II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 November 1993

on the clearance of the accounts presented by the Member States in respect of the expenditure for 1990 of the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section

(93/659/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [1], as last amended by Regulation (EEC) No 2048/88 [2], and in particular Article 5 (2) thereof,

After consulting the Fund Committee,

Whereas, pursuant to Article 5 (2) (b) of Regulation (EEC) No 729/70, the Commission, on the basis of the annual accounts presented by the Member States, clears the accounts of the authorities and bodies referred to in Article 4 of that Regulation;

Whereas the Member States have transmitted to the Commission the documents required to clear the accounts for 1990; whereas on the basis of Article 5 (2) (a) of Regulation (EEC) No 729/70 the 1990 financial year began on 16 October 1989 and ended on 15 October 1990;

Whereas the Commission has carried out the checks provided for in Article 9 (2) of Regulation (EEC) No 729/70;

Whereas Article 8 of Commission Regulation (EEC) No 1723/72 of 26 July 1972 on making up accounts for the European Agricultural Guidance and Guarantee Fund, Guarantee Section [3], as last amended by Regulation (EEC) No 295/88 [4], provides that the decision to clear the accounts must include the determination of the amount of expenditure incurred in each Member State during the financial year in question recognized as chargeable to the Guarantee Section of the Fund; whereas Article 102 of the Financial Regulation of 21 December 1977 [5], as last amended by Regulation (Euratom, ECSC, EEC) No 610/90 [6], provides that the outcome of the clearance decision, that is to say, any discrepancy between the total expenditure booked to the accounts for a financial year pursuant to Articles 100 and 101 and the total expenditure recognized by the Commission when clearing the accounts, is to be booked under a single article, as additional expenditure or a reduction in expenditure;

Whereas, pursuant to Articles 2 and 3 of Regulation (EEC) No 729/70, only refunds on exports to third countries and intervention to stabilize agricultural markets, respectively granted and undertaken according to Community rules within the framework of the common organization of the agricultural markets, may be financed; whereas the inspections carried out show that part of the expenditure declared by the Member States does not meet those conditions and therefore must be disallowed; whereas the amounts declared by each of the Member States concerned, those recognized as chargeable to the EAGGF Guarantee Section and the differences between

[1] OJ No L 94, 28. 4. 1970, p. 13.
[2] OJ No L 185, 15. 7. 1988, p. 1.
[3] OJ No L 186, 16. 8. 1972, p. 1.
[4] OJ No L 30, 2. 2. 1988, p. 7.
[5] OJ No L 356, 31. 12. 1977, p. 1.
[6] OJ No L 70, 16. 3. 1990, p. 1.

the two amounts together with the differences between the expenditure recognized as chargeable to the EAGGF Guarantee Section and that charged in respect of the year are shown in the Annex to this Decision;

Whereas the expenditure relating to implementation of the milk improvement programme declared by Greece amounting to Dr 343 019 260 is not covered by this Decision, given that further examination of this case is necessary in view of the progress made carrying out the concluded contracts; whereas these amounts have therefore been deducted from the expenditure declared by the Member State in respect of the year under consideration and will be cleared subsequently;

Whereas the expenditure disallowed under this Decision with regard to the 1990 financial year for Spain includes an amount of Pta 29 492 159 232, for Greece an amount of Dr 369 593 980 and for Italy an amount of Lit 526 309 029 147, in respect of the additional levy in the milk and milk products sector which should have been collected by those three Member States; whereas these corrections take account of the provisional increase decided by the Council in the guaranteed total quantities of milk in those three Member States for the 1993/94 marketing year; whereas the corrected amounts must be charged to the Member States in question pursuant to this Decision; whereas the Commission reserves the option of applying, in a subsequent decision on the clearance of accounts, a financial correction corresponding to the entire excess deliveries if its verifications fail to confirm the effective application of the milk quota regime in Greece, Spain and Italy within the time limits fixed by the Council; whereas this Decision is nonetheless immediately applicable;

