putting the financial mechanism into place. As a result of this, although the French programme was approved in June 1995, the Commission did not make appropriations available until June 1996.

France has begun an overhaul of its PESCA programme to try to inject some new dynamism into it and to fulfil the expectations being expressed for over a year now by those involved in the fishing industry. This should speed up the use of Community funds allocated to France under the PESCA programme.

Paragraph 9.17 - 9.22

France has no particular comments to make on the fisheries agreements with non-member countries. It should, however, be emphasised that the financial procedures

relating to this aspect should be correctly implemented so that the smooth operation of these agreements, and of fisheries operations in particular, should not be compromised.

Paragraph 9.31

Although the French authorities had not communicated the data on the capacity of the fishing fleet of the overseas departments by 30 September 1996, the information has since been conveyed to the Commission and is now available in full. Moreover, monthly updates are sent to the Commission by the *Centre Administratif des Affaires Maritimes* (Administrative centre for maritime affairs), in accordance with the provisions of Regulation 109/94 on the Community fishing vessel register.

The delay in the provision of the data resulted from the detailed survey which was carried out of the overseas departments' fishing fleet, which is made up of a large number of small vessels. On the question of activity, it was necessary to establish exactly which vessels were owned and operated by professional fishermen.

The French authorities provided the Commission with the information on the fishing effort on 13 June 1997.

Paragraph 9.34

Safety concerns and correct usage of a ship's motor would dictate that it should not be run at its rated power. The derating of engines could provide a solution to this problem. Optimum derating would be around 80% of the motor's power. Shipping safety centres carry out careful checks on the derating of engines below this threshold.

Paragraphs 9.35-9.36

Although France was behind in remeasuring its fleet of vessels of more than 24 metres in 1996, it made a substantial effort to respect that Community obligation. By September 1997, approximately 85% of vessels in that category had been remeasured. The French authorities will communicate the gross tonnage (GT) of vessels measuring more than 24 metres as soon as possible.

Paragraph 9.37-9.38

1. Checks on fishing capacity

The power of vessels as checked by the shipping safety centres of the Ministry for Infrastructure is rechecked at the planning stage, then at the shipyard and during periodic visits on board ship. The tonnage of the ship is measured by the customs authorities' measurement office. Finally, any significant change in the characteristics of the ships requires prior authorisation from the competent shipping safety centre which carries out an *ex post* check on the modifications.

2. Checks on the fishing effort

In line with Community regulations, the arrangements introduced by France are based on the use of the log book as a source of information. This is not ideal, however, as the log book is not tailored to the current regulations, particularly as regards the fishing effort. The Commission is currently reworking it, but it has not yet been completed.

The current log book has only two sections which deal with the fishing effort.

- the duration of the trip, between the departure from and the return to port;

- the duration of fishing operations, which is the length of time during which the fishing gear is being used.

However, there is no section to deal with the obligations under Regulation 2027/95, which defines the fishing effort as the product of fishing power by fishing time in the effort zones defined by the regulation, leaving aside those which the vessel simply passes through.

To comply with this regulation, the shipowner must overload the log book and add sections which were not initially provided for. This information is very difficult to use, however, because of its sheer complexity.

It is for this reason that France tries to establish the duration of presence in effort zones through the use of the "duration of trip" and "duration of fishing operations" parameters, using conversion coefficients on a fishing ground by fishing ground basis.

3. Checks on fishing activity

In the framework of the reduction of fishing activities, France has done everything in its power to achieve the MAGP III targets for reducing the capacity of the fleet. An ambitious plan for reducing the fleet was introduced in the second half of 1996. However, as the plan was voluntary, the MAGP III objectives were not quite reached, despite a reduction of 33 000 kW. There was, therefore, a deficit of 9352 kW, or less than 1% of the overall size of the fleet, at 1 December 1997. However, since 31 December 1996, there has been an advance of 1118 GRT in terms of tonnage.

Paragraph 9.40

In the framework of the freeze on aid requested by the Commission following the failure to achieve the intermediate objectives of MAGP III, the French authorities have taken the steps required to stop all aid in the field. However, it should be noted that there were some projects for which decisions had been taken before the Commission's notification. The State therefore had a legal obligation to implement them.

Paragraph 9.41

To improve the consistency in the granting of aid for projects involving the cessation of fishing activity, the Court emphasises the need to harmonise the definition of fishing activity at Community level, even if this area is still under national jurisdiction.

The French authorities share the Court's opinion that the definition of fishing activity should be harmonised, as there are three different definitions at Community level.

The Commission's method of defining fishing activity may be useful for large vessels (longer than 18m) whose comings and goings from zones could be monitored using appropriate methods.

However, it would seem more appropriate to refer to the number of fishing days rather than the number of days spent at sea, so that transit time is not taken into account when calculating fishing effort.

Chapter 20: Statement of assurance - Analysis of EAGGF-Guarantee and fisheries expenditure

Paragraph 20.4

The new certification of accounts procedure was applied for the first time in the 1996 budgetary exercise.

In this connection, the French authorities submitted audit reports, certified accounts and annual accounts of the paying agencies before 10 February 1997 - the date specified by Community regulations.

The Commission subsequently asked the Certification of Accounts Committee to complete its work and submit the corresponding complementary reports before 30 June 1997. The French authorities did so on 13 June 1997. After examining these documents, the Commission closed the accounts of the French paying agencies by its decision of 31 July 1997.

GREECE

VERSION REVISEE

VOLUME I - ANNUAL REPORT ON 1996

Chapter 1: Own resources

PARAGRAPHS

1.10, 1.31, 1.40, 1.104

Ministry of Finance, Directorate 19 (Customs Procedures)

Chapter 3 - Market organisations - Plant products

PARAGRAPHS

3.29, 3.46, 3.89, 3.91

Doc. No 109/7/A806/A1336 of 10 March 1998 - National Tobacco Board

Chapter 6 - European Regional Development Fund

PARAGRAPHS

6.63, 6.95

Doc. No DEFE33 of 12 January 1998 -. Ministry of Economic Affairs, Directorate for ERDF Implementation and Disbursements

Chapter 7 - European Social Fund

PARAGRAPHS

7.19, 7.34

Doc. No 105048 of 9 January 1998 - Ministry of Labour, Directorate for Programme Planning and Implementation

Chapter 8 - European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF Guidance)

PARAGRAPHS

8.13, 8.20, 8.24, 8.25, 8.35, 8.42, 8.43, 8.53, 8.54, 8.55, 8.56, 8.57

Doc. No 1827 of 16 March 1998 - Ministry of Agriculture, Directorate for Planning and General Administration

Letter No T2020/28 of 15 April 1998

from Directorate 19, DG for Customs and Excise, Ministry of Finance, Athens

to Government Accounting Office, Directorate 41, Athens

.....

Follow-up to the EU report

Further to your note of 27 March 1998 on follow-up to the annual report of the Court of Auditors for 1996, we would inform you that as regards paragraphs 1.10, 1.31 and 1.104 of Chapter I, contained in the annex to letter No 1290 of 6 February 1998 from DG XIX of the Commission, this department has already replied in document A296/51 of 31 March 1998 (copy attached).

As regards paragraph 1.40 our views are as follows:

Paragraph 1.40

Regarding the customs debts arising from the removal of goods from the Piraeus Free Zone, the relevant customs office of inspection has already applied the provisions on collecting the duties and taxes due. They have not yet been collected as the trader liable has appealed to the courts.

Four pages attached.

Pan. Frangos
Director

Letter No 29881 of 31 March 1998

from Directorate 19 (Customs Procedures), DG for Customs and Excise, Ministry of Finance, Athens

to DG XIX, Commission, Brussels

.....

In reply to your letter No XIX/493 of 22 January 1998 on the points raised in the annual report of the Court of Auditors for 1996, we would inform you of the following.

Paragraph 1.10(c)

All the import declarations referred to from both Elefsina Customs Office and Thessaloniki B Customs Office have been regularised through collection of the amount of duty owing, as is shown in breakdown form in two statements (attached) including all the details your departments will need to calculate any interest due.

Paragraph 1.31

Regarding the identity of the goods transported using containers in free zones, as was pointed out to you in the Court of Auditors' document No 6272 of 21 March 1997, the stock records system in the Piraeus and Thessaloniki Free Zones enables the customs office of inspection to ascertain the identity of goods at any time and keep track of their movements. This department therefore does not consider that there is any reason to adopt any further measure in respect of the practice followed in that area.

Paragraph 1.104

As there is no clear reference to Greece in this paragraph, we consider that the observations by the Court of Auditor's officials must relate to the system for monitoring fraud and irregularities.

Article 6(4) of Regulation No 1552/89 on the Community's own resources, as most recently amended by Regulation No 1355/96, provides that in addition to the drawing up of a description of cases of fraud and irregularities, an accompanying statement must be drawn up from which the progress of investigations into each case can be monitored.

Aside from the above, and since, as already stated, there are no particular observations concerning Greece in this paragraph of the report, we will be pleased to supply you with any additional information you may require.

P. Frangos
Director

Letter F 109/A 806/A 1336 of 10 March 1998

from Divisions A and D, Directorate for Tobacco Production - Common Market, National Tobacco Board, Athens

to Budget and Revenue Division, Directorate III, Industrial Products Division, Directorate II, DG for the Agricultural Products Market

.....

Report by the Court of Auditors, 1996

Ref. C 348 of 18 November 1997

With reference to the above report by the EU Court of Auditors and the remarks relating to tobacco **in paragraphs 3.89(a) and 3.94**, following receipt of EU Doc. No 573 of 22 January 1998 we would inform you of the following.

Paragraph 3.89(a)

Court of Auditors

Since Article 9 of Regulation (EEC) No 2075/92, in its original form, allowed quotas to be allocated to new processing undertakings which had not processed tobacco during the reference period, up to a limit of 2% of the total quota, and since the quotas were allocated direct to producers, by analogy and *mutatis mutandis* the Greek authorities were entitled to allocate a quota to new producers, of whom there were far fewer than 4751 but who had grown tobacco on specific areas of land during the previous year, 1992. Furthermore, as there were considerable quotas available (Article 11, Regulation (EEC) No 3477/92), the Greek authorities were entitled to allocate the quotas in question to new producers as well (Article 13 of Regulation (EEC) No 3477/92). The procedure followed in allocating the quotas was, therefore, fully compatible with the new Community rules, as the relevant departments in the Commission finally agreed.

2. The processing programme for the Mavra and Tsebelia varieties was actually applied universally when the growing of those varieties was abandoned and the land used for that purpose consequently became available, a fact which both the Commission and the inspectors from the Court of Auditors appreciated and accepted.

3. As there is no land register to make it easy to identify producers' fields, the Greek authorities dealt with the problem by adopting supplementary measures in relation to the way of declaring holdings, with the Commission's consent. In areas such as Northern Greece where there are maps of the fields, these are already being worked.

The result of applying these supplementary measures has been a significant reduction in the number of producers making what may be false declarations and, by extension, in the numbers of those who could have been engaging in irregularities or fraud.

We are continuing to work with the Commission on improving the supplementary measures.

Paragraph 3.94

We would point out that the Commission's report on the incidence of fraud and irregularities on the export of tobacco to Albania and Bulgaria contained many inaccuracies and arbitrary elements and therefore came to arbitrary conclusions.

The National Committee and the special Ministry of Finance teams which were set up for the purpose examined the points in document No 46413 of 22 December 1994 one by one and replied in their documents of 28 February 1995, 8 February 1996 and 11 March 1996, which are available to the Court of Auditors if it so wishes.

The Commission's charges were made basically in two documents, No 4135 of 20 April 1993 and No 46413 of 22 December 1994, which came with a lengthy report setting out the conclusions the Commission had reached as a result of the investigation it carried out with two missions to Greece in July 1994. The report was the basis for the corrections imposed on Greece in respect of 1991.

Investigations by the National Committee and the special Ministry of Finance teams have produced no evidence of irregularities and fraud having been committed. Only evidence of tax offences has been found, and for these the penalties provided for in law have been imposed.

The Court of Auditors in its report unthinkingly and exclusively endorses the views of the Commission while taking no account of either the Member State's views or the investigations carried out by the Greek authorities, all the data from which have been passed on to the Commission. The Court of Auditors also adopts views of the Commission regarding non-existent controls by the Greek authorities which the Commission has not so far substantiated.

Regarding the supplementary correction of GRD 7 305 million imposed in respect of the period from 1986 to 1989, which on the Commission side was based on the report in document No 46413 of 22 December 1994 mentioned above, the Greek authorities have attached final acceptance of the correction by decision of the National Court, to which the Hellenic Republic appealed, for the financial year 1991.

The European Court, in its judgment of 29 January 1998 **(Case C-61/95)**, rejected the correction imposed for the financial year 1991 in respect of exports to Albania and Bulgaria and required the Commission to repay GRD 3.5 million to the Hellenic Republic.

We will be glad to supply any further information or clarification you may require and would request you to take the requisite steps.

N. Malissiovas
Chairman

Letter No 2008941/490/A0041 of 13 March 1998

from Directorate 41 (Financial Relations with the European Union and International Organisations), Directorate-General for Administration and Financial Control, Government Accounting Office, Secretariat-General for Financial Policy, Ministry of Finance, Greece

to Ms Edith Kitzmantel, Deputy Director-General, DG XIX (Budgets), Commission, Brussels

---

SEM 2000 - Follow-up to the annual report of the Court of Auditors for 1996

In reply to your letter of 22 January 1998 to Mr P. Apostolidis, Permanent Representative of Greece to the European Union, concerning the observations on Greece in the Court of Auditors' report for 1996, please find attached the replies from the relevant ministries.

By order of the State Secretary
(signed)
E. Nikoloudaki
Director

VOLUME I - ANNUAL REPORT ON 1996

Chapter 1 - Own resources

PARAGRAPHS

1.10, 1.31, 1.40, 1.104

Ministry of Finance, Directorate 19 (Customs Procedures)

Chapter 3 - Market organisations - Plant products

PARAGRAPHS

3.29, 3.46, 3.89, 3.91

Doc. No 109/7/A60 of 8 January 1998 - National Tobacco Board

Chapter 6 - European Regional Development Fund

PARAGRAPHS

6.63, 6.95

Doc. No DEFE33 of 12 January 1998 -. Ministry of Economic Affairs, Directorate for ERDF Implementation and Disbursements

Chapter 7 - European Social Fund

PARAGRAPHS

7.19, 7.34

Doc. No 105048 of 9 January 1998 - Ministry of Labour, Directorate for Planning and Implementation of ESF Programmes

Chapter 8 - European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF Guidance)

PARAGRAPHS

8.13, 8.20, 8.24, 8.25, 8.35, 8.42, 8.43, 8.53, 8.54, 8.55, 8.56, 8.57

Doc. No 1827 of 16 March 199 *[Translator's note: the date given here is incomplete. The document numbered 1827 is undated but was faxed on 11 March 1998.]* - Ministry of Agriculture, Directorate for Planning and General Administration

Letter No 1827, undated but faxed on 11 March 1998

from the Directorate for Planning and General Administration, Ministry of Agriculture, Athens

to Division A, Directorate 41, Government Accounting Office, Ministry of Finance, Athens

---

Report of the European Court of Auditors, 1996

Re: your letter 2014927/848/A0041 of 4 March 1998

In reply to your letter and with reference to the various points on the EAGGF Guidance Section in the above report, we would inform you as follows.

8.13 In Greece 80% of investment relates to modernisation of existing units, the condition of which (financial, technological, commercial etc.) is familiar to regional departments because they are frequently in touch for reasons connected with quality control, exports etc. This familiarity on the part of regional departments has its effect positively or otherwise on the reports they send to the Ministry of Agriculture. In addition, reports since 1995 have been detailed, with a great deal of financial and technical data, and before approval is given the Directorate for Planning and General Administration and the Ministry's technical Directorate make recommendations.

8.20 The reports produced are in all respects identical with those stipulated in Regulation No 1685/78 and operators fill in the relevant specimen forms and make the entries provided for in the Regulation. Further checks are now made by the Directorate for Planning and General Administration, where the reports are also kept.

8.24 Payment in cash is a method accepted in Public Accounting and the Bookkeeping and Data Code of the Ministry of Finance.

8.25 The question of public tendering procedures for semi-public undertakings is a more general matter and relates to more than one branch of the national economy. The outcome of such procedures, however, irrespective of the size of budget involved, does not affect the eligibility of expenditure. The eligible expenditure for a project is reflected clearly in the approved budget for the project, which states the categories into which the individual works fall, the quantities associated with each and their cost. Consequently, if the outcome of the competition makes for a smaller budget for the works to be carried out and the project is executed at a lower cost, the subsidies given will be smaller, in other words they will be adjusted to fit the cost. If, because of reviews, the final cost of a project comes out higher than the approved budget, the operator will be subsidised up to the approved amount. The extra cost will be borne solely by the operator.

8.35 Since 1996 a system has been in operation whereby the Agricultural Bank of Greece issues a payment receipt for the beneficiary stating the amount and bearing the signatures of the Bank's official and the beneficiary. In addition, in accordance with ministerial decisions laying down the method of payment, if the beneficiary does not

present himself to collect the amount to which he is entitled within a reasonable time, the amount is deposited in a savings bank account opened in his name for that purpose.

8.42, 8.43 As regards compensatory amounts, because of the large number of beneficiaries a member of the cooperative in the area may be authorised to collect the compensatory amounts for all the beneficiaries. In that event the member signs the payment statement on behalf of all the names; however, he passes on to the Bank the beneficiaries' authorisations, which have to be attached to the back of the payment statement.

