II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 27 June 1977

on scrutiny by Member States of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund

(77/435/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43 and 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas, under Article 8 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy (3), as last amended by Regulation (EEC) No 2788/72 (4), Member States take the measures necessary to satisfy themselves that transactions financed by the European Agricultural Guidance and Guarantee Fund (EAGGF) are actually carried out and are executed correctly, to prevent and deal with irregularities and to recover sums lost as a result of irregularities or negligence ;

Whereas scrutiny of the commercial documents of undertakings receiving or making payments can be a very effective means of surveillance of transactions forming part of the system of financing by the Guarantee Section of the EAGGF and should therefore be applied throughout the Community ; whereas this scrutiny supplements other inspections already carried out by the Member States, particularly the direct inspection of transactions while they are being carried out and the scrutiny of book records of stock provided for in certain cases ; whereas, furthermore, national provisions relating to scrutiny which are more extensive than those provided for in this Directive are not affected by this Directive ;

Whereas the documents used as a basis for such scrutiny should be determined in such a way as to enable the activities in question of the undertakings to be fully scrutinized ;

Whereas it is for Member States to determine the frequency and scope of such scrutiny, particularly in the light of the nature of the transactions carried out under their responsibility and of the breakdown of the undertakings receiving or making payments according to their financial importance in the system of financing by the Guarantee Section of the EAGGF ;

Whereas, furthermore, it is necessary to provide for a minimum number of inspections of commercial documents ; whereas this number must be determined by a method which precludes substantial differences between the Member States by virtue of differences in the structure of their expenditure under the Guarantee

(1) OJ No C 133, 6. 6. 1977, p. 8.
(2) OJ No C 56, 7. 3. 1977, p. 80.
(3) OJ No L 94, 28. 4. 1970, p. 13.
(4) OJ No L 295, 30. 12. 1972, p. 1.

Section of the EAGGF; whereas, according to the information available, this method may be based on the number of undertakings of a certain importance in the system of financing by the Guarantee Section of the EAGGF;

Whereas the scrutiny of particular book records of stock kept by the undertakings should, in appropriate cases, be supplemented by comparison with other information enabling their accuracy to be verified;

Whereas the powers of the officials responsible for scrutiny and the obligations on undertakings to make commercial documents available to such officials for a specified period and to supply such information as may be requested by them should be defined; whereas it should also be stipulated that commercial documents may be seized in certain cases;

Whereas it is necessary to organize cooperation among the Member States in order to take into account the international structure of agricultural trade;

Whereas information collected during the scrutiny of commercial documents must be protected by professional secrecy;

Whereas an exchange of information at Community level should be introduced so that the results of the implementation of this Directive may be used to the best advantage;

Whereas, pursuant to this Directive, certain Member States must introduce a new system of scrutiny entailing *inter alia* the training of a team of specialized inspectors; whereas provision should therefore be made for a transitional period during which the number of inspections may be more limited,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive relates to scrutiny of the commercial documents of undertakings receiving or making payments, hereinafter called 'undertakings', in order to ascertain that transactions forming part of the system of financing by the Guarantee Section of the EAGGF have actually been carried out and have been executed correctly.

2. For the purposes of this Directive 'commercial documents' means all the books, registers, vouchers and supporting documents, accounts and correspondence relating to the undertaking's business activity, in so far as these documents may be useful to the scrutiny referred to in paragraph 1.

Article 2

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings. The scope and frequency of such scrutiny shall be determined by the competent authorities of the Member States in the light of the nature of the transactions to be scrutinized. Member States shall ensure that the selection of undertakings for scrutiny is representative of the breakdown of undertakings according to their financial importance in the system of financing by the Guarantee Section of the EAGGF.

2. The systematic scrutiny referred to in paragraph 1 shall apply each year to a number of undertakings which may not be less than half the undertakings of which the receipts or payments, or the sum thereof, within the system of financing by the Guarantee Section of the EAGGF, amounted to more than 100 000 units of account in the year preceding that of the scrutiny.

3. The systematic scrutiny carried out pursuant to this Directive shall not prejudice the inspections undertaken pursuant to Article 6 of Regulation (EEC) No 283/72 [1], and those undertaken pursuant to Article 9 of Regulation (EEC) No 729/70.

Article 3

Where undertakings are required to keep particular book records of stock in accordance with Community or national provisions, inspection of these records shall, in approrpiate cases, include a comparison with the commercial documents and, where appropriate, the actual quantities in stock.

Article 4

Member States shall require undertakings to keep the commercial documents referred to in Articles 1 (2) and 3 for at least three calendar years, starting from the end of the calendar year in which they were drawn up.

Article 5

1. Member States shall take the measures needed in order to oblige those responsible for the undertakings to ensure that all commercial documents and additional information requested are supplied to the officials responsible for the scrutiny or to the persons empowered for this purpose.

2. Member States shall provide that the officials responsible for the scrutiny or the persons empowered for this purpose may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

---

[1] OJ No L 36, 10. 2. 1972, p. 1.

Article 6

Member States shall take the measures needed in order to ensure national provisions relating to seizure of commercial documents apply in any case which might constitute an irregularity to the detriment of the EAGGF on the part of an undertaking undergoing scrutiny.

Article 7

Member States shall assist each other for the purposes of the scrutiny provided for in Articles 2 and 3 where an undertaking is established in a Member State other than that in which payment of the amount in question has or should have been made or received.

Article 8

1. Information collected in the course of scrutiny as provided for in this Directive shall be protected by professional secrecy. It may not be communicated to any persons other than those who, by reason of their duties in the Member States or in the Institutions of the Communities, are required to have knowledge thereof for the purposes of carrying out these duties.

2. This Article shall not prejudice national provisions relating to legal proceedings.

Article 9

1. Member States shall devote a special chapter of the reports to be drawn up pursuant to Article 4 (3) of Regulation (EEC) No 729/70 to the application of this Directive.

2. The Member States and the Commission shall regularly review the application of this Directive.

Article 10

During the first two years following the year in which this Directive is implemented as provided for in Article 11, the systematic scrutiny provided for in Article 2 (1) may be confined to half the numbr of undertakings resulting from the application of Article 2 (2).

Article 11

Member States shall bring into force the provisions needed in order to comply with this Directive not later than 1 July 1979, and shall forthwith inform the Commission thereof.

Article 12

This Directive is addressed to the Member States.

Done at Luxembourg, 27 June 1977.

For the Council

The President

J. SILKIN