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COMMISSION REGULATION (EC) No 1663/95

of 7 July 1995

laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section

(OJ L 158, 8.7.1995, p. 6)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Commission Regulation (EC) No 896/97 of 20 May 1997	L 128	8	21.5.1997
►**M2**	Commission Regulation (EC) No 2245/1999 of 22 October 1999	L 273	5	23.10.1999
►**M3**	Commission Regulation (EC) No 2025/2001 of 16 October 2001	L 274	3	17.10.2001

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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 (EC) No 1287/95 [2], and in particular Articles 4 (6) and 5 (3) thereof,

Whereas the reform of the procedure for the clearance of the accounts, put into effect by Council Regulation (EC) No 1287/95, provides for the establishment of detailed rules regarding the certification and clearance of the annual accounts of accredited paying agencies;

Whereas changes in the number and nature of measures financed by the EAGGF Guarantee Section, together with changes in techniques for recording and transmitting information, are such as to require a revision of the nature and content of the information to be provided to the Commission for the purpose of the clearance of accounts;

Whereas Commission Regulation (EEC) No 1723/72 [3], as last amended by Regulation (EEC) No 295/88 [4], should therefore be repealed;

Whereas the EAGGF Committee has not delivered an opinion within the time limit set by the chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The limit to the number of paying agencies accredited by each Member State, pursuant to Article 4 (2) of Regulation (EEC) No 729/70, shall be set by the Member State after consulting the Commission. The Commission may in particular make known any obstacle which this number presents to compliance with the time limit laid down in Article 5 (2) (b) of that Regulation, and to the transparency of checks on the operation of the Fund. The Commission shall inform the Fund Committee of the paying agencies accredited in all Member States.

2. For each paying agency, the Member State shall inform the Commission of the authorities (‘the competent authority’) which issue and withdraw accreditation, and which set the period allowed for any necessary adjustments within the meaning of Article 4 (4) of Regulation (EEC) No 729/70.

3. Before accrediting any paying agency, the competent authority shall be satisfied that the administrative and accounting arrangements of the body concerned offer the guarantees referred to in Article 4 (1) (a) of Regulation (EEC) No 729/70. The criteria shall be established by the Member State and applied by the competent authority for the purpose of accreditation, taking account of the Commission's guidelines for those criteria as set out in the Annex. Failure to meet any criteria of significant relevance to the paying agency's operations shall lead to the application of Article 4 (4) of the abovementioned Regulation.

The decision on accreditation shall be taken on the basis of an examination covering the administrative and accounting conditions, including those adopted to protect the Community's interests regarding advances paid, guarantees obtained, intervention stocks and amounts to

(1) OJ No L 94, 28. 4. 1970, p. 13.
(2) OJ No L 125, 8. 6. 1995, p. 1.
(3) OJ No L 186, 16. 8. 1972, p. 1.
(4) OJ No L 30, 2. 2. 1988, p. 7.

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be collected. The examination shall include, in particular, the arrangements regarding the execution of payments, the safeguarding of the treasury, the security of computer systems, the maintenance of accounting records, the division of duties and the adequacy of internal and external controls, in respect of transactions financed by the Guarantee Section of the EAGGF.

4. If the competent authority is satisfied that the paying agency examined complies with all relevant requirements, it shall proceed with its accreditation. Otherwise, it shall address to the paying agency instructions relating to the administrative and accounting arrangements, and in particular to any conditions the paying agency is required to fulfil before accreditation may be granted. Accreditation may be provisionally granted for a period to be fixed in relation to the seriousness of the problem pending the implementation of any requisite changes to the administrative and accounting arrangements.

5. If accreditation is withdrawn, the Member State shall designate another paying agency in accordance with the conditions in Article 4 of Regulation (EEC) No 729/70 and in paragraphs 3 and 4 of this Article and ensures that payments to beneficiaries are not interrupted.

6. The act of accreditation shall consist of a written confirmation that the body meets the criteria for accreditation, and when relevant shall set out the instructions as to changes and the period set. It shall be communicated to the Commission.