8.53 It is not scientifically proper or feasible to restrict irrigation to specific crops throughout Greece. The financial viability studies which are carried out in connection with every land-improvement scheme stipulate both the crops and the areas to be served by the construction of the project and have been approved by the relevant EU bodies. For example, the development programmes (PEP etc.) including the land-improvement works in question have been officially approved.

8.54 Intensive and excessive use of ground water does indeed lead to seepage of sea water, particularly in coastal areas, and consequently causes salinity problems. The legislation on water resources (Act No 1739/87) is being applied, however, and the requisite steps are being taken to deal with the problems, which are caused by thoughtless and exploitative use of underground aquifers. The drilling of boreholes either by private interests or by the State is carried out after hydrogeological studies have been done.

8.55, 8.56 Experience of constructing dams to date has shown that it is virtually impossible for studies to predict all the problems which will arise during construction.

8.57 The standard cost applied in Greece (and therefore at the Ministry of Agriculture) is fixed by the Ministry of the Environment, Regional Planning and Public Works and expenditure checking is done on the basis of the standard costs laid down by Greek law.

V. Skandalis
Director

Letter No 105048 of 3 January 1998

from Division III, Directorate for Planning and Implementation of ESF Programmes, Ministry of Labour and Social Security, Athens

to Division I, Directorate 41, Government Accounting Office, Ministry of Finance, Athens

---

Annual Report of the European Court of Auditors, 1996

Ref.: Your document 2086713/3631/a0041 of 10 December 1997

In reply to the above, as regards the views of this department on the observations of the European Court of Auditors in its annual report on the 1996 financial year, and the observations of the European Commission, we would inform you as follows.

I. On paragraph 7.9 of the report, which refers to the execution of the budget and the Court's observation that in 1996 there was a low take-up of the amounts set aside for Greece by the ESF, we would point out that the reason why the Community aid was not used in full is that the EU suspended the funding. The EU suspended payments of commitments undertaken to this country after carrying out checks on temporarily certified centres - agencies for carrying out ESF measures - where it was found that some of them did not qualify for certification. In fact only 13 out of 332 training centres checked were found not to meet the conditions laid down in this department's decision No 115372/94, and we therefore consider that for the EU to suspend funding for all the agencies carrying out ESF measures was an exceptionally harsh measure and contrary to the provisions of the relevant legal framework (Article 24 of Regulation (EEC) No 2082/93).

II. On paragraphs 7.48-7.51 of the Court of Auditors' report, responsibility for checking and evaluating programmes financed by the ESF in Greece lies with the **Directorate for Control and Evaluation** in the Ministry of Labour and Social Security, which was established by Act No 2224/94 (Greek Government Gazette 112/A of 6 September 1994).

- In this task it is assisted by officials from the Secretariats-General of the Regions, when Regional Management Programmes are being checked.

- It also carries out checks with the Control Coordination Body (ESOE) which has been set up in the Government Accounting Office (Point 6, Act No 2187/94, Presidential Decree 393 of 14 December 1994) and which carries out **planned checks** under the cooperation agreement between the Body and DG XX of the European Commission.

Such checks are carried out according to an annual check programme drawn up each year under the cooperation agreement between the national authorities (Ministry of Labour and Social Security and Ministry of Finance) and the European Commission (DG XX.B.2 and DG V/3), as stated above.

The management programmes are selected and the frequency of the checks decided on following discussions between the said national and Community checking authorities.

III. As far as the other points are concerned, this department is covered by the Commission's replies.

Please take the necessary steps.

P. Christofilopoulou
Secretary-General

Letter No DEFE 33 of 12 January 1998

from Directorate for ERDF Implementation and Disbursements, Directorate-General for Public Investment, Regional Policy and Development, Secretariat-General for Investment, Regional Policy and Development, Ministry of Economic Affairs, Athens

to Directorate 41, Government Accounting Office, Ministry of Finance

---

Report of the European Court of Auditors, 1996

In reply to the observations by the European Court of Auditors,' and in particular the points concerning Greece, we would inform you as follows.

Paragraph 6.63 Financing of investment relating to processing of agricultural products by the ERDF

To begin with, the arrangement for aid to productive investment which applies in Greece provides for financing of investment which may include a section of the primary sector, but on the terms laid down by the CAP as regards agricultural products. In the case of investment of this kind it is not possible to separate out the section which relates to first-level processing of agricultural products from the total investment programme. In cases which relate purely to first-level processing of agricultural products, such investment is not eligible for the Regional Management Programmes, 1994-99, with explicit reference to the programme and decisions of the Monitoring Committees.

Point 6.95d Replacement of innovatory measures with more traditional measures

Regarding the implementation of innovatory measures, where there is not at least a minimum prospect of success, it would be a planning error to insist on them. As it was not obvious from the business plans that implementing the measures concerned would be in any way effective or productive, it was entirely reasonable not to go ahead with carrying them out, thereby wasting resources which in other sectors were desperately needed for completing operations which were both effective and productive.

K. Anastasiou
Head of Directorate

Letter F.109/7/A60 of 8 January 1998

from Divisions A and D, Directorate for Tobacco Production - Common market, National Tobacco Board, Athens

to Directorate-General for the Agricultural Products Market, Directorate II, Industrial Products Division, Directorate III, Budget and Revenue Division

---

Report by the Court of Auditors, 1996

Ref.: C 348 of 18 November 1997

With reference to the above report by the EU Court of Auditors and the remarks relating to tobacco **in paragraphs 3.89(a) and 3.94**, we would inform you as follows.

3.89(a)

1. Tobacco quotas in Greece were allocated in accordance with the provisions of Council Regulation No 2075/92 and Commission Regulation No 3477/92, as the Commission and the Court of Auditors acknowledge.

Greece was the first country which, despite the complexity of the quota system and the fact that the system was designed for the quotas to be allocated to tobacco processors, allocated the quotas direct to tobacco producers from the outset.

The third paragraph of Article 9(3) of Regulation (EEC) No 2075/92, in its original form, allowed quotas to be allocated to new processing undertakings (which had not processed tobacco during the reference period), up to a limit of 2% of the total quota.

Since Greece allocated the quotas direct to tobacco producers from the beginning, by analogy and *mutatis mutandis* it allocated quotas to new producers (fewer than the 4751 refefred to in the report) after the old producers had been awarded the due quotas, as laid down in the regulations, and only for varieties in demand, particularly those where the guarantee threshold allowed the possibility.

This was grasped by the European Commission, i.e. the fact that allocating quotas to new producers did not cause any real infringement or distortion of the Community regulations; that is why it did not propose any correction, and we believe that after reading what we have said the Court of Auditors will also change its view.

2. The processing programme for the Mavra and Tsebelia varieties was actually applied universally when the growing of those varieties was abandoned and the land used for that purpose consequently became available, a fact which the Commission accepted.

3. As there is no land register to make it easy to identify producers' fields, the Greek authorities dealt with the problem by adopting supplementary measures in relation to the way of declaring holdings, with the Commission's consent. In cases such as that of Northern Greece, where there are maps of the fields, these are consequently being worked already.

The result of applying these supplementary measures has been a significant reduction in the number of producers making what may be false declarations and, by extension, in the numbers who were potentially engaging in irregularities or fraud.

We are continuing to work with the Commission on improving the supplementary measures.

3.94

In view of the Commission's accusations that irregularities and fraud were being committed in relation to tobacco exports to Albania and Bulgaria, a National Committee to carry out checks on the exports in question was set up in Greece. Officials of the Ministry of Agriculture, the Ministry of Finance and the National Tobacco Board (economists, customs officers, tax inspectors and technical experts) sat on the Committee. Special Ministry of Finance teams to carry out more detailed checks on the tax aspects were also set up to assist the National Committee in its work.

The Commission's charges were made basically in two documents, No 4135 of 20 April 1993 and No 46413 of 22 December 1994, which came with a lengthy report setting out the conclusions the Commission had reached as a result of the investigation it carried out with two missions to Greece in July 1994.

We would point out that the Commission's report contained many inaccuracies and arbitrary elements and therefore came to arbitrary conclusions.

The National Committee and the special Ministry of Finance teams examined the points made in Doc. No 46413 of 22 December 1994 one by one and replied in their documents of 28 February 1995, 8 February 1996 and 11 March 1996, copies of which are attached for forwarding to the Court of Auditors.

Investigations by the National Committee and the special Ministry of Finance teams have produced no evidence of irregularities and fraud having been committed. Only evidence of tax offences has been found, and for these the penalties provided for in law have been imposed.

It is, however, striking that the Court of Auditors in its report unthinkingly and exclusively endorses the views of the Commission while taking no account of either the Member State's views or the investigations carried out by the Greek authorities, all the data from which have been passed on to the Commission. The Court of Auditors also adopts views of the Commission regarding non-existent controls by the Greek authorities which the Commission has not so far substantiated.

Regarding the supplementary correction of GRD 7 305 million for the period from 1986 to1989, the Greek authorities attach final acceptance of the correction by decision of the National Court for the financial years 1990 and 1991.

The Greek authorities consider that the Court of Auditors should revise its view and get from the Commission all the information passed on to it from the investigation by the National Committee and the special Ministry of Finance teams, as it ought to have done before.

We are at your disposal should you require any further information or clarification, and would request you to take the necessary action.

N. Malisiovas
President

Letter No Y.387/39 of 18 March 1997

from Divisions A and C, Directorate 19 (Customs procedures), Directorate-General for Customs and Excise, Ministry of Finance, Athens

to Echelon 4, Audit Office, Ministry of Justice, Athens

Reply to memorandum of control by European Court of Auditors of free zones and the arrangement for goods arriving at Piraeus and Thessaloniki by sea from 9 to 13 September

Ref.:
(a) European Court of Auditors doc. No 14/97 of 17 January 1997
(b) Greek Audit Office doc. No 2465 of 6 February 1997

Concerning the memorandum of control passed on to us as above, we would make the following observations.

A. FREE ZONES

Before responding to the various points made in the memorandum, we would like to stress that the machinery for controlling the free zone does not rely only on keeping stock records but also on keeping the perimeter and the entry and exit points of the free zone under supervision (Article 168(1), (2) and (3) of the Code).[1]

Stock records, even though they play an important part in exercising customs supervision, are a supplementary mechanism for controlling the goods moving through the free zone.

On the basis of this general principle, we would respond as follows to the points made in the Court of Auditors' memorandum.

The traders established in the Piraeus and Thessaloniki free zones are the Harbour Boards, which, as legal persons in public law, are governed by different laws and regulations. The Boards simultaneously operate and administer the harbours.

The activity in relation to incoming goods consists of storing goods entering the harbours in question until they are collected by persons outside the free zone.

This department is responsible for the operation of the free zones in Greece as regards customs since, from the point of view of administration and handling, free zone areas constitute an integral part of the ports in which free zones have been established and come under the jurisdiction of the above Boards, under the control of the Ministry for the Merchant Marine.

---

[1] Regulation No 2913/92, OJ L 302.

We note that in the memorandum from the European Court of Auditors passed on to us the conclusion drawn is that the proper customs checks on incoming goods are not being carried out in the free zones in Greece.

This department considers that, notwithstanding any shortcomings which may be caused by manpower shortages or a lack of proper infrastructure, customs checks in the free zones are more thorough than those required by the customs regulations of an arrangement primarily intended to serve external trade. We would add the following comments on the individual points raised by the Court of Auditors' inspectors.

1. Thessaloniki Free Zone

The observations on the Thessaloniki Free zone in the memorandum concern:

- the stock records kept;
- failure to enter transhipped goods in the stock records;
- the issuing of customs status certificates for Community goods.

1.1 Keeping of stock records

According to points 14, 15, 16 and 17 of the memorandum, the way the stock records are kept does not ensure customs supervision, for the following reasons.

(a) The entries for containers contain very little description of the goods inside them (point 15).
We would make the following point.
The keeping of stock records by the Thessaloniki Harbour Board (OLT) involves keeping two books authenticated by Thessaloniki Customs Office B, which is the customs office responsible for controlling the Thessaloniki free zone.
The transport documents for containers are entered in one of the books, and the transport documents for goods arriving in conventional packing are entered in the other.
Each entry must give the details referred to in Article 817 of the implementing provisions for the Code.
By way of exception, in the case of containers containing many kinds of goods, and provided that they are sealed with seals which are also mentioned on the transport documents, for administrative reasons not all the goods have to be listed, and all that is required is an indication that they are "miscellaneous".

We do not think that this exception is an actual infringement of the Code, since, as we stated above, customs supervision is based not just on the stock records but on surveillance of the perimeter and the entry and exit points. As the goods in containers are intended for other people, requiring a full description of the content would constitute a serious obstacle to a trader's business activity and would distort the purpose of the free zone, which is to facilitate external trade.
The customs office of inspection is in a position to examine transport documents which relate to containers and do not contain a full description of the goods. Where a container does not bear the seals referred to above, it has to be opened and the goods have to be listed in full.

(b) With the system in place it is not possible to guarantee that improper consumption, use or removal of goods will be detected (points 16 and 17).

We would make the following observation on this point.

Since all the goods are entered in the stock records, any improper consumption, use or removal of goods can be detected.

In the case of goods in sealed containers and not described in the stock records, these are verified when the declaration placing them under a customs regime is lodged. The content is then verified on the basis of the description in the declaration, and a check is made to ensure that the seals placed on the containers are intact.

(c) No check is carried out to ascertain whether the copies of the manifests lodged with customs are complete (point 18).

We would make the following observation.

Copies of the manifests or other transport documents for goods entering the free zone are presented after they have been entered in the stock records. By entering them the trader concerned commits himself as to the content of the transport documents. When a package or container is found to have been broached or to have had its seals broken, the trader inspects the contents and draws up a document.

This is how the customs office, in accordance with Article 176(1) of the Code, recognises goods which have entered the free zone and will leave it in compliance with the prescribed procedure.

1.2 Checking of goods intended for transhipment (points 19 and 20).

Article 176(2) of the Code provides that where goods are transhipped within a free zone, the documents covering them must be available to the customs authorities. The short-term storage of goods in connection with transhipment constitutes an integral part of the transhipment operation.

On the basis of this provision, the Thessaloniki Harbour Board does not enter details of containers which, according to their transport documents, are intended for transhipment to another vessel.

The transport documents are held by the Board since, as stated above, that body is at the same time the port manager and in that capacity provides guarantees for the proper movement of goods intended for transhipment. Despite this, the customs office of inspection, and other customs offices of inspection, may have access to the documents.

Goods intended for transhipment must be kept in special premises so that they can be inspected. Goods which are intended for transhipment and are therefore not entered in the stock records, and any other good not entered in the stock records, may not leave through the exit gates on the landward side, as permission is required from the trader (the Thessaloniki Harbour Board) each time goods leave, and the permit must give details of,

among other things, the stock record number from the warehouse from which the good in question originates. If a good is brought to the exit gate without an exit permit or the stock record number is not stated on the permit, the good may not leave and repressive measures may be applied. Obviously any removal of goods through other points in the perimeter of the zone to the customs territory of the Community constitutes illegal importation.

1.3 Customs status certificates (points 21.22 and 23)

(a) Under Article 170(4) of the Code, the customs authority, at the request of the party concerned, certifies whether goods placed in a free zone have Community or non-Community status.

(b) Under Article 313(2)(e), fourth indent, of the provisions for implementing the Code, goods entering on board a vessel which docks directly at the free zone are regarded as non-Community goods and their Community status must be demonstrated as stipulated in Articles 314 to 323.

On the basis of these provisions the Greek customs department has laid down a procedure for demonstrating the Community status of goods carried by sea and entering the free zone directly. The removal of Community goods is subject to the procedure for demonstrating Community status, using a customs status certificate to which the specified T2L Community status certificate or another equivalent document must be attached. This procedure ensures that documents are checked and avoids illegal practices.

2. Piraeus free zone

2.1. Keeping of stock records (points 24 and 25)

As in Thessaloniki, in Piraeus it is the Piraeus Harbour Board (OLP) which operates the business of storing goods arriving in the Piraeus free zone. No other firm has been given a licence to keep stock records in the zone.

OLP's stock records are kept in the same way as those of the OLT in Thessaloniki, as described above. Consequently, the details in 1.1 also apply to the stock records in the Piraeus free zone.

Transport documents are entered in two general books, depending on the mode of transport. One general book is kept for goods carried by sea and the other for goods carried by road.

Neither of the books contains a full description of the goods. Each transport document entry states the particular treatment to which the goods are subject, with all their details. It is thus possible to keep track of the movement of the goods, as the general book refers onwards to the more specialised accounts kept in the warehouses or premises in which the goods are stored.

2.2 Collection of duties in the event of use, consumption or removal of goods from the free zone (points 26, 27, 28, 29, 30 and 31).

The customs department applies the rules governing the incurring of a customs debt and therefore applies Article 205 of the Code.

The difference between Customs Office H and the Harbour Board referred to at 28 is due to a mistaken notion on the part of the latter that the free zone is foreign territory and that no customs debt is therefore incurred in respect of goods which go missing.

As soon as this department was informed of the dispute, it instructed Customs Office H to apply all the rules governing the method of collecting duties and taxes owing on goods which have been consumed or used or have gone missing in the free zone. The instruction was contained in document P.6198/102 of 19 November 1996, of which a copy is attached. The Piraeus Harbour Board runs the business of storing goods as a public warehouse and is therefore liable for duties like any other person.