Whereas expenditure disallowed under this Decision with respect to the 1990 financial year for Greece and Italy includes Dr 859 315 339 and Lit 15 697 544 030 respectively in respect of export refunds in the tobacco sector; whereas the same applies to Greece in respect of tobacco premiums, the amount being Dr 3 632 654 033; whereas, in view of the failure to comply with certain Community provisions, the corrected amounts should be charged to those Member States pursuant to this Decision; whereas, however, the special circumstances of these cases justify re-examination by the Commission of the disallowance during the present clearance in the light of the findings of verifications currently underway; whereas this Decision is nonetheless immediately applicable;

Whereas Commission Decision 90/644/EEC [1], as last amended by Decision 92/315/EEC [2], concerning expediture for 1988, does not cover expenditure of Dr 48 065 056 733 declared by Greece in respect of production aid for cotton; whereas Commission Decision 92/491/EEC [3], as last amended by Decision 93/524/EEC [4], concerning expenditure for 1989, does not cover expenditure of DM 760 841 808,23 in respect of export refunds, Dr 58 005 839 787 in respect of production aid for cotton, intervention storage for baled tobacco and the grubbing-up of vines, of Pta 1 766 026 057, FF 499 800 000 and Lit 103 600 591 415 for the grubbing-up of vines and £ Irl 293 514 782,91 and £ 19 702 437,99 in respect of export refunds; whereas the Commission's inquiries into this expenditure have now been closed; whereas this Decision should lay down the further action to be taken with regard to these cases;

Whereas Decision 92/491/EEC fixed, subject to revision, financial corrections in respect of export refunds at Bfrs 101 462 150 for Belgium, Pta 626 592 450 for Spain, £ Irl 5 990 097 for Ireland and £ 4 051 029 for the United Kingdom; whereas the Commission undertook to re-examine this disallowance if the Member States concerned, by carrying out additional checks on the expenditure in question, were to provide evidence to eliminate doubts as to the justification for the refunds declared; whereas the inquiry subsequently carried out in Irish export firms showed no anomalies with regard to the declaration; whereas, therefore, the amount for Ireland should be charged to the Community; whereas, on the other hand, the inquiries carried out in Belgium, Spain and the United Kingdom showed anomalies with regard to the declarations made; whereas definitive financial corrections of Bfrs 22 646 327 for Belgium, Pta 24 002 044 for Spain and £ 51 169 for the United Kingdom should therefore be fixed; whereas the amounts of Bfrs 78 815 823 for Belgium, Pta 602 590 406 for Spain and £ 3 999 860 for the United Kingdom should consequently be charged to the Community budget;

Whereas Decision 92/491/EEC fixed, subject to revision, a financial correction of Bfrs 71 307 680 in respect of the basic co-responsibility levy and the additional levy which should have been paid by Belgium in the cereals sector; whereas, however, the Commission undertook to re-examine the disallowance on condition that Belgium provided the evidence requested; whereas scrutiny of the documents provided and the findings of the inspections carried out revealed no information casting doubt on the justification for the financial correction or showing that the situation with regard to checks on collection of the levy had substantially changed; whereas, on the other

[1] OJ No L 350, 14. 12. 1990, p. 82.
[2] OJ No L 166, 20. 6. 1992, p. 36.
[3] OJ No L 298, 14. 10. 1992, p. 23.
[4] OJ No L 252, 9. 10. 1993, p. 27.

hand, the correction can be reduced by Bfrs 30 275 887 on the basis of that information ; whereas, therefore, this amount should be charged to the Community budget ;