7. The communication provided for under Article 4 (3) of Regulation (EEC) No 729/70 shall be provided when the paying agency is first accredited, and shall be accompanied by the following information in respect of each paying agency:

— the responsibilities vested in it,

— the allocation of responsibilities between its departments,

— its relationship with other bodies, public or private, which also hold some of the responsibilities for executing the measures under which it charges expenditure to the Fund,

— the procedures by which claims by beneficiaries are received, verified, and validated, and by which expenditure is authorized and paid and accounted for,

— the provisions for internal audits.

The information to be provided where Article 4 (4) of Regulation (EEC) No 729/70 applies shall include all instructions relating to the administrative and accounting arrangements, and to the adaptations the paying agency is required to carry out in order to avoid withdrawal of accreditation, and the period allowed for implementation.

Article 2

1. The ‘coordinating body’ referred to in Article 4 (1) (b) of Regulation (EEC) No 729/70 shall act as the sole representative of the Member State before the Commission for all questions relating to the EAGGF Guarantee Section concerning:

— distributing Community texts and guidelines relating thereto to the various paying agencies and to those bodies responsible for their implementation,

— promoting their harmonized application,

— communicating to the Commission the information stipulated in this Regulation and in Regulation (EEC) No 729/70.

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►M3 ——————— ◄ A paying agency may fulfil the role of coordinating body provided that the two responsibilities are kept apart. In performing its tasks, the coordinating body may, in accordance with national procedures, call on other administrative bodies or departments, in particular those with accounting or technical expertise.

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2. The Member State shall communicate to the Commission information concerning the name and the written constitution of the coordinating body, and the administrative, accounting and internal control conditions relating to its operation.

3. ►M2 The form and content of the accounting information referred to in ►M3 Article 4(1)c of this Regulation ◄ shall be established in accordance with the procedure provided for in Article 13 of Regulation (EEC) No 729/70. ◄

Article 3

1. The certificate referred to in Article 5 (1) (b) of Regulation (EEC) No 729/70 shall be established by a department or body which is operationally independent of the paying and coordinating agencies and which has the technical vocation (certifying body).

The certificate shall be based on examination of procedures and of a sample of transactions. It shall cover compliance of payments with Community rules only as regards the capability of the paying agencies' administrative structures to ensure that such compliance has been checked before a payment is made.

The certifying body shall conduct its examination according to internationally accepted auditing standards. The checks shall be undertaken both during and after the end of each financial year. Before 31 January of the following year, the certifying body shall draw up the certificate and also a report of its findings which shall in particular state whether it has gained reasonable assurance that the accounts to be transmitted to the Commission are true, complete and accurate, and that the internal control procedures have operated satisfactorily.

2. Where more than one paying agency is accredited, the Member State may rely on the attestations issued by the departments or bodies which certified the accounts of the respective paying agencies, provided that it receives assurances that the scope and the standards of the audits performed were equivalent to the requirements laid down in paragraph 1.

3. The report referred to in paragraph 1 shall state:

— whether the paying agencies' procedures, with particular regard to the accreditation criteria, are such as to give reasonable assurance that the operations charged to the Fund comply with Community rules, and what recommendations have been made for the improvement of systems,

— whether the annual accounts referred to in Article 4 (1) (a) of this Regulation are in accordance with the books and records of the paying agencies,

— whether the statements of expenditure and of intervention operations provided for in Article 5 are a materially true, complete and accurate record of the operations charged to the Fund,

— whether the financial interests of the Community are properly protected as regards advances paid, guarantees obtained, intervention stocks and amounts to be collected,

— whether recommendations on the improvement of systems addressed to the paying agency have been followed up.

The report shall be accompanied by the information on the number and qualifications of staff undertaking the audit, on the work done, on the number of transactions examined, on the level of materiality and confidence obtained, on the weakness found and recommendations made for improvement, and on the operations of both the certifying body and other audit bodies, internal and external to the paying agencies, from which all or part of the certifying body's assurance on the matters reported was gained.

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Article 4

1. For the purpose of the clearance of the accounts pursuant to Article 5 (2) (b) of Regulation (EEC) No 729/70, the Member States shall send to the Commission:

(a) the annual accounts of the expenditure charged to the Guarantee Section of the Fund and reports established pursuant to Article 5 (1) of that Regulation by each department or body;

(b) the certificates and reports established by the certifying body or bodies;

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(c) a full record of all accounting information required for statistical and control purposes in the form and of the content established on the basis of Article 2(3) of this Regulation.