This department does not think it advisable for the moment to rescind the authorisation to keep stock records, as this is the first time this state of affairs has arisen. However, if the OLP persists in refusing to remit the established sums owing, the question of rescinding the authorisation may be raised.

This department has not asked the Harbour Board to accept responsibility for the duties owing, as that responsibility flows from the existing rules and is not dependent on acceptance by the debtor.

The cases of duties owing referred to in the attached copy are those established by Customs Office H and the duties will be collected in accordance with the existing rules. The customs office has not so far told us whether or not the amounts stated have been collected.

2.3 Checks on stocks of goods in the free zone (points 32 and 33)

According to Article 168 of the Code, checks of stocks of goods in the free zone are carried out on the basis of the copy of the transport document handed over to the customs office of inspection.

Whenever a check is carried out, the trader has to show which goods have left under the customs documents or, where direct removal has taken place, under a document of the trader bearing an entry by the customs body responsible.

Under Article 804 of the provisions for implementing the Code, stock records in the free zones in Greece are inspected at least once a year. The inspection is based on the copies of the transport documents handed over to the customs office of inspection, and is carried out by a three-member panel consisting of an official from the regional directorate and two officials from the customs office of inspection.

The panel checks to see whether the goods referred to in the transport document were given a lawful destination under the existing customs rules. Where it is found that goods have left the free zone without the stipulated formalities having been completed, the fact is reported to the customs office of inspection, which takes steps to recover the duties.

Sample checks may be carried out on stocks.

In Piraeus free zone there have not so far been any reports of serious omissions such as to justify reconsidering approval of the stock records.

The deficiencies noted in the attached copy did not arise from an inspection of the stock records but from checks on goods when the declaration releasing the goods for free circulation or placing them under some other customs regime was presented. The fact that there were deficiencies in the packages or containers cannot be grounds for rescinding the permit as a deficiency may be due to causes for which the trader is not responsible. At all events, this department is monitoring such deficiencies and, if the Harbour Board is found to be responsible for them, it will raise the question of reconsidering approval of the stock records.

The legal argument put forward by the Harbour Board, that the Board is not responsible for goods which go missing, as stated above (2.2), is not accepted by this department.

2.4 Certificates of the Community status of goods (points 34, 35 and 36)

The remarks made at 1.3 regarding the Thessaloniki free zone apply to the above points.

3. General points

Historically speaking, the free zone as an institution was first established in Greece at the beginning of the 20th century.

The first free zone to be set up was established in Thessaloniki in 1914.

The Piraeus free zone began operating in 1950, and the Iraklio free zone in 1958.

Until 1995, Greek free zones used to operate in a different way from that laid down in Community rules.

Whereas a free zone was regarded as constituting foreign territory, supervision of goods was based on the lodging of a declaration at the customs office, which would monitor the movements of the goods and clear the declaration with the customs documents for exit from the free zone.

This gave rise to the notion that the removal of goods from a free zone did not give rise to a customs debt.

As from May 1995, approval of stock records was granted to the Piraeus and Thessaloniki Harbour Boards, which have exclusive rights to carry on warehousing activity inside their respective free zones.

The Iraklio Harbour Fund did not ask for approval of stock records and this department therefore asked for the free zone there to deleted from Annex 108 of the implementing regulation, with the result that for some time now the free zone in Iraklio harbour has not been operating.

The Iraklio Harbour Fund then applied for stock records approval, and at the same time asked for the boundaries of the free zone to be modified in such a way that the loading and unloading jetty for goods would be outside the free zone.

The free zone is due to start operating once the directives governing its operations are published. The only undertaking handling goods will be the Iraklio Harbour Fund which, like the Piraeus and Thessaloniki Harbour Boards, is a public-law legal person subject to supervision by the Ministry of the Merchant Marine.

As regards the part of the harbour which is not in the free zone, the existing rules on presenting and temporarily storing goods apply.

B. ARRANGEMENT FOR GOODS ARRIVING BY SEA

With regard to point 39, regarding the use of the notification document (TC 12) provided for by Article 313 of the provisions for implementing the Code, the customs authorities responsible for the point at which the inspection by the team in question was carried out have told us that they do not endorse the view that confusion reigned when the document in question was discussed; on the contrary, they consider that views of real substance were exchanged between the inspectors and the customs officers responsible as to the reliability of the document in terms of demonstrating the Community status of goods moving to and from a Community port, and at all events the exchange of views was useful in clarifying the positions of both sides.

As far as the substance of the issue is concerned, the questions raised by the customs office are correctly conveyed in the relevant section of the memorandum.

As regards point 50 of the memorandum, we would point out that the infrastructure of the harbours in Greece is such that even Community goods still sometimes have to be brought into the free zones for operational reasons relating to the harbours, with the result that Article 38(5) of the Community Customs Code cannot be applied.

N. Glendzis
Director

IRELAND

1996 Annual Report by the Court of Auditors

Response by Ireland to the Courts' Observations

VOLUME 1 - ANNUAL REPORT CONCERNING THE FINANCIAL YEAR 1996

CHAPTER 1 - OWN RESOURCES

Paragraphs 1.10 (c) and 1.17

The comment in respect of Ireland in paragraph 1.10 (c) relates to sums taken on deposit pending determination of correct liability to customs duty. It is confirmed that arrangements have been put in place for regular review of all such sums which concern own resources to ensure that they are entered in the accounts within the time limits prescribed by Community law.

Paragraph 1.21 and 1.22

With regard to paragraph 1.21 the reference to "security arrangements" refers to the physical security by way of enclosure by fencing with supervised entrances and exits but in so far as it may imply a lack of, or deficiency in, customs control in free zones in Ireland it is incorrect.

The free zone controls operated in Ireland are perfectly adequate to protect the Community's own resources and are, in fact similar to those applicable, under Community rules, to customs procedures, such as warehousing, involving a combination of physical and documentary checks on a risk analysis basis. As has been indicated by the Commission, proposals to amend Community rules are in train to enable all Member States to apply the type of control system operated by Ireland.

Paragraph 1.35

The Irish Authorities consider that the arrangements for the removal of goods from point of entry in Ireland to the free zone are clearly permitted by Article 97.2(b) of the Community Customs Code which allows Member States to apply simplified procedures for goods not required to move on the territory of another Member State. They note, however, that the Commission takes the view that Community rules do not allow the guarantee to be waived for transfers to the free zone under simplified procedures and, subject to further discussion with the Commission, will review current practice.

It is important to note that there is no instance of any loss of Community funds or any abuse of the simplified procedure which Ireland operates by traders or carriers and that this has been verified by detailed checks carried out from time to time by the Customs authorities.

Paragraph 1.42

Prior to 1997 the procedure in Ireland was that regular control visits were carried out by customs staff on traders in Shannon. These control visits entailed detailed checks of individual transactions and examination of trader records. A detailed record of these visits and the checks performed were in fact kept by Customs and shown to the Auditors in the course of their visit.

These controls are considered by the Irish Customs Authorities as being perfectly adequate to protect the own resources of the Community. Since January 1997 a new audit procedure has been introduced generally in the Irish Customs Administration whereby, on a risk analysis basis, an intensive audit of the totality of the traders' relations with Customs is conducted by specialised customs staff. These arrangements also apply in relation to free zones traders. A copy of the Audit Guidelines manual which was developed to assist audit staff dealing with the new post clearance audit regime has been provided to the Commission.

Paragraph 1.51

Procedural changes have been introduced which meet the Courts' concerns. However, it should be pointed out that the relevant Customs supervision office was in fact in all cases in a position to be aware of the precise conditions attaching to the authorisation and to monitor their implementation. It should also be noted that no risk to own resources arose in these situations.

Paragraph 1.56

The Irish Authorities have introduced additional measures with a view to ensuring that this problem does not recur.

CHAPTER 3 - PLANT PRODUCTS

Paragraph 3.29

Ireland engaged consultants in 1997 to review the computer and business processes relating to Area Aid payments based on the land parcel identification scheme. The project was completed

in February 1998 and included agreed improvements to processes and systems and an action plan for 1998. Amongst these are daily transfers of data between systems (i.e. bar coding, scanning, land parcel identification database and the Supra mainframe) and a formal tracking system for inspection cases.

The more structured approach emerging from this review and the establishment of a monitoring group, which will report progress to the paying agency's existing high level Accreditation Review Group (ARG), on which the Department of Finance is represented, will provide improved assurance on meeting EU requirements and the comments and recommendations of EU and national audit bodies.

Paragraph 3.46

Cross checking within the system improved in 1997, and for 1998 the following measures are being taken to facilitate cross checks between area aid and other schemes. The Department of the Marine and Natural Resources is being given the full land parcel identification database (LPIS) to allow the Forest Service carry out cross checks against area aid applications data. It is also anticipated that Phase I of the Forestry Inventory System will be delivered in 1998. This new system is expected to facilitate automatic checks between the Forest Service and area aid data on the LPIS.

For the 1998 processing cycle it is proposed to give the 36 Rural Environment Protection Scheme (REPS) local offices access to the details of every land parcel declared by area aid applicants by mid Summer 1998. This will allow local offices to identify REPS applicants who have not submitted area aid applications and to cross check land parcels declared on the area aid applications of those who have.

The ultimate objective would be to have a system for automatic comparison of data.

CHAPTER 4 - COM: ANIMAL PRODUCTS

Paragraph 4.45

The difficulties experienced in 1996 were largely overcome in 1997.

Paragraph 4.49

Following the entry into force of legislation implementing Directive 92/102/EEC for bovines (it was implemented earlier for sheep and pigs) farm registers were transmitted to every cattle farmer in the country. Each bovine animal was already accompanied by an identity card for movement in Ireland.

CHAPTER 5 - EXPORT REFUNDS ON VEAL AND BEEF

Paragraph 5.35

Given the Courts' concerns the Department of Agriculture and Food has undertaken further examination of the circumstances surrounding this shipment. Origin checks have taken place at the four plants where male beef was deboned under the terms of Regulation (EEC) 1964/82. Under the terms of this regulation as implemented in Ireland, export refund records trace animals from points of slaughter, through deboning and packing to individual cuts. The origin checks were in all cases satisfactory.

The Irish authorities are satisfied that there is no indication that export refunds were improperly paid on this consignment of beef. We would however lend support to the Court's point concerning the need for harmonisation of veterinary procedures. In Ireland all temporary re-imports are subject to veterinary examination.

CHAPTER 6 - EUROPEAN REGIONAL DEVELOPMENT FUND

Paragraph 6.22

The Department of Enterprise, Trade and Employment maintains that the normal reporting, accounting and reconciliation arrangements within the implementing agencies is more than adequate to ensure that returns relating to EU expenditure are sufficiently accurate and correct. All expenditure by the implementing agencies is subject to a strict and highly developed system of controls and checks. This system applies to all payments, in all years, irrespective of whether the funding involved comes from the National Exchequer or from the EU. Agency declarations of EU-related expenditure under the Industry OP have been reconciled against agencies' overall accounting systems. Apart from the agencies' internal controls systems (e.g grant payments

systems), Departments and their implementing agencies are subject to audit by the Irish Comptroller and Auditor General (C&AG). While we accept that the C&AG's Office has no formal function in relation to EU funding, it is still auditing overall agency spending and examining procedures of which the EU-supported elements form a subset. For example, in examining the overall accounts of Forbairt, the C&AG is automatically covering those Forbairt activities which form part of and receive EU support via the Industry OP.

Partly as a result of similar criticisms in the past, the Department of Finance has commissioned consultants as part of an overall assessment of what improvements are needed at implementation and agency level in developing systems for tracking and monitoring expenditure and appropriate controls.

The reference to the "high instance of irregularity found in the payment claims" is inaccurate and misleading. The Irish authorities objected to a similar comment in the Court's preliminary report and in previous audit reports.

We are not aware of what specific irregularities are being referred to in relation to the Industry OP. While numerous queries have been raised in relation to the OP in the course of previous visits by the Court of Auditors and/or the European Commission's DG XX, it has been our understanding that all such questions had been explained to the satisfaction of the body concerned.

Comments relating to justification of expenditure relate to Department of Enterprise, Trade and Employments' internal records. It was not possible during the course of the audit visit to reconcile some agency returns with final claims from Departmental records alone. However, both the agencies concerned (Forbairt and An Bord Trachtala) were able to confirm subsequently that the final claims were correct and in accordance with their own expenditure records.

The "official documents" referred to in the Court's report are manual calculations required to present the agency returns in the format of the Industry OP. For example, where more than one agency may be involved in delivering a particular measure, returns from Forbairt/IDA and Shannon Development have to be combined. Some of these calculations, as presented on file,

do indeed contain corrections or alterations. However, they are not "justifying the final declaration amounts" as the Auditors state, nor are they presented as such on file. The actual expenditure amounts are justified by the supporting agency returns and ultimately by the agencies' own financial control systems.

The Department of Enterprise, Trade and Employment accepts that from the strict viewpoint which the Court is required to take, the files examined did not always contain a clear and obvious link between agency returns and the figures finally declared in the annual reports. That is not to say, however, that there is any flaw, irregularity or fraud in the declared figures themselves. Subsequent checks with the implementing agencies confirmed that the figures quoted in the final returns were correct and in agreement with the agencies' financial control systems, but it was not possible to establish this within the timescale of the audit visit.

It is worth noting also that the manual system of reporting in use for the 1989-1993 OP and, from which many of the Court of Auditors' criticisms arise, was superseded by a computer based system from the start of the 1994-1999 OP.

Paragraph 6.23

The Irish Authorities reject what is viewed as a negatively skewed picture of what was, overall, a reasonably well managed and successful programme. It is accepted, however, that not all of the Auditor's findings in their draft report were without foundation and that the relevant Department's monitoring/control function did not operate adequately.

Paragraph 6.23 refers to the inability to audit the library project owing to unavailable documentation. About 50% of the expenditure on this project, which was managed by the Library Council, was in respect of wages and salaries of the promoter's staff and staff in the six participating libraries. While a listing of totals of staff involved, man-hours, hourly rates, etc. was available during the audit, the original time sheets from which the listing was compiled could not be located. The Library Council had the time sheets but they were accidently destroyed. Indeed it was the Project Manager for Telematique who brought the loss of the original time sheets to the attention of the Auditors and offered that sworn affidavits could be provided if required.

The second point in paragraph 6.23 concerning Telematique is misleading viz. that an exact analysis of eligible expenditure by measure and project did not exist. This criticism was rejected in our earlier response on the Auditor's draft report. All of the individual project files were available to the Auditors during their visit in October 1996 and the breakdown of the expenditure amount in the final declaration could have been verified against the individual files if they had wished to do so. While we accept that this would have been time-consuming, we reject the implication that there was a break in the audit trail; the project files are the control documents.

The Telematique OP operated from 1991 to 1993 and is long since finalised. However, it should be pointed out that in the case of other ongoing Community Initiatives operated by Forbairt on behalf of the Department of Enterprise, Trade and Employment e.g. the Small Business Operational Programme, the standard practice since 1994 is that no financial returns from contractors are entertained unless accompanied by an independent audit certificate.

Paragraph 6.32

During the course of the audit, the Court representatives revisited issues originally raised in 1994 by the European Commission's DG XX - in particular, the difficulties encountered by DG XX in reconciling agency spending and financial records with the declarations made to the EU for support under the Industry OP. An exercise carried out by an independent firm of accountants on behalf of the Department of Enterprise, Trade and Employment subsequently concluded that the systems in place appeared to provide an adequate reconciliation.

The positive outcome of this exercise was accepted by the Commission, but the Court still insists that it could not trace the expenditure from the agency's grant payments system to the annual claim within a reasonable time because "no systematic reconciliation took place". This is not correct. All EU declarations can and have been reconciled with agency spending but this could not be done in the time available to the Court. It took the independent accountant several weeks to check and reconcile all expenditure because of the number of agencies and measures involved and the manual systems in use for the years in question (1989 and 1990).

It should also be noted that the original DG XX audit extended to agencies other than the present IDA and Forbairt - however the Court of Auditor's report refers only to IDA/Eolas and Forbairt,

giving the impression that queries/problems originally raised in 1994 and 1995 still persisted within those agencies in 1996. To our knowledge and that of the agencies concerned, there are no outstanding audit queries or irregularities under the Industry OP.

The implementing agencies have expressed concern, which is shared by the Department of Enterprise, Trade and Employment, over the generally negative impression given by the text of the 1996 report, especially as this is completely at variance with the feedback given by the Auditors during the course of the visit in October 1996. In particular, issues which in our opinion had been finalised in a satisfactory manner either at the final meeting with the Court of Auditors or in our written response, are raised again in the text. The severity with which this reads is in direct conflict with the impression given at the final meeting, during which the Auditors indicated that they were impressed with the systems which were in operation in IDA and Forbairt.

It might be noted that the scale and complexity of the Industry OP and the number of implementing organisations involved make it extremely difficult to ensure that full documentation and information is available to reconcile any and every sub-measure within the few days normally available to the auditors - there are over fifty sub-measures and thirteen Departments or Agencies involved in the OP. Notwithstanding this, as lead Department, the Dept of Enterprise, Trade and Employment will continue to liaise as closely as possible with the Court of Auditors on audit visits to try to avoid negative reports arising out of misunderstanding or time constraints.