Whereas Decision 92/491/EEC fixed, subject to revision, financial corrections at DM 4 217 752 for Germany in respect of export refunds for beef and veal and DM 1 609 109 in respect of private storage for beef, at FF 1 500 000 for France in respect of the late payment of part of the minimum price in the context of production aid for peas and field beans, at Lit 1 241 513 490 for Italy in respect of financial compensation for withdrawals of fruit and vegetables and at Esc 80 074 799 for Portugal in respect of financial compensation for withdrawals of fish in the fisheries sector ; whereas, however, the Commission undertook to re-examine the disallowances on condition that the Member States provided the evidence requested ; whereas, on the basis of the evidence provided by the Member States in question, the abovementioned amounts can be charged to the Community budget ;

Whereas Commission Decision 92/491/EEC fixed, subject to revision, a financial correction of Dr 120 296 927 for Greece in respect of export refunds granted in the cereals sector in view of the illegal grant of national export subsidies ; whereas, however, the Commission undertook to re-examine the disallowance ; whereas the additional verifications carried out by the Commission revealed no information casting doubt on the justification for the financial correction ; whereas, therefore, that correction should now become definitive ;

Whereas the Court of Justice, by its judgment of 22 June 1993 in Case C-56/91 Greece v. Commission [1], annulled the accounts clearance decision for 1988 in respect of Greece in so far as it had adopted a financial correction of Dr 245 233 relating to the sale by Greece of beef held in intervention storage ; whereas, as a result, and in accordance with Article 176 of the Treaty, the abovementioned amount must be charged in this clearance of accounts to the Community budget for 1988 ;

Whereas, in its judgment of 14 July 1967 in Joined Cases 5, 7 and 13 to 24/66, Kampffmeyer and Others v. Commission [2] and its judgment of 30 November 1967 in Case 30/66 Firma Becher v. Commission [3], the Court of Justice found that the Commission bore non-contractual liability to make good the damage caused by Decision 63/553/EEC [4], whereby it had authorized Germany to maintain a protective measure in the cereals sector ;

whereas, in the abovementioned judgments, the court also decided that the amounts to be actually paid to the parties concerned depended on the question of damages and the interest which would be awarded under German law ; whereas under national legal procedures Germany fully compensated the parties concerned ; whereas, on the basis of the information forwarded by the German Government and in accordance with the joint liability of the German Government and the Commission for the damage caused, the Commission should charge DM 955 721, being half of the amount paid by Germany, to the Community budget ;

Whereas, in respect of Belgium, the inquiries regarding exceptional market support measures in the pigmeat sector and the processing of butter into butteroil are now closed, as are the inquiries in respect of Italy regarding the quality of durum wheat bought into intervention and inspection of withdrawals of fruit and vegetables, the inquiry in respect of the Netherlands regarding the eligibility of butter bought into intervention between 1982 and 1987 and the inquiries in respect of Ireland and Italy with regard to public storage in the context of intervention in the beef and veal sector ; whereas this Decision lays down the further action to be taken with regard to these cases ;

Whereas Article 8 of Regulation (EEC) No 729/70 provides that the financial consequences arising from irregularities or negligence are not to be borne by the Community if they are the result of irregularities or negligence attributable to administrative authorities or other bodies of the Member States ; whereas some of those financial consequences which cannot be borne by the Community budget should be included within the scope of this Decision ;

Whereas this Decision is without prejudice to any financial consequences which may be determined in any subsequent clearance of accounts in respect of national aid or infringements for which the procedures started under Articles 93 and 169 of the Treaty are now being implemented or were terminated after 30 April 1993 ;

Whereas this Decision is without prejudice to any financial consequences determined by the Commission, during a subsequent accounts clearance procedure from current investigations underway at the time of this Decision, from irregularities within the meaning of Article 8 of Regulation (EEC) No 729/70 or from judgments of the Court of Justice in cases now pending and relating to matters covered by this Decision,

(1) Not yet published in the ECR.
(2) [1967] ECR, p. 245.
(3) [1967] ECR, p. 286.
(4) OJ No 146, 11. 10. 1963, p. 2479/63.

HAS ADOPTED THIS DECISION :

Article 1

The Member States' accounts concerning expenditure financed by the EAGGF Guarantee Section in respect of 1990 are hereby cleared as indicated in the Annex.