2. The documents and the accounting information referred to in paragraph 1 shall be sent to the Commission by 10 February of the year following the end of the financial year which it concerns. The documents referred to in points (a) and (b) of paragraph 1 shall be sent in four copies or, alternatively, in one copy together with an electronic copy.

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3. At the request of the Commission, or on the initiative of the Member State, further information relating to the clearance of the accounts concerned may be sent to the Commission up to a deadline which the Commission shall set, taking account of the amount of work required to provide that information. In the absence of this information, the Commission may clear accounts on the basis of such information as is in its possession at that deadline.

4. The Commission may accept a request for a delay in sending information in justified cases, if it is addressed to it before the deadline.

Article 5

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1. The accounts referred to in Article 4(1)(a) shall include:

(a) the expenditure summarised by item and subitem of the Community budget;

(b) a table of differences, by item and subitem, between the expenditure declared in the annual declaration and that declared in the monthly declaration for the same period in the document referred to in Article 3(5) of Regulation (EC) No 296/96. This must be accompanied by an explanation for each difference by subitem;

(c) the table, for the end of the financial year, referred to in Article 3(6a)(a) of Regulation (EC) No 296/96;

(d) a summary of intervention operations and a statement of the quantity and location of stocks at the end of the financial year;

(e) confirmation that the details of each movement of intervention storage is held on the paying agency's files;

(f) the tables, for the end of the financial year, referred to in Article 3(6a)(b) of Regulation (EC) No 296/96.

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2. The reports referred to in Article 4 (1) (a) of this Regulation shall contain the following information concerning the coordinating body and each paying agency:

— any exceptional transactions or technical difficulties experienced regarding the financial year concerned,

— any significant modification since the previous report of the information in Article 1 (7).

Article 6

The supporting documents regarding the expenditure financed and the amounts to be recovered by the EAGGF Guarantee Section, shall be

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kept at the disposal of the Commission for at least three years following that in which the Commission clears the accounts of the financial year concerned and, in the case where the clearance of accounts decision is the subject of proceedings before the Court of Justice of the European Communities, up to one year after the conclusion of those proceedings.

Article 7

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1. Accounts clearance decisions as provided for in Article 5 (2) (b) of Regulation (EEC) No 729/70 shall, without prejudice to decisions taken subsequently in accordance with paragraph 2 (c) of that Article, determine the amount of expenditure effected in each Member State during the financial year in question which shall be recognized as being chargeable to the EAGGF on the basis of the accounts referred to in Article 5 (1) (b) of that Regulation and the reductions in and suspensions of advances in respect of the financial year concerned, including reductions as referred to in the second subparagraph of Article 4 (3) of Commission Regulation (EC) No 296/96 ([1]).

Amounts that, in accordance with accounts clearance decisions as referred to in the first subparagraph, are recoverable from, or payable to, each Member State shall be determined by deducting advances paid during the financial year in question from expenditure recognized for that year in accordance with the first subparagraph. Such amounts shall be deducted from, or added to, advances against expenditure from the second month following that in which the accounts clearance decision is taken.

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2. The Commission shall communicate to the Member State concerned the results of its verifications of the information supplied, together with any amendments it proposes, before 31 March following the end of the financial year.

3. If, for reasons attributable to the Member State concerned, the Commission is unable to clear the accounts of a Member State before 30 April of the following year, the Commission shall notify the Member State of those further enquiries it proposes to undertake pursuant to Article 9 of Regulation (EEC) No 729/70.

Article 8

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1. If, as a result of an enquiry, the Commission considers that expenditure has not been effected according to Community rules, it shall notify the Member State concerned of the results of its checks and indicate the corrective measures to be taken to ensure future compliance.

The communication shall refer to this Regulation. The Member State shall reply within two months and the Commission may modify its position in consequence. In justified cases, the Commission may extend the period allowed for reply.