CHAPTER 8 - EAGGF GUIDANCE

Paragraph 8.26

A request for recovery has issued to the firm concerned and the Commission will be informed of developments in this case.

Paragraph 8.38

It is accepted that the local office record systems are cumbersome and the Department of Agriculture and Food is examining how computerisation would improve the speed of access and cross reference to records. This will have to take account of developments in computerisation of the CAP Reform measures and Accompanying Measures which are more advanced.

In relation to farm improvement plans the Irish authorities would emphasise that completion of farm improvement plans is the responsibility of the applicant for on farm investment aid.

Paragraph 8.64

The Department of Agriculture and Food does not share the Court's conclusion in this case. Having reviewed the papers the Department is still of the view that an agreement was in operation between the parties involved.

CHAPTER 9 - COMMON POLICY ON FISHERIES AND THE SEA

Paragraph 9.31

Ireland is fully committed to complying with its obligations on the reporting of fleet details to the European Commission under Regulation 104/94 (as amended), and has been working closely with the Commission to ensure that all the necessary information is provided in the required format.

A joint Working Group (with the Commission) on the transmission and compatibility of information in respect of the Irish fleet register was set up in 1997, with the aim of bringing information on the Irish fleet on the Irish and EU registers into line. Agreement on the position at the end of 1996 has been reached and arrangements are in train to ensure the effective and timely delivery of information to the Commission in future.

Paragraph 9.33

The position has changed since September 1996, as Ireland has since forwarded the requisite information on the fishing effort of the Irish fishing fleet to the European Commission in a Report on Irish implementation of MAGP III (1992-1996). Ireland is assessing the technical options for supplying the relevant information electronically to the Commission in future.

Paragraph 9.35

Ireland would wish to see standard systems for measurement of fishing vessels operated by all Member States and has made it views on the matter known to the European Commission.

VOLUME II - STATEMENT OF ASSURANCE
CHAPTER 20 - EAGGF AND FISHERIES EXPENDITURE

Paragraph 20.13

It should be clarified that the certifying body did not suggest there were grounds for doubting the accuracy of opening stocks but said that it had not been in a position to verify these at the time of the 1995/96 audit (ie after year end). The body expressed no reservations on closing stocks in 1995/96 or on opening and closing 1996/97 stocks.

The need for speedier submission of documentation from officials in meat plants and coldstores has been addressed in the Beef Intervention Computer Systems project (BICS) through better management information reports and increased monitoring of time lag issues. In January 1998 average times for submission of IB4 and IB8 forms were 8 days and 7.8 days respectively - a substantial improvement on earlier periods.

Monthly reconciliation of coldstores : In November 1997 a new computer facility was implemented allowing for automatic reconciliation of coldstore returns and paying agency records and is now fully operational. It complemented accelerated reconciliation procedures introduced during 1997 i.e. production of the annual account on a quarterly basis, emphasis on timely input of stock data and a detailed programme of inventory checks and stock counts (the scope of the latter going beyond the requirements of the regulations).

As a result of the BICS project in 1997 the computer system is now producing accurate, reliable and timely data which fully support intervention operations.

The issues which arose during the stock counts at two stores have been addressed by the paying agency. The certifying body and Commission auditors who attended the 1997 stock count

reached favourable conclusions on the process.

The butter stock recording system is being examined and the paying agency is acting upon recent business consultants' recommendations in the matter.

ITALY

REPLY TO THE FOLLOW UP TO THE EUROPEAN COURT OF AUDITORS REPORT CONCERNING THE FINANCIAL YEAR 1996 - COMMENTS AND MEASURES ADOPTED BY *ITALY*

CHAPTER 1 - OWN RESOURCES

Financial management in the Member States

Paragraphs 1.9 to 1.17. Paragraph 1.13 of the report refers to the entering in the accounts of customs duties which have been notified to the debtor but remain uncollected and unsecured or, although secured, have been challenged.

Community law (Regulations (EEC, Euratom) No 1552/89 and (Euratom, EC) No 1355/96) requires such duties to be entered in a separate account or B account, stating the deadline and method to enable checks to be carried out on the steps taken by Member States to collect own resources, especially amounts involved in of cases of fraud or irregularities.

It was pointed out that various offices in Italy use an accounting method that does not comply with Community law, in that the amounts are not brought to account until the moment of recovery rather than at the moment of communication to the debtor.

Circulars have been sent to local offices on several occasions explicitly pointing out the requirements of Community law. The most recent were. circulars Nos 274/D Ref.; 1801/VIII of 22 November 1996 and 1691/VIII of 22 September 1997.

As the date of establishment is the date of registration under customs law or, more precisely, the date of entry in the accounts of amounts paid on the basis of individual import declarations, circular 274/D expressly points out that "when debts have been challenged, the date of assessment - or of entry in the separate account - must be no later than the date of the first administrative decision (request for payment) informing the taxable person of the debt incurred, or the date of notification of the judicial authorities, whichever comes first."

Circular 1691/VIII S.D. contained instructions regarding the entry in the B account of surcharges established as own resources subsequent to verification.

In the case of duties established following *ex post* verification, which therefore may be challenged by the economic operator and lead to disputes, the conditions were also set out for entering the amount in a separate account on a date other than the date of notification (notification of a revised assessment or examination report) which contains the new calculation of the surcharge and is used by the customs office to inform the debtor of the amount due and request payment. This notification, in fact, constitutes the first administrative decision regarding the verification of the conditions required for establishing and therefore entering the Community's own resources.

The instructions issued in relation to the bringing to account and establishment of customs duties subsequent to *ex post* checks of declarations should in future prevent any repetition of the delays (up to 24 months) referred to by the Court in paragraph 1.10b.

Free zones

Paragraphs 1.24, 1.28, 1.32 and 1.39. With regard to the comments made by the Court in relation to these paragraphs, we must point out that the comments relating to the functioning of the free zones of Trieste, which we were already aware of, are based on the fact that the provisions applied to these free zones derive from the Treaty of Rome and not from the Community Customs Code.

A draft government regulation is currently being prepared to harmonise the abovementioned provisions, which, once adopted, will eliminate the cause of the Court's observations.

The implementation of provisions in force

Paragraph 1.104. In the case cited by the European Court of Auditors (the import of video cassettes declared as originating in Macao) we should point out that, following a telex from the Commission department concerned, we sent telex No 6390/196/X S.D. to the administrative offices stating that, since the Form A certificates were not a valid justification for the granting of the preferential duty under the generalised system of preferences requested for the import of video cassettes declared and certified as originating in Macao, the duties established were to be recovered.

The telex also ordered the collection of anti-dumping duties on the imports, as the items in question had to be regarded as originating in China and thus not subject to preference.

As regards the Court's observation concerning the failure to provide a summary of the establishments and recoveries carried out by local offices, we should point out that these aspects of establishment and recovery are the responsibility of these offices.

Chapter 3 - MARKET ORGANISATIONS. PLANT PRODUCTS

Arable crops

We believe we should point out that the observations made concerning the activities of the Italian Government in relation to the management of arable crop farming are fairly marginal.

Reference is made to the method of calculation used to establish the regionalisation plan. As the Court was informed during its visits to Italy, the Government confined itself to using the statistical survey (agricultural regions) and historical data supplied by the *Istituto Centrale di Statistica* (Central Statistics Office). This is simple to check, as the data is contained in the ISTAT yearbooks and can be verified by referring to the Eurostat data bases. The system was approved by the Community authorities in July 1992 and has been neither altered nor modified in any way, apart from the section concerning the

creation of the new provinces, where purely formal changes were made without alteration to the substance.

With regard to the possibility of overcompensation occurring in certain sectors, this was caused by a combination of global economic factors that had an impact throughout the Community and led to a marked increase in the market price, as a consequence of shortages. Clearly, no provision can be made for such developments in any economic policy programme based on objective data and, therefore, no responsibility can be attributed with hindsight, nor can anyone be admonished who, at the time, was called upon to develop an agricultural policy that was quite radical, in view of the European and national situation at the time.

Integrated administrative and control system (IACS)

The observations made in paragraph 3.48 are not relevant, as the tolerance of 5 000 m^2 derives from the technical and scientific characteristics of remote sensing and has also been accepted by the Community body responsible for the integrated control system.

Clearly, if technological progress increases the accuracy of remote sensing the tolerance could be revised.

With reference to the observations made in paragraph 3.56, and as has already been explained at meetings with the representatives of the Court, the methods employed by Italy, i.e. the use of aerial photography or satellite pictures to cover the whole area prior to the period following the serving of the request and therefore a long time before the *in loco* check was carried out and cross-checked with the farmer concerned, makes a 48-hour advance-warning irrelevant, since the farmer has no chance to modify the areas already photographed by the authorities.

It should be pointed out that the observations concerning practices in France and Germany suggest that the system set up by the Italian authorities is more than satisfactory in comparison with those in the rest of the Community.

(CMO) for raw tobacco

Tobacco market. We do not share the Court's view concerning the quality of the tobacco, as we believe that, especially in the last few years, quality has improved (the Italian Bright and Kentucky varieties, for example, are highly sought after on the market).

As producer countries have repeatedly stated, it is impossible to value the tobacco correctly on the basis of the price paid by the processor, because it is also influenced by other factors. Price levels are affected by crop levels and world prices, as well as preferential duties.

Furthermore, in the first few years, all measures protecting and supporting the market were cut (reimbursements, subsidies), forcing the sector to reorganise without any form of "safety net".

There was no appropriate internal restructuring process based on a revised plan for the sector, especially as it was impossible to use any type of subsidy - national or otherwise -

to modernise and standardise holdings and reorganise quotas. These were all consequences of the ban on subsidies on tobacco and the inflexibility of the quota system, which made it impossible to transfer quotas easily since the scheme had no compensation or definitive transfer mechanisms which would have enabled new, young producers to enter the sector.

However, we share the view expressed in the Commission study that there is a need to increase the scope of specific aid at the next reform.

Market balance and budget situation

The observation made regarding the high level of tobacco subsidies must be seen in the light of the highly labour-intensive nature of the sector in comparison with other farming sectors. The subsidies create a high level of employment in the regions concerned and help to increase the earnings of a large number of workers.

According to estimates, approximately 180 000 full-time jobs are supported directly or indirectly by the subsidisation of tobacco in Italy alone.

More generally, given the low level of self-sufficiency, quotas for producer countries should be increased. This would boost employment far more than alternative activities.

Complexity of the new scheme

We share the view that the scheme is rigid and complex, and this prevents it from employing more elastic and efficient compensation schemes while requiring a major administrative effort from the Member States.

During the first year of its adoption the basic Regulation contained a contradiction, which in turn led to the failure to conduct the checks identified by the Commission.

According to the provisions, Member States had to set up a computerised data base by the end of 1995, making processors responsible for supplying the producers' data, which was to be used to calculate the quotas for 1993 and 1994. At the same time, Member States were made responsible for checking the data while they were engaged in setting up and consolidating the data base to enable them to assign quotas to the producers directly from 1995 onwards and carry out appropriate checks on the allocation.

It follows that the responsibility for the failure to carry out the checks cannot be attributed to the administration, which took all the precautions possible within the constraints described above.

Italy has always called for checks to be stricter and more wide-ranging, with on-the-ground checks (carried out by Italy since 1993 and approved for all Member States by the Commission from the 1995 harvest onwards) and the possibility to impose penalties to deter fictitious producers and processors who fail to fulfil their obligations.

Italy is the only country to have legislated for conditions and selection procedures for the recognition of processors and has also continued to call for additional control measures and penalties, including an improved definition of producers to ensure that quotas are assigned correctly.

Additional checks have also been carried out in warehouses and in the fields ever since the reform was introduced, using aerial photography (then still at an experimental stage) and cross-checking the data base information with cadastral data and other information on the cultivated areas.

Therefore the failure to set up a specific control agency for tobacco did not lead to a reduction in the quality of the controls, which were qualitatively and quantitatively adequate, as has repeatedly been acknowledged by Commission monitoring departments.

We must stress that quality controls of the tobacco are carried out in accordance with current Community Regulations.

If the Commission believes control measures need to be introduced over and above those currently in force, especially with regard to quality control, the agency would need to be set up and co-financed.

Direct income support

We do not share the views expressed by the Court of Auditors concerning income support because it would be impossible to convert to activities that were similarly labour-intensive, nor concerning quality, which has levelled off as a consequence of insufficient support.

We similarly oppose quota buy-back arrangements, which will lead to producers abandoning their activity, and the lowering of guarantee levels.

We accept the approach contained in the reform proposed by the Commission, but it must leave sufficient scope to take account of the characteristics in each producer country.

Above all, the scheme needs to be simplified and made more flexible. This would help a new generation to take over and production to improve as desired.

CHAPTER 6 - EUROPEAN REGIONAL DEVELOPMENT FUND

Support for aid schemes

Paragraph 6.56. The committee monitoring the Industry and Service multiannual operational programme targeted small-scale projects with Measure 2.1 (Selective support for investment and innovation in industrial SMEs), as can be seen from the committee report of 14 February 1997.

As a consequence of and in accordance with this approach the monitoring committee decided on 16 December 1997 that Measure 2.1 funding could not be awarded to projects with a budget of more than LIT 18 billion (cf. the committee report of 16 December 1997).

Concurrent drawing and overlapping of aid

Paragraph 6.63. There needs to be a clearer definition by the European Commission of the fields of intervention covered by the various Funds with regard to the notion of

first-level processing so as to avoid possible overlapping of aid as found by the Court in Calabria.

CHAPTER 7 - EUROPEAN SOCIAL FUND

The partnership

Paragraph 7.18. The composition of the monitoring committees is as follows:

- Objective 1 — Human resources: 58 full members and observers;
- Objective 1 — Multiannual operational programmes: 52 full members and observers;
- Objective 3 — 50 full members and observers;
- Objective 4 — 50 full members and observers.

Paragraph 7.19 d). The committees monitoring Objective 1 Human Resources and Objectives 3 and 4 each met twice in 1996:

- Objective 1 — Human resources: 12 March 1996 and 14-15 October 1996;
- Objective 3 — 27-28 June 1996 and 14-15 November 1996;
- Objective 4 — 29-30 June 1996 and 23-24 October 1996.

The private sector

Paragraph 7.26. In its communication of 15 October 1993 the Commission confirmed that the safety courses are admissible for Objective 4 funding. Nevertheless, the Emilia-Romagna region suspended the funding of all safety-related activities for 1997.

Paragraph 7.27. The difficulty regarding co-financing by SMEs relates to the management of the ESF at Community level. The national and regional authorities are, however, trying to launch programmes bearing in mind the prioritising of SMEs and the planned participation of the bodies responsible for the OPs.

Examination of systems

Paragraph 7.42. Commission Decision C(97) 1035/6 of 23 April 1997 (SEM 2000) modified the system for certifying expenditure, requiring the expenditure actually incurred by the training providers in a calendar year to be certified (datasheets 1 and 4) rather than the expenditure incurred by the final beneficiary, or the public body providing the financing, as had originally been allowed.

While not opposing the modifications, the Minister of Employment pointed out to Commissioner Flynn in communication No 5446 of 9 December 1997 that altering the perspective while programmes were already running would necessitate profound and immediate procedural changes that would not be desirable at a time when the management of the ESF was already so complex. During the discussions leading up to the approval of the SEM 2000 datasheets the Commission also gave assurances that while the programmes were running the institutional, legal and financial characteristics of the Member States as partners would be respected, as provided for by the abovementioned decision. Further technical studies are needed to resolve the problem and more time is needed to implement the decision than provided for by the decision.

As regards Community initiatives, expenditure is currently certified on the basis of expenditure actually incurred by the bodies responsible for the programmes, as was agreed with the Commission when the programmes were launched.

National cofinancing

Paragraphs 7.52, 7.56 and 7.57. Until 31 December 1995 national co-financing for the ESF in Italy was managed on an extra-budgetary basis by the Ministry of Employment, in accordance with Section 25 of Act No 745/78 and subsequent amendments. Under Section 1(72) of Act No 594/95 the funds used for co-financing were transferred to the Treasury from 1 January 1996. To this end the Treasury and the Ministry of Employment issued a joint ministerial order on 12 July 1996 establishing a new system of financial management and creating procedures for coordinating the various operators involved. As a consequence, there was a slight delay in transferring resources to the regions although the deliberations of the Interministerial Committee for Economic Planning had already been approved. In the meantime some regions financed national contributions out of their own resources and were later reimbursed by the Treasury Ministry. The accounting problems caused by this transfer of powers were resolved by the Member State in collaboration with the Commission's DG V.

The 1990-93 operational programme managed by the region of Sicily is a special case. The requests for payment for 1992 and 1993 and the concomitant reprogramming of resources are being validated by the Commission. In this case too, the situation has been examined and discussed with DG V.

Paragraph 7.53. Please see paragraph 7.42 for comments on the method of certifying expenditure.

Paragraph 7.54. To bring national contributions into line with Community contributions the administrative measure of 18 December 1996, registered by the Court of Auditors on 18 February 1997 and published in the Gazzetta Ufficiale on 21 March 1997, redrafted the deliberations of the Interministerial Committee for Economic Planning for 1994 and 1995 on the basis of the ESF programming. The deliberations for 1996 were adopted on 18 December 1996 and the deliberations for 1997 and 1998 were approved on 20 March 1997, taking account of previous financial programming. These measures made it possible to transfer the national contributions to the regions in time.