Article 2

The amounts arising under points 3 of the Annex are to be taken into account as part of the expenditure referred to in Article 3 of Commission Regulation (EEC) No 2776/88 [1] for the month of November 1993.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 25 November 1993.

For the Commission

René STEICHEN

Member of the Commission

[1] OJ No L 249, 8. 9. 1988, p. 9.

ANNEX

BELGIUM

EAGGF Guarantee Section expenditure Financial year : 1990	Bfrs
1. **Expenditure recognized**	
(a) Expenditure declared by the Member State in respect of the present clearance	36 708 849 337
(b) Expenditure declared during the preceding year but excluded from that clearance	0
(c) Expenditure declared, excluded from the present clearance	0
(d) Expenditure declared, coming under the present clearance (a + b + c)	36 708 849 337
(e) Expenditure disallowed	244 678 086
(f) Total expenditure recognized (d + e)	36 953 527 423
2. **Expenditure charged**	
(a) Expenditure charged in respect of the present year	37 223 301 336
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	0
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0
(d) Total expenditure charged, coming under the present clearance (a + b + c)	37 223 301 336
3. **Expenditure chargeable to or payable to the Member State following clearance of the accounts** (2d − 1f)	269 773 913

DENMARK

EAGGF Guarantee Section expenditure Financial year: 1990	Dkr
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	8 873 891 435,98
(b) Expenditure declared during the preceding year but excluded from that clearance	0,—
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	8 873 891 435,98
(e) Expenditure disallowed	− 12 741 507,81
(f) Total expenditure recognized (d + e)	8 861 149 928,17
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	8 886 515 021,72
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	0,—
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	8 886 515 021,72
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	25 365 093,55

GERMANY

EAGGF Guarantee Section expenditure Financial year: 1990	DM
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	9 443 565 291,45
(b) Expenditure declared during the preceding year but excluded from that clearance	760 841 808,23
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	10 204 407 099,68
(e) Expenditure disallowed	− 12 138 098,27
(f) Total expenditure recognized (d + e)	10 192 269 001,41
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	9 444 879 736,04
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	760 841 808,23
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	10 205 721 544,27
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	13 452 542,86

GREECE

EAGGF Guarantee Section expenditure Financial year: 1990	Dr
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	375 713 512 722
(b) Expenditure declared during the preceding year but excluded from that clearance	106 070 896 520
(c) Expenditure declared, excluded from the present clearance	– 343 019 260
(d) Expenditure declared, coming under the present clearance (a + b + c)	481 441 389 982
(e) Expenditure disallowed	– 5 068 077 463
(f) Total expenditure recognized (d + e)	476 373 312 519
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	376 000 997 503
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	106 070 896 520
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	– 343 019 260
(d) Total expenditure charged, coming under the present clearance (a + b + c)	481 728 874 763
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d – 1f)	5 355 562 244

SPAIN

EAGGF Guarantee Section expenditure Financial year : 1990	Pta
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	277 982 315 185
(b) Expenditure declared during the preceding year but excluded from that clearance	1 766 026 057
(c) Expenditure declared, excluded from the present clearance	0
(d) Expenditure declared, coming under the present clearance (a + b + c)	279 748 341 242
(e) Expenditure disallowed	– 29 224 069 973
(f) Total expenditure recognized (d + e)	250 524 271 269
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	277 910 254 332
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	1 766 026 057
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0
(d) Total expenditure charged, coming under the present clearance (a + b + c)	279 676 280 389
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d – 1f)	29 152 009 120

FRANCE

EAGGF Guarantee Section expenditure Financial year: 1990	FF
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	35 969 122 771,86
(b) Expenditure declared during the preceding year but excluded from that clearance	499 800 000,—
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	36 468 922 771,86
(e) Expenditure disallowed	− 115 180 309,60
(f) Total expenditure recognized (d + e)	36 353 742 462,26
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	35 969 357 000,—
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	499 800 000,—
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	36 469 157 000,—
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	115 414 537,74