After expiry of the period allowed for reply, the Commission shall invite the Member State to a bilateral discussion and the parties shall endeavour to reach agreement on the measures to be taken and on an evaluation of the gravity of the infringement and the financial loss to the Community. Following that discussion and any deadline after the discussion fixed by the Commission, after consultation of the Member States, for the provision of further information or, where the Member State does not accept the invitation to a meeting before the deadline set by the Commission, after that deadline has passed, the Commission shall formally communicate its conclusions to the Member State, referring to Commission Decision 94/442/EC ([2]). Without prejudice to the fourth subparagraph of this paragraph, that communication shall include an

([1]) OJ No L 39, 17. 2. 1996, p. 5.
([2]) OJ L 182, 16.7.1994, p. 45.

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evaluation of any expenditure the Commission intends to exclude under Article 5(2)(c) of Regulation (EEC) No 729/70.

The Member State shall inform the Commission as soon as possible of the corrective measures adopted to ensure compliance with Community rules and the date of their entry into force. The Commission shall, as appropriate, adopt one or more Decisions under Article 5(2)(c) of Regulation (EEC) No 729/70 to exclude expenditure affected by non-compliance with Community rules up to the date of entry into force of the corrective measures.

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2. The decisions referred to in Article 5 (2) (c) of Regulation (EEC) No 729/70 shall be taken after an examination of any report drawn up by the Conciliation body according to the provisions laid down in Directive 94/442/EC.

3. The deductions from the Community financing as referred to in Article 5 (2) (c) of Regulation (EEC) No 729/70 shall be made from the advances relating to the expenditure of the second month following the decision pursuant to that Article. However, at the Member State's request and where warranted by the materiality of the deductions, and after consulting the Fund Committee, the Commission may appoint some other date.

Article 9

Regulation (EEC) No 1723/72 is hereby repealed with effect from 16 October 1995.

However, it shall remain applicable to the clearance of the accounts of the Guarantee Fund up to those of its financial year 1995.

Article 10

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities.*

It shall apply from the financial year beginning 16 October 1995.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX

Guidelines for criteria for accreditation as a paying agency

The criteria for accreditation are such that the paying agency provides sufficient assurance concerning the proper functioning of its administrative organization and of the system of internal control, and the maintenance of documents pursuant to Article 4 of Regulation (EEC) No 729/70. Only the small scale of operations of a paying agency can justify the application of simplified criteria. The non-respect of any criteria of significant relevance to the paying agency's operations shall lead to the application of Article 4 (4) of that Regulation.

1. The establishment of a paying agency (‘agency’) shall take the form of a formal act which lays down the agency's powers, obligations and responsibilities, particularly in relation to EAGGF-Guarantee expenditure, as defined in Article 2 and 3 of Regulation (EEC) No 729/70, and which sets out the agency's administrative structure.

2. The agency shall execute three principal functions in respect of EAGGF-Guarantee expenditure:

   (i) Authorization of payments: the objective of this function is the establishment of the amount that shall be paid to a claimant in conformity with Community rules.

   (ii) Execution of payments: the objective of this function is the issuing of an instruction to the agency's bankers, or, in appropriate cases, a governmental payments office, to pay the authorized amount to the claimant (or his assignee).

   (iii) Accounting for payment: the objective of this function is the recording of the payment in the agency's separate books of account of EAGGF expenditure, which will normally be in the form of an electronic data processing system, and the preparation of periodic summaries of expenditure, including the monthly and annual declarations to the European Commission. The books of account also record the assets financed by the Fund, in particular concerning intervention stocks, uncleared advances and debtors.

3. Without prejudice to the delegations provided for in point 4, the agency shall normally dispose of two services:

   (i) The internal audit service: the objective of this service or equivalent procedure is to ensure that the agency's system of internal control operates effectively; the internal audit service shall be independent of the agency's other departments and shall report directly to the agency's top management.

   (ii) The technical service: the objective of this service is to verify the facts on which payments to claimants are based; for example the facts on such matters as the quality and characteristics of products, livestock, land etc., the date of delivery, the transformation into another product and other checks of a technical nature.

   The verification of these facts is assured through the operation of a control and inspection system. A major role of the technical service is the monitoring of this control system.