CHAPTER 8 - EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND (EAGGF GUIDANCE)

Audit of expenditure incurred under Council Regulation (EEC) No 866/90

According to Official Journal C 198 of 18 November 1997, during 1996 the Court of Auditors conducted audits of some projects financed under Regulation (EEC) No 866/90.

We assume that these were audits of projects concerning the processing and marketing of agricultural products that form part of the regional MOPs in the Objective 1 regions, about which we have no knowledge.

Audit of expenditure incurred under Council Regulation (EEC) No 2328/91

Regulation (EC) No 950/97 (formerly Regulation (EEC) No 2328/91) aims to improve the efficiency of agricultural structures by means of support measures to improve living and working conditions, encourage young farmers to set up, introduce accounts, offer vocational training, and provide compensatory allowances for farmers in less-favoured areas.

As regards the observations concerning the late payment of investment aid and compensatory payments, this was due to the long gap between the end of the programming for 1989-93 and the start of the 1994-99 operational programmes.

In some regions the interval was almost two years and this prevented the deployment of resources for 1994-99, making it impossible for many regions to fulfil their multi-annual commitments to farmers concluded prior to 1994, as they had run out of funds.

Therefore, several regions were able to allocate investment aid and compensatory allowances (under Regulation (EC) No 950/97) only after the new operational programmes had been approved.

- Investment aid: in 1996 LIT 147 155 063 819 was paid out in investment aid, leading to a refund of LIT 45 507 043 502, while for the period from 1994 to 1996 a total of LIT 379 584 205 000 was paid out (LIT 292 100 095 000 for non-Objective 1 regions and LIT 87 484 110 000 for the Objective 1 regions) leading to a request for a total reimbursement of LIT 117 730 565 094 from the EAGGF-Guidance section.

- Compensatory payments: in 1996 alone expenditure incurred amounted to LIT 188 513 218 657, leading to a refund of LIT 105 405 948 459 (LIT 76 399 844 000 for non-Objective 1 areas and LIT 112 113 373 000 for Objective 1 regions); in the period from 1994 to 1996 a total of LIT 308 183 894 000 was allocated (LIT 132 666 251 000 for non-Objective 1 areas and LIT 175 517 642 000 for Objective 1 regions) leading to a total refund of LIT 166 081 521 000.

Although Table 8.4. (Expenditure on major EAGGF-Guidance measures) contains no data for Italy for 1995 and 1996, the Commission was correctly supplied with the information (communication No 5205 of 28 June 1996 relating to payments effected in

1995 and communication No 5016 of 27 June 1997 relating to payments effected in 1996).

In response to the observations made by the Court of Auditors concerning Calabria, ministerial circular No 5196 of 4 August 1997 was sent to the Court containing the clarifications requested with regard to the region in question.

CHAPTER 20 - ANALYSIS OF EAGGF-GUARANTEE AND FISHERIES EXPENDITURE

While understanding the need for the paying agencies to send their annual accounts to the Commission within the deadline, we are slightly perplexed as to why the provisions need to be implemented in the manner set out in the document presented by the Commission to the EAGGF Committee on 17 December 1997.

The proposed percentages are too high, especially as the advance payments would be reduced from 11 February and the same thing would apply to the following month's advances, i.e. to the current measures to be financed from the next budget, which, for any number of reasons, could be higher or lower than that of the previous year. The penalty applied would therefore have financial consequences linked to market developments the following year.

It is also impractical for this to enter into force once the accounts for 1997 have been closed, as contracts have already been concluded with the certifying bodies and they would need to state the penalties for delays in completion in relation to the proposed penalties.

We also have serious doubts concerning the scale of the reductions indicated in the Commission document as there was no definition of the "serious inadequacies", the concept stemming from a document that was considered incomplete or qualitatively flawed from the point of view of verification.

Finally, we would point out that the provisions in question would need to be adopted by a Commission regulation in the same way as was the case for the reduction in advances for expenditure effected after the deadlines laid down (Regulation (EC) No 296/96).

NETHERLANDS

OFFICE OF THE PERMANENT REPRESENTATIVE
OF THE KINGDOM OF THE NETHERLANDS
TO THE EUROPEAN UNION

25 March 1998

Follow-up to the annual report of the Court of Auditors for the 1996 financial year

As part of the third phase of the SEM 2000 initiative, it was agreed that the Commission would ask the Member States to set out the measures they had taken in response to the observations made by the Court of Auditors in its annual report so that the Commission could take them into account in its follow-up report to the discharge authority. In letter No XIX/D/00573 of 22 January 1998 DG XIX asked the Netherlands to reply by 15 March 1998 to the observations which the Court of Auditors made in connection with the Netherlands in its annual report for 1996. You will find this reply below.

Paragraph 1.10 Late establishment of own resources
The Court of Auditors states that in the Netherlands, as in other Member States, the customs duties payable on incomplete declarations are not always entered into the accounts on time. This point is still being investigated (see paragraph 1.63 below) and the findings should be forwarded around 1 April 1998.

Paragraph 1.63 Equivalent compensation under inward processing
The Court of Auditors notes that, in the Netherlands, equivalent compensation was not applied in the manner provided for in Community legislation. Meanwhile, the Netherlands has taken the measures necessary to bring this practice into line with the legislation. The Commission also asked for further information in Mr Mingasson's letter No XIX/D/00509 of 22 January 1998. The Netherlands organised an investigation in response. If possible, the findings will be sent to the Commission by 1 April 1998.

Paragraph 3.29 Per hectare aid for arable crops
The Court of Auditors finds that the statistical basis for the original calculation of the base areas and yields is not entirely satisfactory. Council Regulation (EEC) No 837/90 lays down the confidence intervals to be complied with when determining areas and cereal production in order to ensure statistical reliability. In the case of areas, the standard error for the total area under cereal cultivation may not exceed 1% (or 5 000 hectares, at the discretion of the Member State). The Court of Auditors notes that Eurostat's report to the European Parliament in November 1994 on statistical systems for measuring area, production and yield indicated that at that time only Denmark, Germany, France and the United Kingdom were able to provide statistics of the required accuracy. As the statistical uncertainty is not spelled out in the abovementioned report, the risk of overestimating or underestimating the base areas and yields cannot be quantified. The Court of Auditors states that the most important and persistent budgetary implications probably result from cases in which the base area is not achieved. They are likely to result from initial overestimation of the base area, which hides the real overshoots and thus saves the Member State from sanctions.

Regulation (EEC) No 837/90 states that the statistical information to be supplied by the Member States may be based on censuses or sample surveys. For information based on sample surveys, the Regulation lays down the abovementioned provisions on statistical reliability. For censuses on the other hand, the Regulation does not contain any provisions on reliability.

The base area established for the Netherlands is determined from area censuses taken from the annual agricultural statistics. Eurostat has no doubts about the reliability and quality of the area statistics obtained in this manner.
There is thus no reason to assume that the Netherlands was allocated too high a base area.

Paragraphs 5.32, 5.33, 5.34 and 5.35 Customs checks/Veterinary checks in the beef sector

These observations relate to a Court of Auditors' enquiry into the treatment of consignments of frozen meat which were exported from the Community and then re-imported (in part) for various reasons. This beef had been sent to Egypt with export subsidies. The purpose of the enquiry was to determine whether an export subsidy had been paid wrongly for the proportion of the consignment that had been rejected. The Court of Auditors published a report on this enquiry in February 1997.

The Netherlands did not fully understand the Court of Auditors' conclusions. As these conclusions may have been based in part on misunderstandings in the Court of Auditors in connection with such matters as the organisation of the customs and veterinary checks, the system was again explained in detail in letter No DA97/259 of 14 August 1997 (copy attached). The Court of Auditors had not replied to this letter by the time the annual report was published and the report did not appear to take the Dutch comments into account. In view of the above, and the Commission's replies to the annual report (see below), no further steps have so far been taken.

The Netherlands is pleased to note that the Commission states in its reply to the Court's observations that it is willing to improve its system of informing the Member States to ensure standard treatment of cases where rejected products are returned from third countries. The Netherlands is waiting for the UCLAF investigation announced by the Commission which will take place in the relevant Member States in cooperation with the competent authorities. The Court of Auditors also points out in its report that there are no precise Community regulations on the treatment of returned goods.

In response to the findings set out in paragraph 5.35(e) of the annual report, which result from investigations carried out by the Dutch authorities at the request of the Court of Auditors into an export transaction by a Dutch firm (involving ECU 0.1 million in export refunds), the paying agency responsible has now initiated a recovery procedure against the firm in question.

Paragraph 6.62 Concurrent drawing and overlapping of aid

In paragraph 6.62 the Court of Auditors deals with the dual financing of a project in Flevoland by the ERDF and the ESF. The Court of Auditors made the same comment in its report on its visit to the Province of Flevoland. In March 1997 the Netherlands replied as follows in a letter to the Court of Auditors:

> 45% of the new multi-service centre is financed by the ERDF. The annual rent which the Vocational Training Centre receives for the new building as administrator of this centre is based on the net construction costs, i.e. with the ERDF contribution deducted. The Vocational Training Centre is obliged to rent out the premises to third parties at a rate which will at least cover the costs. Sometimes the projects carried out in the centre receive assistance from the ESF. The Province of Flevoland considers there to be no question of dual financing in such a case. Only the body carrying out the project subsidised by the ESF (in this case a course) receives assistance from the ESF. If the course were to be organised on premises

other than the multi-service centre, the body implementing the project would still receive the same contribution.

The Netherlands still maintains that the provision of ESF assistance to the organisers of courses held in the multi-service centre should not be considered by the Court of Auditors as dual financing.

Paragraph 6.95 The SME initiative

According to the Court of Auditors, assessment of the impact of the measures is hindered by the inconsistent data on the number of small firms used at the planning stage. The Netherlands is surprised that the Court of Auditors has only now come out with this remark and not in the inspection report on which the Province of Flevoland has already expressed its observations. The impact indicators for the programme relate mainly to employment in Flevoland (15 000 extra jobs) and growth in the gross regional product. Employment in the region was still used as an important indicator after further discussions with the Commission. The number of small firms is not an assessment criterion in the programme. Incidentally, figures are available on the number of small firms in the Province of Flevoland. Quantitative data concerning the pre-SPD period are contained in the programming document and the figures are updated every year.

9.9, 9.14 and 9.45 FIFG, PESCA and coherence with programme objectives

In connection with the Financial Instrument for Fisheries Guidance (FIFG) and the Community initiative PESCA the Court of Auditors notes that there has been a difficult start and a delay in implementation in the Netherlands (and in various other Member States), leading to a low level of utilisation of the appropriations available. The Court of Auditors also states that the FIFG financial assistance envisaged to attain the multiannual guidance programme (MGP) objectives (modernisation of the fishing fleet) was clearly insufficient.

The Netherlands is now making a considerable effort to speed up implementation of the flow of subsidies from both the FIFG and PESCA. The Netherlands does not agree with the Court of Auditors' opinion that the Dutch modernisation measures are unsatisfactory. It should first be pointed out that the Dutch modernisation effort is voluntary, as in other Member States. Second, the economic situation of the Dutch fleet is such that fishing activities normally cover costs or make a profit. The provision of more money under the FIFG programme does not lead to more capacity which has to be modernised.

The Netherlands has done as much as it can to modernise the fishing fleet. Additional national funds were provided for this purpose under the "restructuring package" agreed with the sector in early 1996. These funds have not been used in full. The Dutch Government is discussing a continuation of the modernisation effort with the fishing industry.

Paragraph 9.30 The Community's fishing vessel register

The Court of Auditors notes that the Commission report on the implementation of the MGP at the end of 1995 could not include up-to-date data for the Netherlands (and Italy) on the changes that had taken place in their fishing fleet as the Commission had not received any information from the Netherlands for a long period.
The Netherlands has now supplied this information and the Dutch fishing fleet is thus included.

Conclusion

The Netherlands hopes that the information contained in this letter is sufficient and is always prepared to reply to any questions or comments.

Enclosures: 1

Letter of 14 August 1997 from the Dutch Finance Ministry to the Head of the General Court of Auditors

Own resources; control of Egyptian beef

In your letter of 23 March 1997 you enclosed the report of 26 February 1997 (ref. F11117N/BM/FB WP97-301) drawn up by the European Court of Auditors following its control of the (re-)importation of beef from Egypt. Unfortunately, dealing with this report took longer than normal. We would make the following comments in reply.

Introduction
The report by the European Court of Auditors contains the findings of the control which was said to have been carried out at the Dutch customs and/or veterinary departments in Vlissingen on 14 October 1996 to examine the conditions under which (re-)imported frozen beef of Community origin which had been rejected by Egypt between 1993 and 1996 had been placed under a customs procedure and controlled. However, there was no control at the Dutch customs and/or veterinary departments on 14 October 1996. There were plans for a visit by a Court of Auditors control team to the Netherlands from 4 to 8 November 1996, but this control was restricted to 4 November. In the period leading up to the control, the Dutch authorities repeatedly stated that detailed information was needed if the control was to be organised properly since there were no longer any files for the control period in question at Vlissingen customs post now that documentation was centralised at the taxation and customs department in Apeldoorn.
The Court of Auditors provided this detailed information for only one ship before the visit on 4 November. The Customs Service handed over these files during the control visit.
As the Court of Auditors had not wished to provide any advance information about other consignments, the control ended on 4 November as the files were not available. It was, however, agreed that the Court of Auditors would provide more detailed information about the other consignments to be controlled. One letter on this subject which the Court of Auditors sent on 5 November 1996 (ref. BM/FB/F10765NI) did not reach the Finance Ministry, via the General Court of Auditors, until 8 January 1997. The Dutch authorities provided the Court of Auditors with a series of documents on 17 February 1997. They then received the control report dated 19 February 1997.

It is therefore not clear what exactly the report is referring to. This makes it extremely difficult to reply to the report. The extent to which the Court of Auditors has noted and/or taken account of the documentation provided on 17 February 1997 is also unclear. In view of the time which elapsed between the date on which the information was sent and the date of the report, we assume that it has not been taken into account.

We were surprised by the whole procedure surrounding this control, which is unlike anything experienced during previous controls. We feel that the general conclusions drawn on the basis of an extremely restricted control are unintelligible or at least insufficiently explained.

As we also get the impression that the procedure for implementing Community legislation in the Netherlands was not made completely clear, a brief account is given below. Finally, attention is drawn to specific findings in the report.

We would also point out that, contrary to what the Court of Auditors appears to think, it is not the authorities but the declarant who places a specific consignment of goods under a customs procedure.

II. Procedural provisions of Regulation (EEC) No 3665/87
Customs checks
Veterinary checks

II.1 Regulation (EEC) No 3665/87

This Regulation contains provisions relating to entitlement to export refunds on agricultural products. The provisions of relevance to the investigation are listed below:
(a) The refund shall be paid only on written application by the exporter, who must submit an export declaration for that purpose (Articles 47 and 3).
(b) No refund shall be granted on products which are not of sound and fair marketable quality, or on products intended for human consumption whose characteristics or condition exclude or substantially impair their use for that purpose (Article 13).
(c) The day of export shall be used to establish the quantity, nature and characteristics of the product exported (Article 3(4)).
(d) The products must have left the customs territory of the Community in the unaltered state within 60 days (Article 4(1)).
(e) In the case of export by sea, the refund is not paid until there is proof that the goods are shipped direct to a port in the non-member country specified or, if the ship calls at a port within the territory of the European Union, until there is proof that the goods have been re-exported within 28 days (in the case of transhipment) or until there is a declaration that the goods have not been transhipped there (Article 6a). The Dutch authorities do not consider that this article contains any provisions for goods returning from a non-member country to the European Union.
(f) For a differentiated refund, the product must have been imported in the unaltered state into the non-member country 12 months after the export declaration was accepted (Article 17). Products shall be regarded as being in the unaltered state if there is no evidence of processing (Article 17(2)).

II.2 Customs checks
In accordance with Regulation (EEC) No 386/90, the customs service checks exports of agricultural products for which agricultural refunds have been requested. The checks relate to the export declaration (type, weight, sound marketability) and whether the goods are leaving the customs territory of the Community in an unaltered state and are based on the T5 control copy. The customs service does not check whether the goods are imported into the non-member country. The exporter has to provide evidence to the paying agency processing the refund application (in this case the Marketing Board for Livestock, Meat and Eggs) that the goods have been imported into the non-member country specified or a different non-member country. The paying agency assesses the evidence submitted and can carry out a check in the country of destination.

If Community goods are exported, they lose their Community customs status under point (8) of Article 4 of the Community Customs Code. If these goods return to the customs territory of the Community, they are subject to customs supervision under Article 37 of the Customs Code. Generally speaking, this means that their identity is supervised during customs warehousing or transit. If the returned goods are to be released

for free circulation, further measures are taken under Article 844 of the provisions for the implementation of the Community Customs Code (Regulation (EEC) No 2454/93).

II.3 Veterinary checks

A general account is given below of the procedure followed by the National Inspection Service for Animals and Animal Products (RVV) when consignments of veterinary products are sent to a non-member country as a consignment which is freely marketable in the European Union and are then returned to the Community. This covers both returned goods forwarded to other non-member countries and returned goods re-imported into a Member State of the European Union. This procedure is based on the following premisses:

* consignments of veterinary products sent from a Member State to a non-member country must satisfy the requirements laid down in the Community rules applying to those products;
* if the returned goods are destined for a Member State of the European Union, veterinary risks must be ruled out;
* if the returned goods are destined for a non-member country and if there is a risk to human and animal health, the consignment must be refused and destroyed.