IRELAND

EAGGF Guarantee Section expenditure Financial year : 1990	£ Irl
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	1 285 174 312,84
(b) Expenditure declared during the preceding year but excluded from that clearance	293 514 782,91
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	1 578 689 095,75
(e) Expenditure disallowed	– 2 546 763,54
(f) Total expenditure recognized (d + e)	1 576 142 332,21
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	1 287 100 278,51
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	293 514 782,91
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	1 580 615 061,42
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d – 1f)	4 472 729,21

ITALY

EAGGF Guarantee Section expenditure Financial year: 1990	Lit
1. **Expenditure recognized**	
(a) Expenditure declared by the Member State in respect of the present clearance	6 370 613 428 380
(b) Expenditure declared during the preceding year but excluded from that clearance	103 600 591 415
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	6 474 214 019 795
(e) Expenditure disallowed	– 586 129 215 541
(f) Total expenditure recognized (d + e)	5 888 084 804 254
2. **Expenditure charged**	
(a) Expenditure charged in respect of the present year	6 394 446 710 610
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	103 600 591 415
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	6 498 047 302 025
3. **Expenditure chargeable to or payable to the Member State following clearance of the accounts** (2d – 1f)	609 962 497 771

LUXEMBOURG

EAGGF Guarantee Section expenditure Financial year : 1990	Lfrs
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	190 405 951
(b) Expenditure declared during the preceding year but excluded from that clearance	0
(c) Expenditure declared, excluded from the present clearance	0
(d) Expenditure declared, coming under the present clearance (a + b + c)	190 405 951
(e) Expenditure disallowed	31 116 620
(f) Total expenditure recognized (d + e)	221 522 571
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	221 522 571
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	0
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0
(d) Total expenditure charged, coming under the present clearance (a + b + c)	221 522 571
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	0

NETHERLANDS

EAGGF Guarantee Section expenditure Financial year: 1990	Fl
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	6 650 953 782,54
(b) Expenditure declared during the preceding year but excluded from that clearance	0,—
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	6 650 953 782,54
(e) Expenditure disallowed	− 88 004 857,32
(f) Total expenditure recognized (d + e)	6 562 948 925,22
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	6 650 433 675,19
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	0,—
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	6 650 433 675,19
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	87 484 749,97

PORTUGAL

EAGGF Guarantee Section expenditure Financial year: 1990	Esc
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	38 364 410 470,90
(b) Expenditure declared during the preceding year but excluded from that clearance	0,—
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	38 364 410 470,90
(e) Expenditure disallowed	136 223 980,—
(f) Total expenditure recognized (d + e)	38 500 634 450,90
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	38 364 410 472,50
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	0,—
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	38 364 410 472,50
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	− 136 223 978,40

UNITED KINGDOM

EAGGF Guarantee Section expenditure Financial year : 1990	£
1. Expenditure recognized	
(a) Expenditure declared by the Member State in respect of the present clearance	1 410 029 647,46
(b) Expenditure declared during the preceding year but excluded from that clearance	19 702 437,99
(c) Expenditure declared, excluded from the present clearance	0,—
(d) Expenditure declared, coming under the present clearance (a + b + c)	1 429 732 085,45
(e) Expenditure disallowed	4 318 215,59
(f) Total expenditure recognized (d + e)	1 434 050 301,04
2. Expenditure charged	
(a) Expenditure charged in respect of the present year	1 409 855 516,41
(b) Expenditure charged in respect of the preceding year, but excluded from that clearance	19 702 437,99
(c) Expenditure charged in respect of the present year, but excluded from the present clearance	0,—
(d) Total expenditure charged, coming under the present clearance (a + b + c)	1 429 557 954,40
3. Expenditure chargeable to or payable to the Member State following clearance of the accounts (2d − 1f)	− 4 492 346,64