4. Part or all of the authorization function and/or the technical service may be delegated to other bodies provided that the following conditions are fulfilled;

   (i) The responsibilities and obligations of these other bodies, notably concerning the control and verification of the compliance with Community rules, are clearly defined.

   (ii) The bodies dispose of effective systems for ensuring that they fulfil their responsibilities in a satisfactory manner.

   (iii) The bodies explicitly confirm to the agency that they in fact fulfil their responsibilities and describe the means employed.

   (iv) The agency is informed on a regular and timely basis of the results of controls effected, so that the sufficiency of these controls may always be taken into account before a claim is settled. The work performed shall be described in detail in a report accompanying each claim, batch of claims or, when appropriate, in a report covering one marketing year. The report, shall be accompanied by an attestation of the eligibility of the approved claims and of the nature, scope and limits of the work done. If any physical or administrative checks are not exhaustive, but performed on a sample of claims, the claims selected shall be identified, the sampling method described, the results of all inspections and the measures taken in respect of discrepancies and irregularities reported upon. The supporting documents submitted to the agency shall be

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sufficient to provide assurance that all the required checks on the eligibility of the authorized claims have been performed.

(v) Where documents relating to the claims authorized and controls effected are retained by the other bodies, both these bodies and the agency shall set up procedures to ensure that the location of all such documents that are relevant to specific payments made by the agency is recorded, and that these documents may be made available for inspection at the agency's offices at the request of the persons and bodies who would normally have the right to inspect such documents, which include:

— the agency's staff who deal with the claim,

— the agency's internal audit service,

— the body that attests the agency's annual declaration,

— mandated officials of the European Union.

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4a. With the prior agreement of the Commission and in the case of co-financed measures only, where a large number of small payments must be made, payments to applicants for aid may be delegated to other bodies. A written agreement must be concluded between the paying agency and that body specifying the nature of the information and the supporting documents to be submitted to the paying agency and the time limit within which they must be submitted; they must as a minimum permit the paying agency to comply with the accreditation criteria and to meet the deadlines laid down for the submission of monthly and annual accounts. The paying agency shall remain responsible for the efficient management of the funds concerned and for updating accounting records. The authorised agents of the paying agency, the certifying body and the European Union shall have the right to examine any evidence held by the abovementioned body and to carry out checks on applicants for aid.

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5. The agency's administrative structure shall provide for separation of the three functions of authorization, execution and accounting for payments, each of which shall be the responsibility of a separate administrative subunit, the responsibilities of which are defined in an organization chart. The administrative structure may provide for the function of the technical service to be performed by the authorization department in appropriate cases.

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The administrative subunit responsible for the execution of the payments, or else a unit responsible for supervising it, shall have available documentary evidence of the authorisation of claims, and of the administrative and physical checks prescribed. The information and the evidence may be in a summary form equivalent to that described in point 4(iv) of this Annex, and it may be provided through a computerised system.

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6. The agency shall adopt the following procedures or those offering equivalent guarantees:

(i) The agency shall lay down detailed written procedures for the receipt, recording and processing of claims inclusive of a description of all documents to be used.

(ii) The division of duties shall be such that no official has responsibility for more than one of the responsibilities for authorizing, paying or accounting for sums charged to EAGGF, and that no official performs one of those tasks without his work coming under the supervision of a second official.

The responsibilities of each official shall be defined in writing, including the setting of financial limits to his authority. Staff training shall be appropriate, and there shall be a policy for rotating staff in sensitive positions, or alternatively for increased supervision. ►M2 Appropriate measures must be taken to avoid a conflict of interests where a person occupying a position of responsibility or a sensitive position with regard to the verification, authorisation and payment of claims on the Fund also fulfils other functions outside the paying agency. ◄

(iii) Each official responsible for authorization shall have at his disposal a detailed check-list of the verifications he is required to undertake, and shall include in the supporting documents of the claim his attestation that these checks have been performed. This attestation may be made by electronic means subject to the conditions referred to in subparagraph (vi). There shall be evidence of review of the work by more senior member of staff.