The procedure followed by the RVV is similar to that laid down in *Directive 90/675/EEC laying down the principles governing the organization of veterinary checks on products entering the Community from third countries*. Returned goods forwarded to non-member countries are treated as veterinary products in transit (from one non-member country to another). Returned goods destined for the Netherlands or another Member State of the European Union are treated as veterinary products from non-member countries.

The Dutch customs and veterinary authorities have agreed that the customs authorities should inform the RVV when consignments of veterinary products are returned. The importer must present the returned consignment to the official veterinarian at the border inspection post together with a border crossing document in accordance with *Commission Decision 93/13/EEC laying down the procedures for veterinary checks at Community border inspection posts on products from third countries* (model laid down in Annex B to the Decision) and the accompanying veterinary certificates and documents. The importer must indicate the destination of the consignment on the border crossing document. Various procedures apply depending on destination.

A. Third-country destinations

If the consignment is destined for a non-member country, the official veterinarian follows the regular procedure for consignments originating in a non-member country and destined for another non-member country in accordance with the relevant provisions of *Directive 90/675/EEC,* in particular Articles 7 and 12 which are expanded upon in *Commission Decision 93/14/EEC laying down the methods of veterinary checks for products from third countries in free zones and free warehouses, in customs warehouses, as well as during the time of transport from one third country to another via the Community.* There is thus a check of whether the volume is the same as indicated in the accompanying documents. If goods in transit are stored, they are kept separate from goods which are to be released for free circulation on the territory of the European Union. This requires storage in a free warehouse which is sealable by customs. Apart from the normal customs arrangements for the opening and closing of these warehouses, the RVV supervises entries, storage and withdrawals in the cold stores and cold store units. These consignments do not need to be physically checked under Community rules. Furthermore, no new health certificate is needed for export to another non-member

country. If there is any suspicion of an irregularity in connection with the consignment of veterinary products, the official veterinarian at the external border inspection post will conduct a physical check, which may be followed by laboratory tests.

B. European Union destinations

Returned consignments destined for the Netherlands or other Member States of the European Union are treated as products with third-country status. When re-imported into the Community, these veterinary products must satisfy Community requirements for the import of these goods into the Community or the specific control conditions of the Member State for which they are destined. The official veterinarian checks the destination of the consignment on the basis of the accompanying documents and the frontier entry document. The inspection of documents must show that the consignment was originally sent to the non-member country as freely marketable from the veterinary angle. The official veterinarian checks that the consignment corresponds with the accompanying documents. He also checks that the packaging is identified and not open or damaged and bears the required (EU) marks (if stipulated for the products in question) or, in the case of products which have not been packaged separately, that the container has been sealed by the authorities of the country of origin. The official veterinarian inspects the consignment to ascertain whether it complies with the Community rules in force. As a result of these controls, he decides whether the consignment should be admitted to the territory of the European Union. The consignment is rejected if it does not satisfy the requirements laid down.

C. Conclusion

The Court of Auditors inspectors note that, since the meat of Community origin had been subject to a full veterinary check when it was first exported, no new checks were made, whatever the reasons for the rejection by the Egyptian authorities. They also conclude that, as there was no veterinary check, it is impossible to give an opinion on the health aspects of the re-exported products.

In view of the above, the Dutch authorities consider that consignments of beef of Community origin which are returned from Egypt and then stored in transit in a free warehouse sealed by customs in accordance with Community rules do not require veterinary checks for the issue of a health certificate. They do not therefore accept the conclusions of the Court of Auditors.

III. Entry of frozen meat (returned goods) by sea

III.1 Clearance

All sea-going vessels calling at a Dutch port must be cleared. As part of the clearance procedure, a distinction is made between the entry of Community goods and the entry of non-Community goods. A Douane 11 document is drawn up for the non-Community goods which are to be unloaded. The goods recorded on the Douane 11 document could include goods which have previously been exported from the European Union (returned goods). This is regularly mentioned in the Douane 11 document. Furthermore, returned goods are often declared in advance.

If the returned goods are veterinary products, they are recorded as not marketable in the EU. The product is then given special attention by customs and a veterinarian is called in.

III.2 Unloading

If the goods being unloaded are veterinary products, controls are tightened up. A distinction has to be made between general cargo and consignments loaded in containers. Tighter control is possible only if the immediate packaging is visible. It relates to the

quantity, marks and numbers and origin of the goods. In some places the goods are stored in a cold store immediately after unloading. In other places they have to be carried a short distance since not all cold stores are in the immediate vicinity of where the goods are unloaded.

III.3 Storage

Frozen products are normally kept in cold stores with customs status. Returned consignments of meat are kept in warehouses subject to stricter official supervision in view of the risks involved.

The goods enter the cold store under cover of an IM-7 document or are registered by the administration. There are regular physical checks on entry and records are made.
Data relating to such aspects as quantity and weight drawn up by outside bodies acting on behalf of the declarants are also used in the checks.

III.4 Checks during storage

During storage, checks are conducted on the basis of the firm's documentation and records. Contrary to what the Court of Auditors states in its report, use *is* made of stock records. There is therefore no point in the customs service keeping its own records and, furthermore, this is not required by the Community Customs Code or other documents.
All warehouses (cold stores) are subject to official supervision during working hours. Outside working hours, all access points are officially closed. The official supervision of cold stores may be regarded as constant supervision since customs officials are always present.
From the veterinary aspect, the control of veterinary products not satisfying EU quality standards must be considered tight. The products have to be kept in specific areas which are locked outside working hours and subject to official supervision during working hours. The National Inspection Service for Animals and Animal Products (RVV) also exercises supervision during storage.

III.5 Processing of stored goods

Requests to process veterinary products are never considered without the RVV's consent. If authorised, this processing occurs under permanent customs supervision. The RVV also visits the premises to supervise these cases.

III.6 Withdrawal

Goods are always withdrawn from cold stores under cover of a T1 document. An official check is made of the goods on withdrawal and a record is made of the findings.

III.7 Inspection of exports

Where appropriate, the ship's bill of lading is inspected on loading and transhipment. The clearance procedure for the relevant T1 documents is also closely scrutinised.

IV. Specific comments on the report

IV.1 Customs checks

In paragraph 2 the Court of Auditors makes a number of comments on customs checks in the Netherlands.
At point (a) the Court of Auditors states that the goods are treated as T1 goods despite their Community origin. The Court of Auditors considers this to be wrong. In view of the Community rules on the matter (in particular point 4 in Article 8 of the Community Customs Code), exported goods should be treated as T1 goods, especially in the case of

returned goods (see also IV.2 below). Without further explanation, we cannot understand why the Court of Auditors made this comment.
At point (b) the Court of Auditors states that the customs does not supervise the goods stored in warehouses and does not keep stock records. In view of the comments in section II above, this comment too cannot be understood without further explanation.
At point (c) the Court of Auditors states that there is no procedure for the discharge of transit documents which guarantees that all the goods are re-exported. We do not consider this conclusion to be correct since the discharge procedure is set out in detail in the Community Customs Code and in the provisions for the implementation of the Community Customs Code. This comment too cannot be understood without further explanation.
At point (d) the Court of Auditors states that the goods were exported under cover of a T1 document and were not subject to specific checks. From what was already stated above, it can only be concluded that the goods lost their Community customs status, with the result that they had to be carried under cover of a T1 document. Checks also take place within the warehousing system. For that reason, these comments too cannot be understood without a more detailed justification.

IV.2 Export transactions by Bonis International NV

Preliminary comment
In its letter No BMIF10145NI of 11 March 1996 the Court of Auditors asked the Netherlands for information on the company Bonis International NV of Vlijmen which had exported a consignment of beef to Egypt. The Court of Auditors had information that this consignment had been refused in Egypt and had been taken to Antwerp. The Netherlands was asked to investigate the whereabouts of this consignment (see letter).
As a rule, the Netherlands does not conduct any inspections at the Court of Auditors' behest. However, an exception was made as there might have been an irregularity in this case. On 21 May 1996 the General Inspectorate paid a short visit to the final destination of the consignment. The Coordinating Department in the Ministry of Agriculture sent a report on the findings of the investigation to the Court of Auditors in letter No iz/961229 on 16 July 1996.
In the telephone conversations between the Coordinating Department and the Court of Auditors leading up to the visit in November 1996 it was specifically asked on a number of occasions whether there was any link between the visit to Vlissingen customs post in connection with the beef returned from Egypt and the report on Bonis. The Court of Auditors always denied this.
The report by the General Inspectorate responded to the Court of Auditors' queries about the final destination of the returned consignment by stating that the beef ultimately turned up in Iraq. However, this report does not constitute a systems audit of the procedure followed by Dutch customs and veterinary departments. A number of unconnected quotations from telephone conversations in the "final conclusions" cannot, in our view, be regarded as such. This is also supported by the fact that the inspector does not allow these quotations to play any role in his final assessment on the returned status of the consignment in question.
In the report now available on the Court of Auditors' findings, it appears that the General Inspectorate's report on Bonis is, however, the main source for the conclusions on the procedure followed by Dutch Customs and the RVV. The Netherlands regrets that the Court of Auditors has used the Bonis report in this way.

Comments on the Bonis case

We would reply as follows to the report's findings on the Bonis case. The account given by the inspectors from the Court of Auditors contain a number of factual inaccuracies.

The report states that these export products were rejected by the Egyptian health department for reasons of poor quality. From the General Inspectorate's report 75.20.91 it cannot be concluded that the Egyptian health department rejected these export products for reasons of poor quality. On the one hand, it is claimed that part of the consignment was rejected because of a "bacteriological" defect. On the other hand, it is said to have been rejected because the percentage of lean meat was too low in part of the consignment. The reason for the rejection has thus not been established. In general, there are frequent problems involving the ratio between lean meat and fat when beef is imported into Egypt. The European Commission is aware of the problem.
The report also suggests that the whole consignment was rejected. In fact, only 84 000 of the approximately 344 000 kg consignment (net weight) was actually returned.

The report states that the goods were re-imported into the Community. However, there is no question of them having been re-imported into the European Union or of the Regulation on returned goods having been applied. Some of the consignment which was originally exported returned to Europe, where it was stored in transit in a cold store in Vlissingen and forwarded to Iraq. Furthermore, the consignment was unloaded not in Vlissingen but in Antwerp from where it was taken by lorry to the cold store in Vlissingen.

In the report the inspectors claim that the identity of the products could not be examined during the customs and veterinary checks carried out when the goods were in store or when they were eventually exported as no physical inspection (count, quality control) had been conducted.
A general account is also given of the procedures followed when exported goods are returned to the customs territory of the Community. These procedures are based on Community rules in the customs and veterinary sectors. These procedures were applied in the case in hand.

The inspectors state that the Dutch veterinary departments drew up the veterinary export certificate on presentation of the original certificate issued in Belgium for the export to Egypt.
As stated above, no certificate of this type is required for forwarding these goods to Iraq under the Community rules in force. The original health certificate drawn up for the export to Egypt was issued by the Dutch and not the Belgian veterinary authorities.

The report states that the Dutch inspection department noted various irregularities, including the fact that the Dutch health certificate was drawn up for beef which was finally exported to Jordan and not Iraq.
The report by the Dutch inspection department does indeed state that in November 1994 the Iraqi authorities appeared to be satisfied with a health certificate drawn up for goods exported to Egypt. Furthermore, it has already been explained that no new health certificate was required for forwarding the goods to Iraq. There is thus no question of an irregularity.

We would reply as follows to the comments in the Court of Auditors' report in connection with the indication in the documents of different ships and different

customers and the divergent data on the labels attached to the cartons when the goods were repackaged.
When goods are forwarded to a third country, it is obvious that there will be other customers and ships involved and that new data will be entered on the labels when the goods are repackaged. It should be pointed out in this connection that the returned portion of the consignment was repackaged under the supervision of the Dutch customs and veterinary authorities.

The inspectors concluded that it was clear that the Dutch authorities had not checked the identity or quality of the goods exported to Iraq.
The Dutch authorities cannot agree with this conclusion. The Dutch customs and veterinary authorities conducted the checks required by Community rules when the goods were in transit, in this case the customs supervision of the identity of the goods during warehousing and transit. From the veterinary aspect, this involved a control of documents and identity (in this case by the external border inspection post in Antwerp where the goods were unloaded) and supervision by the veterinary authorities during warehousing. These procedures are described in greater detail above.

Finally, the report concludes that the alleged defect in the control system applied to these goods means that undue benefits may have been obtained for these products when they were eventually exported. The Dutch authorities should accordingly demand the return of the refunds paid to Bonis.
We have given a reasoned explanation, with reference to the procedures in force, of why the Dutch authorities consider that there is no question of defects in the control system.

PORTUGAL

REPLY TO EUROPEAN COMMISSION LETTER No 573

OBSERVATIONS ON THE EUROPEAN COURT OF AUDITORS' REPORT FOR 1996

As requested in the European Commission (DG XIX)'s letter No 573 of 22 January 1998, we would inform you of the following.

VOLUME I - ANNUAL REPORT CONCERNING THE FINANCIAL YEAR 1996

Chapter 1 - Own resources

Paragraph 1.52

The Court of Auditors notes that in Portugal the examination of economic conditions claimed for the purposes of inward processing is carried out at the local level, not the central level as it should be.

To make the process of examining economic conditions claimed by traders more objective, a study is under way into the possibility of concluding cooperation agreements with the government departments best placed in terms of familiarity with general market conditions, the degree of availability of goods in the EU, differences in quality and technical specifications between Community and non-Community goods, and current prices.

Paragraph 1.60

The Court of Auditors notes that in Portugal rates of yield are not retrospectively verified by the customs authorities.

To tighten up the measures already adopted by the customs authorities in this area, we are currently studying a procedure for checks to be carried out by the fraud prevention and prosecution system of the Directorate-General for Customs and Excise, for the purpose of evaluating the rates of yield put forward for inward processing operations whenever the customs authorities have difficulty in carrying out such checks.

Chapter 3 - Market organisations - Plant products

Paragraph 3.29

The Court of Auditors notes that the statistical basis for the original calculation of the base areas and yields is not entirely satisfactory.

We acknowledge that the Court's observation is pertinent, and admit that in Portugal the available margin between the national base area and the total area to which an application for aid relates appears wide when compared with the other Member States, but would offer the following explanation.

1. Between the 1993/94 season and the 1995/96 season, the margin fell by 6%. This is a normal trend directly related to the fact that the number of producers getting aid is rising from year to year.

2. If the figures for the 1996/97 season are added to these figures, it can be seen that in the 1996/97 season the total area for which aid was requested came to 892 923 hectares, thereby bringing the margin to 15%.

3. The national base area, which comes to 1 054 000 ha, is divided up as stipulated by Regulation (EC) No 1300/96 of 5 July 1996. On the mainland we have 808 300 ha of non-irrigated land and 235 400 of irrigated land.

4. In the 1996/97 season, although the total area in receipt of aid was still less than the national base area, there was an overshoot with the irrigated area on the mainland and apportionment rates broken down as follows had to be applied:

Ordinary regime	Maize products	- 5.02%
Ordinary regime	Producers of other irrigated crops	- 47.78%
Simplified regime	Producers of irrigated crops	- 16.73%

5. The high level of apportionment rates applied shows that there is no risk of either an overestimation of the base area or of overshoots being hidden, as the Court of Auditors' report states.

6. Lastly, during the 1996/97 season the national base area was reduced to 1 040 810 ha., as 13 214 ha. was assigned to the special reserve for stocking density.

Paragraph 3.46

The Court of Auditors notes that in Portugal, at the end of 1996, the database and the alphanumeric system were still not sufficiently developed, which makes efficient administrative checks such as cross-checks impossible.

The Court's remark, as regards Portugal, relates to the identification of parcels. As the Commission has stated, the system was used in Portugal in 1996 in the 49 priority 'concelhos', and was fully used in 1997.

Chapter 4 - Common organisation of the market - Animal products

Paragraph 4.45

The Court of Auditors notes that in Portugal and other Member States the deadlines laid down by the IACS were not met.

All the facilities required by the IACS have been created. The last one (an alphanumeric identification system for agricultural parcels) recently became fully operational.

Paragraph 4.49

The Court of Auditors notes that in Portugal large producers have the required registers, but small producers still have difficulties in that area.

In Portugal the requirement to keep a livestock register laid down by Regulation (EEC) No 3887/92 was implemented without any support in national law until December 1996, when the publication of Decree Law No 245/96 created a set of rules for its implementation. However, it transpired that the subsequent publication of Regulation (EC) No 820/97 removed certain phase displacements in the national rules, which therefore need to be updated pending their implementation at any moment. At all events, this register has in fact been put into operation in farms already organised into farming businesses, which has not caused any problems. The same cannot be said of the smallholder producers who predominate in certain regions and whose socio-cultural situation is, unfortunately, likely to limit very substantially the likelihood of their keeping updated registers in the prescribed form. The relevant national authorities are, however, endeavouring to create conditions in which these difficulties can be overcome.

Paragraph 4.58

The Court of Auditors notes that in Portugal animals aged over two years had been counted as 0.6 LU instead of 1 LU as prescribed by the Regulation.

The situation described was the case until 1996 inclusive, when the mistake was discovered. It was corrected as from the entries for 1997. The relevant national authorities hope to be in a position shortly to give the corrections to the figures (for the number of producers, animals and incorrect payments) which arose out of this error in calculating LUs (livestock units) in respect of payments for the entries from 1993 to 1996.

Paragraph 4.74

The Court of Auditors notes that in Portugal controls at the two rendering plants visited were not operating effectively.

The steps deemed necessary to rectify the shortcomings detected have been taken at the Regional Directorates of Agriculture, whose technicians are responsible for carrying out the controls. The controls are now operating within the prescribed and recommended norms.

Chapter 7 - European Social Fund

Paragraph 7.17

The Court of Auditors notes that in Portugal the monitoring committees consist mainly of public servants, although national representatives have signalled to the Commission their willingness to increase the participation of partners in the future.

1. Although they do not usually participate in the monitoring committees for operational measures, employers and labour do participate in the monitoring committees for the (Community initiatives) ADAPT and Employment. They also have a meeting with the ESF Coordinating Committee every two months, are members of the board of directors of the IEFP (Instituto de Emprego e Formaçao Profissional - Employment and Vocational Training Institute) and have a seat on the Economic and Social Council (CES).

2. It is also felt that the fact that some representatives of employment and labour are promoters of training schemes would mean that they could not be regarded as participating in the committees in a completely independent manner.

Paragraph 7.27

The Court of Auditors notes that in Portugal SMEs do not meet the requirement to co-finance training operations funded by the ESF.

We would make the following points.

1. The funding of the training operations carried out from 1994 to 1996 was regulated by Article 7 of Executory Decision No 15/94 of 6 July 1994. This stipulated that all beneficiary bodies were required to contribute to the implementation of operations at rates ranging from 2.5% to 15%, depending on their scale and objectives and the type of trainees. It remained, however, possible to stay outside the joint contribution scheme where there were special rules on training subprogrammes for particular sectors. We would point out, however, that all the programmes, subprogrammes and measures were the outcome of direct negotiations between the national authorities and the European Commission. In addition, the requirement laid down in Article 5(3) of Regulation No 2084/93 for *"enterprises whose workers (...) are able to take part in training operations"* to finance a portion of the cost was expressly stated in Executory Decision No 15/94.

2. Current national law on this question (Executory Decision No 15/96 of 26 November 1996), in relation to private contributions, provides that: *"Private contributions from beneficiary firms shall be equal to the eligible remuneration of the staff being trained and may be reduced, in terms of amount and in cases to be laid down by legislative decision of the Minister for Training and Employment in accordance with the criteria relating to the size of the body concerned and the training arrangements, in schemes to be carried out during normal working hours."*

3. We have found not only that the requirement to contribute is being met but that the contributions vary according to the firm benefiting from the scheme and the arrangements for the training.

4. The overhaul of the national legislation on ESF operations in Portugal carried out at the end of 1996 has given SMEs easier access to the ESF, at the expense of large companies such as banks.

In particular, a pilot training programme for SMEs has been launched, with a view to incorporating young graduates into such companies, and the CI SME, which had already started to run, has been relaunched.

There are other programmes, such as RIME - Regime de Incentivos às Microempresas (Incentive Scheme for Mini-Companies), which also help to create jobs in smaller companies.

Paragraph 7.43

The Court of Auditors notes that in Portugal a number of projects under the PEDIP programme which had been conditionally approved and had not been funded were included by DAFSE in the final claims for 1995.

1. Sometimes, on grounds of necessity and because there is an intrinsic link between the investment component and the training component, a training scheme has to be started before the investment plan is put forward; the bodies concerned are subject to all the ESF rules but do not receive any ESF or national funding until their plans are approved. Meanwhile they incur expenditure which, if not included in the accounts for the year, ceases to be eligible and, if included, raises the question brought up by the Court of Auditors.

2. The approach taken by the national authorities was to consider such expenditure in the accounts for the year to which they relate. This is what was done at the end of 1995. However, at the end of 1996, amounts relating to projects which had not been approved by the time the accounts were closed were deducted from the expenditure for the year.

3. This state of affairs was discussed in detail with the PEDIP programme manager and it was concluded that national law in this area needed to be amended to avoid the procedure described by the Court.

Chapter 20 - Analysis of EAGGF-Guarantee and fisheries expenditure

Paragraph 20.4

The Court of Auditors notes that in the case of the paying agencies in Portugal the European Commission was unable to take a definitive clearance decision on the EAGGF-Guarantee accounts by the deadline laid down in the rules.

The following points need to be made.

1. On 17 February 1997, the Inspectorate-General for Finance (IGF), discharging the responsibilities as a certifying agency conferred on it by Decree-Law No 331-A/95 of 2 December 1995, issued certificates in respect of the annual accounts for 1996 produced by the Portuguese paying agencies, INGA - Instituto Nacional de Intervençao e Garantia Agrícola (National Institute for Intervention and Farm Guarantees) and IFADAP - Instituto de Financiamento e Apoio ao Desenvolvimento da Agricultura e Pescas (Institute for Funding and Support for Agriculture and Fisheries Development), as regards operations financed by EAGGF-Guarantee, together with reports setting out the findings of the inspections carried out for the purpose of issuing the certificates.

2. The European Commission sent the Portuguese authorities two letters, Nos 13 490 and 13 519, both of 26 March 1997, acknowledging *"the standard of the work done by the IGF auditors, who worked to short deadlines and with limited resources"* and stating that *"the account certification operations were carried out satisfactorily, and both the certificate and the audit report meet the special requirements for Commission documents and the requirements of Regulation No 729/70 and Regulations No 1663/95"*.

Nevertheless, the Commission, in the same letters, asked the certifying agency (the IGF) to carry out additional certification work on the accounts, specifically:

- to complete its spot checks on processes, both for INGA and for IFADAP (as the IGF auditors had not been able to carry out the full spot checks by the statutory deadline);

- to carry out physical checks, with INGA's officials, at certain public intervention storage premises.

It also asked for the findings of this extra work to be passed on to it by 30 June.

3. The additional work requested by the Commission (DG VI) was done by the IGF, while checks on the intervention stocks were carried out by INGA (beef and veal) and IVV (mixed alcohol). The findings were sent to the Commission on 20 and 30 June 1997 in the supplementary audit reports relating to IFADAP and INGA respectively, thus enabling the Commission to clear their accounts on 31 July 1997.

4. For the certifying of the 1997 accounts, and on the basis of practical experience acquired in 1996, it was possible to plan and carry out all the certification work by a deadline consistent with submitting the reports and certificates to the Commission on 10 February 1998.

Paragraph 20.13

The Court of Auditors notes that in Portugal the certifying body limited the scope of its audit opinion in respect of public storage.

We would make the following points.

1. The reason why the scope of the audit opinion for 1996 in respect of public storage was limited is that no physical inventory had been made of the intervention stocks as at 30 September 1996.

2. The Commission, in letter No 13 490 of 26 March 1997, asked the Inspectorate-General for Finance, as the certifying body, to carry out a stocktaking exercise at certain public storage premises, together with INGA.

3. Between the middle of May and the middle of June 1997, therefore, checks were made on the stocks of beef and veal and mixed alcohol, the only intervention products in the 1996 financial year, and on 30 June 1997 the Inspectorate-General for Finance issued an additional audit report withdrawing the reservation in the original certificate on the grounds that the discrepancies found between the results of the physical stocktaking exercise and the INGA records were not of material importance. It was then possible to confirm the figures notified to the EAGGF by INGA for the 1996 financial year.

4. The certificate relating to the 1997 accounts submitted to the Commission on 10 February 1998 contains a further reservation as to the quantities of intervention stocks of beef and veal (the checks on mixed alcohol did not give rise to any comments by the IGF). INGA's approach to carrying out a new physical stocktaking exercise gave rise to comments by the IGF and the Commission as regards the method of selecting the sample to be checked. INGA therefore carried out a new stocktaking exercise in January 1998, involving, in particular, the engaging of new refrigerated premises so that the intervention stocks of beef and veal could be completely reorganised. This operation is expected to be completed in the very near future, and the outcome of it will enable the IGF to reconsider its reservation on this point. Note that the consolidation of the existing rules in INGA as regards checks on stocks will eliminate the reasons why reservations were made in this area.

UNITED KINGDOM

COURT OF AUDITORS' ANNUAL REPORT CONCERNING THE FINANCIAL YEAR 1996

Response by the United Kingdom to the Court's observations

The references are to paragraphs in the Court of Auditors' annual report on Financial Year 1996 (Official Journal C348, Volume 40 dated 18 November 1997)

Chapter 1: Own Resources

Late establishment of own resources

1.10 In all Member States, the Court examined the extent to which national procedures ensure that, in accordance with Community legislation, customs debts are entered in the accounts at the appropriate time.

The Court observed that in the United Kingdom, where criminal proceedings are involved, customs debts are not established as soon as the conditions of Article 2 of Council Regulation No 1552/89 are fulfilled. In many cases, such debts are established prior to initiation of criminal proceedings but completion of criminal proceedings and successful prosecution takes precedence over arrears collection.

The UK understands the Court's concern and is actively reviewing administrative procedures in criminal cases so that Customs debts may be established as soon as the conditions of Article 2 of Regulation 1552/89 are fulfilled.

1.11 The Court observes that in the United Kingdom, the accounting system for managing cash deposits taken to secure potential tax debts does not allow separate identification of the deposits relating to Community own resources.

The present systems comply with the Community Customs Code, but the UK agrees with the Court that greater transparency would be desirable. However, it believes that changes to achieve this would incur costs disproportionate to the benefits. The UK is awaiting the Commission's communication on this subject, and will be pleased to respond to this.

Tariff classification

1.15 The Court observes that in the United Kingdom an error in the tariff had persisted for 17 years. The British authorities established and made available the underpaid duties for a period up to three years prior to the date of discovery of the error (December 1991). Duties foregone during the period of enquiry necessary to establish and correct the error were not made available. Late payment interest should apply to the underpayment made available more than three years late.

The UK accepts that a change to the UK Customs tariff in 1976 concerning sardines failed to remove an earlier sub-division for pilchards and that, as a result, some importers continued to enter pilchards to the wrong heading, which attracted a lower rate of import duty.

The error was brought to the UK's attention in December 1991. It took some time to investigate the problem and determine how much duty had been underpaid and by whom. Meanwhile the Customs automated entry system was amended from 1 March 1992. The arrears of duty, which needed to be partly estimated, amounted to £2,644,300.

The UK sought clearance from the EC's Duty Free Arrangement Committee (DFAC) for non-recovery of underpaid duty from importers, but DFAC ruled that the duty concerned should be recovered. Since an official error was involved, the UK chose not to pursue recovery action and accordingly wrote off the arrears and made the Own Resources available to the Commission in February 1995.

The UK notes that the Court believes that duties foregone during the period of enquiry necessary to establish and correct the error, as well as late payment interest, should be paid. The UK is awaiting the Commission's request for arrears and interest before proceeding further.

Duties payable on passengers' baggage

1.17 (We believe the reference should be to 1.16) The Court observes that in the United Kingdom an incorrect percentage was used for three years in the apportionment of own resource revenues from passengers' baggage. This led to an underpayment of traditional own resources between 1993 and 1995.

The UK authorities identified the error, disclosed the information to the Commission and made available an underpayment of £3.1 million ecu (£2.3 million) of customs duties in March 1996. The overpayment of VAT which was a smaller sum was adjusted in December 1996. The UK has provided the Commission with the information necessary to enable it to calculate the interest due.

Designation and enclosure of free zones

1.23 The Court undertook an investigation of the operation of free zones, including the administration of Tilbury Freeport which is both a free zone and a normal port. The Court observes that the free zone at Tilbury is not physically separated from the normal port, but operates as if it were a customs regime. It expressed concerns about the risks to Community own resources due to the removal of free zone goods, their replacement with similar goods from outside the free zone, and subsequent non-payment of appropriate customs duties under Article 201 of the Customs Code.

The UK recognises that the Tilbury free zone, as with other free zones, does not operate in a way which fully complies with the Community Customs Code. The Court's comments in its report have been brought to the attention of UK customs officers to emphasise the need for fully effective controls.

The UK understands that the reference in the Court's report to incorrect removal of goods from the free zone and their replacement by similar goods when the error was discovered, reflects comments made by the operator of Tilbury Free Zone when the free zone began operating in 1991. Whilst It is now too late to require payment of the duty due at that time, removal of incorrect goods has not been a problem since. The Customs team at Tilbury make frequent unannounced visits and trace selected free zone goods from start to finish to ensure that they are properly accounted for.

The UK welcomes the Commission's study of Community free zones and its decision as a result to bring forward proposals to modernise the legislation. These changes are expected to come into force from 1 January 1999 and the type of regime in place at Tilbury will be consistent with the new legislation. The UK does not therefore intend to modify its procedures to bring them into line with current legislation, which is expected to be superceded early next year.

Inadequacy of accounting follow-up of establishments and recoveries

1.111. The Court observes that in the United Kingdom enforcement measures are suspended and security in respect of recovery orders is not required whilst cases are pending with the customs authorities.

In the period under review, where importers had lodged appeals with Customs and Excise, amounts in dispute were required to be paid, secured by guarantee or covered by hardship provisions before the matter could proceed to tribunal stage. However, similar requirements did not apply to the initial review stage because Customs can overturn a decision at the review stage and decide that there are no grounds on which to enforce a customs debt.

Policy in the UK has now been changed and all appeals, at whatever stage, are subject to the lodging of a security except where a formal hardship application has been approved.

Chapter 3: Market organisations - Plant products

Area aid for arable crops

Base areas and treatment of overshooting

3.19 The Court notes that base areas (the average area in each Member State with certain crops over the period 1989 - 1991) have been established as an expenditure stabilisation mechanism. The Court observes that in some Member States, including the United Kingdom, several databases exist. As a result the calculation of the overshoot requires manual exchange of data between regional administrations increasing the risk of error, because of the lack of overall checks at national level.

The UK notes the Court's observation. The use of more than one database reflects the different payments systems in England, Scotland, Wales, and Northern Ireland. The UK ensures that all returns to the Commission are fully checked and complete.

Reliability of the statistics

3.29 The Court observes that persistent overshoots of some base areas in Member States, including the United Kingdom, may be the result of wrong estimations or changes in the areas cultivated with arable crops.

The UK notes the Court's observations but considers that this is only one possible explanation for the overshoots. As the Court goes on to observe, persistent undershoots may indicate initial overestimation of base areas which would have more important budgetary implications. The Court also observes that the UK was one of only 4 Member States which were able to meet the requirements of Council Regulation No 837/90 for accuracy of statistics by the required date.

The computerised database

3.39 The Court observes that a number of Member States (including the UK which has set up 4 regional databases) have established decentralised databases but that they should be compatible.

As noted above, the databases of the four UK Agriculture Departments are not directly linked, but manual procedures are in place to enable exchanges of information on land covered by another Department. This ensures that claims involving land in more than one Department are fully checked and the correct payments are made.

The integrated control system: selection of producers to be checked

3.51 The Court observes that in the United Kingdom risk assessment used for selecting applications for site visit checks were not sufficiently sophisticated to ensure that very large holdings were checked according to their weight in the area aid system.

The UK notes the Court's suggestion that a more sophisticated risk assessment system should be introduced in the UK so that more large holdings would be subject to inspection. It intends to introduce a new method in 1998, taking account of the Commission's views, which will meet this concern.

Conclusions

3.73 The Court observes that the regulations do not give precise enough instructions for calculating overshoot consistently and documentation in Member States does not allow proper control of the calculations and could lead to overpayments

The UK notes the Court's observations but is satisfied that it is fully complying with the Commission's implementing regulations as outlined in responses to 3.19 and 3.29 above.

On the particular points highlighted by the Court, the Scottish base area was not initially understated and therefore increased overall, rather the split between Less Favoured Areas and other areas was adjusted to reflect the actual situation. The Commission accepted this readjustment.

The UK accepts that, along with Spain and Germany, it used provisional figures as at 15 September for calculating arable aid area overshoot but believes that this takes account of the need to inform producers in good time of any extraordinary compulsory set-aside at the time of autumn sowing. The UK notes from the Commission's reply that it agrees with this method.

The UK notes the Court's observation that only using rotational set-aside, which is the lowest figure, when calculating maize base overshoot, underestimated that overshoot. The UK believes this was largely offset with the undershoot on other crops. The problem will also not recur given that there is now only one rate of set-aside.

The UK also notes the Court's observations about the method of rounding adopted by the UK when calculating the percentage rate of overshoot which led to lower sanctions. The UK agrees with the Commission's reply that the method adopted is correct otherwise penalties would be unjustifiably increased.

The UK accepts the Court's observation that the incorrect application of regulations in 1994 unduly penalised farmers. Those affected have now been paid the extra aid to which they were entitled with interest.

The Court's observations on the implementing regulation have been covered in the Commission's reply on that point.

3.77 The Court concludes from the findings set out in paragraphs 3.50 to 3.63 that some Member States do not comply with the regulatory requirements of traditional field inspection.

As noted in the reply to 3.51, the UK will be introducing a more sophisticated risk assessment method next year in consultation with the Commission.

Chapter 4: Common organisation of the market - Animal products
Beef and veal premium schemes and selected BSE related measures

Administration and control of premiums

4.45 Deadlines for creating computerised systems relating to identification and registration of animals under the Integrated Administration and Control System (IACS) have not been met in Member States visited.

The UK regrets that deadlines were not met, but agrees with the Commission's response which explains that setting up the IACS was a major technical and administrative task involving considerable investment and administrative reorganisation. Every effort was made by the UK to meet the deadlines and good progress has been made in many areas.