(iv) A claim shall be authorized for payment only after sufficient checks have been made to verify that it complies with Community regulations. These checks shall include those required by the regulation governing

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the specific measure under which aid is claimed, and those required pursuant to Article 8 of Regulation (EEC) No 729/70 to prevent and detect fraud and irregularity with particular regard to the risks presented. The checks to be undertaken shall be specified in a check-list, and their performance shall be attested for each claim, or for each batch of claims.

(v) Procedures should ensure that payment is made only to the claimant, to his bank account or to his assignee. The payment shall be executed by the agency's banker, or, as appropriate, a governmental payments office, or the cheque mailed, within five working days of the date of charge to the EAGGF. Procedures shall be adopted to ensure that all payments for which transfers are not executed, or cheques not cashed, are recredited to the Fund. No payments shall be made in cash. The approval of the authorizing official and/or his supervisor may be made by electronic means, provided an appropriate level of security over these means is ensured, and the identity of the signatory is entered in the electronic records.

(vi) ►M3 The confidentiality, integrity and availability of all computer data should be assured by measures adapted to the administrative structure, staffing and technological environment of each individual paying agency. The financial and technological effort should be in proportion to the actual risks incurred.

In any computer system used, adequate procedures should be in place for:

(a) general organisation, management and audit,

(b) physical security,

(c) logical security,

(d) systems development, programming and maintenance,

(e) routine operations,

(f) telecommunications,

(g) microcomputers,

(h) contingency planning,

(i) application controls. ◄

(vii) The agency's procedures shall ensure that every change in the Community's regulations, and in particular the rates of aid applicable, are recorded and the instructions, databases and checklists updated in good time.

7. Payments of advances shall be identified in the accounting records, and procedures adopted to ensure that:

(i) Guarantees are obtained only from financial institutions, which fulfill the conditions of Regulation (EEC) No 2220/85 [1] and which are approved by appropriate authorities, and deliver guarantees which remain valid until cleared or called upon, and are met on the simple request of the agency.

(ii) The advances are cleared within the stipulated time limits, and that those overdue for clearing are promptly identified and the guarantees promptly called upon.

(iii) The clearing of advances is subject to the same controls by authorizing officers as are payments.

8. The accounting for intervention storage shall ensure that the quantities, and associated costs, are correctly and promptly processed and recorded per identifiable lot and in the correct account at each stage from the acceptance of an offer to the physical disposal of the product, in compliance with the scheme regulations, and ensure that the quantity and nature of stocks at every location may be determined at any time. Stocks shall be physically verified on a regular basis by persons, bodies or departments independent of the stockkeepers.

9. Accounting procedures shall ensure that monthly and annual declarations are complete, accurate and timely, and that any errors or omissions are detected and corrected, in particular through checks and reconciliations performed at intervals not exceeding three months.

10. The internal audit service shall verify that procedures adopted by the agency are adequate to ensure that compliance with Community regulations is verified, and that accounts are accurate, complete and timely. Verifications may be limited to selected measures and to samples of transactions provided

[1] OJ No L 205, 3. 8. 1985, p. 5.

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that an audit plan ensures that all significant areas, including the departments responsible for authorization, are covered over a period not exceeding five years. The service's work shall be performed according to internationally accepted standards, shall be recorded in working papers and shall result in reports and recommendations addressed to the agency's top management. The audit plans and reports shall be made available to the certifying body and to officials of the European Union mandated to undertake financial audits and for the sole purpose of appraising the effectiveness of the internal audit function.

11. All the above paragraphs apply, *mutatis mutandis,* to 'negative expenditure' (levies, forfeited guarantees, reimbursed payments, etc.) that the agency is required to collect on behalf of the Guarantee Section of the EAGGF. In particular, the agency shall set up a system for the recognition of all amounts due to the EAGGF and for the recording in a debtors ledger of all such debts prior to their receipt. The debtors ledger shall be inspected at regular intervals with the aim of taking action to collect debts that are overdue.

    The agency may delegate the responsibility for collecting certain categories of negative expenditure to other bodies, subject to the conditions set out in point 4, adapted as appropriate, and to the additional condition that the other body reports to the agency on a regular and timely basis, not less than monthly, on all revenues recognized and monies received.

12. The agency shall ensure that all claims received are dealt with expeditiously.