Identification and registration of animals

4.49 The Court observes that in the UK while large producers tend to have the required farm registers, smaller ones still have difficulties maintaining adequate records.

The UK accepts that small farmers have problems. The UK feels that many of these problems stem from the complexity of requirements under current legislation and would like to see simplification of legislation made a priority under CAP reform.

4.55 The Court observes that at least 10 per cent of livestock applications for premium, selected using risk analysis, must be subject to on-the-spot checks but the Court found that for suckler cow applications, some Member States, including the United Kingdom, examine only a sample of animals on farm, based on either the herd size or the number of animals claimed.

The UK notes the Court's observation but agrees with the Commission's reply that sampling on this basis is acceptable.

Additional payments

4.69 The Court observes that payment of aid for cattle was made under the Beef Payment Marketing Scheme in respect of a number of animals which were over thirty months old and therefore outside the scope of the scheme.

The UK notes the Court's observation but believes that payment of aid under the Beef Marketing Payment Scheme (BMPS) on animals over 30 months of age was legitimate. The BMPS does not stipulate an upper age limit, but requires that animals have been slaughtered for human consumption. The animals in question all satisfied the dentition test (ruling out animals with more than two permanent incisors) which, under the provisions of the Fresh Meat Beef Controls (No 2) Regulations determines whether animals may be used for human consumption. As outlined in its reply, the Commission has accepted the legality of this approach.

Reactivation of the calf processing premium

4.74 The Commission notes that there was lack of control to ensure that the beef that left an abattoir visited in the UK arrived at the rendering plant.

The UK notes the Court's concerns. It believes that slashing and dyeing carcasses effectively denatures the calves processed under the Calf Processing Aid Scheme. There is no evidence that such meat has ever been marketed for human consumption.

However in view of the continuing concern expressed by both the Court and FEOGA auditors, the UK authorities now require calf cadavers to be left intact to avoid any risk of diversion of the offals.

Trials are also taking place with a denaturant which would make calf meat unpalatable to humans and to see whether the stain can be treated with chemicals so that it permeates the flesh. These changes should be sufficient to allay the concerns expressed about the possible diversions of material between the abattoirs and the rendering plants.

Chapter 5: Certain procedural aspects of export refunds on beef and veal

5.13 *The Court notes action that should be taken by the Commission in the light of various fraud cases uncovered by the British and Spanish authorities.*

The UK is pleased to cooperate as fully as possible with the Commission and other Member States to uncover and prosecute fraud against the Community budget. At present there is no evidence to confirm involvement of a UK exporter in the diversion of beef exports destined for Africa to the Canary Islands. Enquiries are continuing.

5.35 The Court notes that inadequate checks have led to wrongful payment of export refunds and cites a number of examples of which 5.35(e) involves a French company which sold a consignment of beef rejected to by Egypt to a UK company which shipped it to South Africa.

Although a UK company was involved, the acts took place outside UK territory. The UK will be happy to give any assistance necessary to pursue this case.

Chapter 6: European Regional Development Fund

Reliability of final payment claims

6.25 The Court notes that the final claim for an Objective 2 project in the East Midlands in 1990-91 exceeded eligible expenditure.

The UK accepts that eligible expenditure specified in the final declaration of expenditure was higher than the figure subsequently determined by audit of final claims. This arose as a consequence of procedures operating at the time which allowed final claims arriving after the final declaration of expenditure to be allowed.

This procedure did not, per se, result in overpayments being made to final beneficiaries. The UK recognises that in one case a small element of costs relating to salaries (about 3 per cent of total project costs and at a 25 per cent ERDF grant rate, involving grant expenditure of about 0.8 per cent of total costs), was allowed as eligible despite the auditor not being able to identify supporting documentation.

For current programmes the terms of the offer letter are more specific about programme closure including instructions on when final claims must be audited and submitted so as not to forfeit the right to grants. Reminder letters will be sent.

6.26 The Court notes that their audit of a sample of seven projects under one operating programme revealed that final declared expenditure should be reduced by 2.4%

The UK accepts that eligible expenditure specified in the final declaration of expenditure was higher than the figure subsequently determined by audit of final claims. This arose as a consequence of procedures operating at the time which allowed final claims arriving after the final declaration of expenditure to be allowed.

The Government Office are in correspondence with the Commission to determine the correct eligible expenditure for the programme and whether a repayment to the Commission is due. The UK will make repayment as necessary.

Taking account of factors influencing the closure of programmes

6.33 The Court observes that subsequent sale of an ERDF assisted project was not accounted for in the final declaration.

The Government Office concerned did not include the sale in the final declaration because it was not informed by the project sponsor that the sale was proposed until 22 July 1995 and the final declaration had been submitted on 29 June 1995. The UK is satisfied that the Government

Office concerned took appropriate steps by informing the Commission of details of the proposed sale of the ERDF-aided asset within one week of it being made aware of this sale by the sponsors. The Commission advised that the amount would be recovered from the final project payment but did not do this. As the Commission response recognises this was due to a misunderstanding which it is in the process of rectifying.

Quality of final reports

6.37 The Court observes that the content of final reports does not always meet requirements set and the time taken by the Commission to approve them causes unnecessary delay as was the case for projects in the East Midlands.

The UK understands the Court's concerns but it should be noted that closure of programmes is often concentrated in a short period of time towards the end of the six month period allowed - when most audited final claims are received. It is not surprising that some discrepancies occur and that further clarification is required.

The Government Office submitted the final declaration of expenditure within the deadline of six months and provided clarification on this and other aspects of the final report to the satisfaction of the European Commission.

The UK also notes that the Commission's reply states that substantial improvements have been made as regions follow more closely the outline of the model reports provided.

The assessment of the impact of measures in favour of undertakings on regional development

6.95 The Court observes that the quantified data on businesses in receipt of aid used in the planning stage in Merseyside was inconsistent.

The UK notes the Court's observation but agrees with the Commission's reply that a misunderstanding arose from the existence of two different indicators and that the final report, approved by the Commission in May 1996, contains the correct reference.

Chapter 7: European Social Fund

Audits of particular aspects

The partnership

7.17 The Court observes that employer and employee representatives as such are not involved in UK monitoring committees.

The UK notes the Court's observation. Earlier this year the Government announced that the involvement of employer and employee representatives in the Structural Funds would be for the individual monitoring committees to encourage in whatever manner seemed to be most valuable. The Confederation of British Industry and the Trades Union Congress have now nominated representatives to sit on national Monitoring Committees.

The private sector, Objective 4 and ADAPT

7.21 The Court observes that the UK decided to use other objectives, not Objective 4, for training delivery.

An Objective 4 plan covering England, Scotland and Wales is currently being agreed with the Commission and formal approval is expected very shortly.

Chapter 8: European Agricultural Guidance and Guarantee Fund, Guidance Section (EAGGF-Guidance)

Audit of expenditure incurred under Council Regulation (EEC) No 866/90

The viability of aided enterprises

8.13 The Court notes that written reports under Council Regulation 866/90 are insufficiently detailed to allow adequate assessment of the viability of applicants.

The UK agrees on the importance of assessing the overall viability of aided enterprises prior to the approval of aid. It does in fact carry out detailed checks and prepare detailed evaluation reports. However, it acknowledges that in some cases in Wales, these reports may not have been included on the case file. This has now been rectified.

Monitoring and control arrangements

8.21 The Court observes that although inspection visits were adequately documented, only one physical inspection per project is normally undertaken, even in cases where projects are implemented over a long period.

The UK notes the Court's concern and confirms that measures are now in place to ensure a greater level of monitoring. In particular, the Department of Agriculture for Northern Ireland confirms that all projects are inspected by technical advisors at final claim stage and that larger projects are subject to intermediate inspection while the Welsh Office has recently introduced procedures which will ensure projects are inspected at least twice, including a post-payment check.

Exclusion of ineligible expenditure

8.28 The Court cites two cases of ineligible expenditure in respect of machine spare parts and an engineer's salary.

As the Court notes in its report, procedures to ensure the exclusion of ineligible expenditure have now been implemented.

System of aid for investments in agricultural holdings

8.40 The Court observes that required labour inputs are not independently verified but only subject to a reasonableness check and suggests a cross

check with the number of animals claimed for other grants. The Court further notes considerable delays on a number of occasions before aid was paid to beneficiaries.

The UK agrees on the importance of prompt payment to beneficiaries and will look into the situation in Wales, where the inspection was carried out. In England, all but 3 per cent of payments were made within national deadlines of 3 months from receipt of claim.

The UK require applicants for grant to make a declaration in terms of stocking and cropping. This information is used in combination with standard labour factors to assess labour input (MWU). Claims over a certain value will automatically be selected for an inspection with a further random element built into inspection procedures. Each year, a number of development plans accounts are checked. The UK considers this system provides adequate safeguards, taken with other checking procedures. However, the UK will consider the point made by the Court as it is quite possible that more than one inspection can be carried out on the same farm business depending on the amounts contained in the claims received.

Results of audit

8.66 and 8.67 The Court observes that in the early years of the first and second programming periods, take up of measures available was significantly slower than anticipated. Eligibility criteria were therefore relaxed to encourage greater participation but the scheme continued to be underutilised. The UK agreed on two occasions in the final year to reductions in funding for operational programmes. An unanticipated rush of late applications resulted in a shortfall of funding available under the operational programme and the Commission allowed an amount of 23.5 Million ECU for the new programming period.

The UK has noted the Court's observations and is working with the Commission to improve expenditure forecasting.

Chapter 9: Common policy on fisheries and the sea

Financial Instrument for Fisheries guidance (FIFG)

9.14 The Court observes that the start of the initiative was complicated by its multi-fund character and the slow rate of implementation is reflected by the fact that Members States, including the United Kingdom, were unable to forward certified statements of eligible expenditure to the Commission at December 1996.

The UK notes the Court's observations and agrees that greater simplification of the scheme is required in order to make it more effective

The Community register of fishing fleet

9.31 The Court observes that the fleet register is still incomplete in a number of respects. For the UK, as at September 1996, 404 boats or 5% of the fleet were not classified by segment.

The UK shares the Court's concerns over accuracy of fleet data held by the Commission and supports the conclusion that further improvements are needed.

As the Commission points out in its response, the large number of unclassified vessels for the UK appears to be the result of a communication problem with the Commission, since there are no missing segment codes in the national register. The UK will be happy to respond to any request from the Commission for further information.

Fleet tonnage

9.35 The Court observes that the total declared tonnage of the Community fishing fleet is unreliable due to different measuring techniques. Reference is not made to any particular Member State.

The UK shares the Court's concerns over the accuracy of the declared tonnage of the Community fishing fleet and agrees that there should be a consistent and reliable method of calculating tonnage.

Follow up to special report on restructuring capacities of fishing fleets

Coherence with programme objectives

9.45 The Court notes that the operational programmes for aid for the cessation of fishing does not provide for aid for construction projects in countries such as the United Kingdom which, according to the Commission Report on the implementation of the MultiAnnual Guidance Programmes for the fishing fleets (MAGP) do not respect the MAGP objectives.

The UK shares the Court's concerns and confirms that it is difficult to meet the Commission's requirements in respect of the MultiAnnual Guidance Programmes for the fishing fleets.

Chapter 20: Analysis of EAGGF-Guarantee and fisheries expenditure

Accreditation of paying agencies and the certification of accounts

20.4 The Court observes that UK certified accounts were not delivered to the statutory deadline.

The UK acknowledges that the UK accounts were submitted late. As the Commission notes in its response, a number of Member States had problems in the first year of the new certification procedure. In the UK difficulties arose primarily due to the implementation of a new accounting system. Any reconciliation problems should, as indicated in the report, be resolved by the 1998 FEOGA year.

20.7 The Court observes that the UK paying agencies provided final accounts to the certifying body late; that reconciliation problems existed between the operational and accounting records of the agencies; that some accounting records were not reconciled with those of the coordinating body responsible for making returns to the Commission, and that declarations were made on the basis of advances to the paying agencies rather than payments by them to beneficiaries.

Difficulties arose mainly from the implementation of a new accounting system However, accounts for all the UK paying agencies were cleared in July. None of the problems identified were sufficiently serious to justify exclusion of the accounts from the clearance decision. Four out of the seven paying agencies received no qualification to their accounts, whilst others received only minor qualification.

The UK does not accept however that monthly declarations were based on advances to the UK paying agencies rather than actual payments made by them to beneficiaries. They are based on actual claim payment requirements of the paying agencies.

It is acknowledged that difficulties exist with recoveries where timing differences occur between recoveries by paying agencies and payment to the Commission. From October 1997, monthly declarations from UK paying agencies will comprise both actual expenditure and receipts.

Any reconciliation problems should, as indicated in the report, be resolved by the 1998 FEOGA year.

Areas of limited assurance

20.13(a) The Court observes that it was unable to obtain assurance on certain transactions because of lack of sufficient evidence, for example because of inadequate physical checks on quantities in respect of public storage in the United Kingdom

The UK notes the Court's observation. The UK authorities have been able to demonstrate that the procedures implemented at that time in the UK had written Commission approval and to demonstrate that the UK had in place an effective stocktaking system.

EC Regulation 618/90 has now been repealed and replaced with Regulation 2148/96. As a result of these changes, the UK has revised its procedures to ensure full compliance with the requirements of the new regulation.

SWEDEN

Swedish Cabinet Office - Finance department, 3 February 1998

Following the European Council's decision to ask the Member States to report on action taken in response to the Court of Auditor's observations, I am enclosing our reply to the comments which directly affect Sweden. I am also sending the report to the President of the Court of Auditors.

I am pleased to see that the Commission is adopting a serious approach to following up the observations made by the Court in its Report. Since most of the Community's budget is administered by the Member States, their reports on measures taken at national level form an important part of the follow-up process.

In this connection I would like to stress once again Sweden's strong support for the Commission in its bid to improve the implementation of the budget and financial control, particularly the work being undertaken as part of the SEM 2000 initiative. In my view it is of vital importance that the progress made in this area should now be consolidated and implemented.

Later this month the Commission is going to table a proposal which will cover, among other things, a new Structural Fund Regulation for the next programming period. It is therefore important for the experience obtained over the years in the field of the Structural Fund and reflected in the Court's Report to be put to use and have an impact on the proposal.

(signed)

Erik Asbrink

EUROPEAN COURT OF AUDITORS ANNUAL REPORT FOR 1996

Sweden's report on action taken on the Court of Auditors' observations

The numbers refer to paragraphs in the Annual Report (published in OJ C 348/97, p. 1).

Volume I - Annual Report concerning the financial year 1996

Chapter 6 - European Regional Development Fund

Paragraphs 6.7-6.8

The Court's remarks are concerned with delays in implementing Objective 6. It should be emphasised that its comments do not contain any reference to errors. The Court points out, among other things, that no claims had been submitted for payment from the Regional Fund at 31 December 1996 and that the first payment to a final beneficiary only took place in July 1996.

Subsequently, both the second advance for 1995 and the first and second advances for 1996 were paid out. The combined amount paid out from the Regional Fund for Objective 6 has now reached ECU 35 827 million. By October 1997 decisions had been taken on 48% of the total Objective 6 funding for 1995-99 and by December of the same year 19% of resources had been paid out. These figures show that the Court of Auditors comments were based on the fact that the programme started late and in general needed a "running-in" period to be able to operate as intended.

Chapter 7 - European Social Fund

Paragraph 7.26

The Court of Auditors notes that staff employed in the public sector (hospitals) were receiving training under Objective 4. The Commission was requested to clarify the eligibility of such expenditure.

Sweden has been granted a derogation for the public sector (health care). The Commission's account of the background to this derogation is fully endorsed by the Swedish Government. In its negotiations with the Commission on Objective 4 the Government stressed precisely this aspect of equal opportunities and the fact that the public health care sector is vulnerable to competition. The fact that public employees can be given notice in Sweden was also stressed.

Volume II - Statements of assurance

Chapter 20 - Analysis EAGGF-Guarantee and fisheries expenditure

Paragraph 20.13

Under the system for offsetting storage costs for sugar, the company is compensated each month for the quantities of sugar stored in warehouses or silos. Article 16 of Regulation (EEC) No 1998/78 states that where discrepancies are found the amount of the reimbursement shall be adjusted. The silos are emptied and cleaned approximately every three years and at this point any discrepancies between the recorded amount and the

actual amount are discovered. These discrepancies were adjusted in the company's storage balance at 30 September each year, but not reported by the company to the Agriculture Board (the authority responsible for making payments) which is why no action was taken by the Board.

The discrepancies arising in the course of the 1997/98 marketing year have been notified to the Agriculture Board and a payment of SEK 146 720 was made to the company in January 1998.

Following a request from the Agriculture Board, information has also been received about the discrepancies that occurred during the 1994/95 and 1995/96 marketing years. The Agriculture Board has come to the conclusion that for the 1994/95 marketing year the company received compensation for too large a quantity, which meant that the company will have to repay SEK 165 834. For the 1995/96 marketing year, the Agriculture Board found that SEK 7 708 must be paid to the company. Adjustments in relation to discrepancies for 1994/95 and 1995/96 will be made in March 1998.

The procedures of the authority concerned now include ensuring that information regarding possible discrepancies is received from the company. The relevant inspection established a distribution of risk for all the warehouses. Each warehouse is inspected twice a year and each storage operation is checked for all the warehouses.