COMMISSION REGULATION (EC) No 2278/96

of 28 November 1996

modifying Regulation (EEC) No 1863/90 laying down detailed rules for the application of Council Regulation (EEC) No 4045/89 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 and repealing Directive 77/435/EEC

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4045/89 of 21 December 1989 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 and repealing Directive 77/435/EEC [1], as last amended by Regulation (EC) No 3235/94 [2], and in particular Article 19 thereof,

Whereas Article 7 of Regulation (EEC) No 4045/89 establishes a system of mutual assistance between Member States for the purpose of carrying out the scrutinies provided for in Articles 2 and 3 of that Regulation and requires that the Commission establish the provisions for the coordination of joint actions involving mutual assistance between two or more Member States; whereas it is appropriate, therefore, that these provisions should be introduced into Commission Regulation (EEC) No 1863/90 [3], as amended by Regulation (EC) No 2992/95 [4];

Whereas Annex II of Regulation (EEC) No 1863/90 sets out the information to be included in the annual reports submitted by Member States under Article 9 (1) of Regulation (EEC) No 4045/89; whereas this should be amended to provide expressly for the inclusion of the results of the scrutinies carried out;

Whereas errors have been discovered in certain language versions of Annexes III and IV of Regulation (EEC) No 1863/90 which should be corrected; whereas for the sake of clarity it is desirable to replace the whole of the annexes with the corrected versions; whereas the corrected annexes should have effect from the date of entry into force of Regulation (EC) No 2992/95 by which the original annexes were introduced;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Fund Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1863/90 is amended as follows:

1. The following Articles shall be renumbered as follows:
   - Article 4a shall become Article 5,
   - Article 4b shall become Article 6,
   - Article 5 shall become Article 8,

2. The following title, subtitle and Article are added after Article 6:

'TITLE III

Joint actions

Article 7

1. The Commission, on its own initiative, or on the basis of a proposal by a Member State, and with the agreement of the Member States concerned, may decide to coordinate joint actions involving mutual assistance between two or more Member States, as foreseen in Article 7 (1) of Regulation (EEC) No 4045/89, having regard, in particular, to,
   - the degree of risk presented,
   - the extent of operations, in particular the frequency of intra- and extra-Community trade, and their financial importance,
   - the need to achieve a uniform approach.

2. In agreement with the Member States involved, a Member State shall be designated responsible for the management of the joint action. However, each Member State shall remain responsible for carrying out the scrutinies required by Regulation (EEC) No 4045/89, as well as for the resulting consequences.

3. Each Member State involved shall:
   - designate those persons or services responsible for carrying out the joint action on its behalf,

[1] OJ No L 388, 30. 12. 1989, p. 18.
[2] OJ No L 338, 28. 12. 1994, p. 16.
[3] OJ No L 170, 3. 7. 1990, p. 23.
[4] OJ No L 312, 23. 12. 1995, p. 11.

— ensure that a sufficient number of adequately experienced officials is made available for the conduct of the joint action,

— ensure that within set time limits the scrutiny is carried out and the report finalised and made available to all participating Member States and to the Commission.'

3. Annex II is replaced by Annex A to this Regulation.

4. Annexes III and IV are replaced by Annexes B and C, respectively, to this Regulation.

Article 2

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

The provisions of Article 1 point 4 are applicable with effect from 30. 12. 1995.

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

Done at Brussels, 28 November 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX A

'ANNEX II

Information to be provided in the annual report submitted by Member States under Article 9 (1) of Council Regulation (EEC) No 4045/89 ('the Regulation').

1. **Administration of the Regulation**

The administration of the Regulation, including changes to the organizations responsible for controls and to the special department responsible for monitoring the application of the Regulation as referred to in Article 11, and to the competences of those organisations,

2. **Legislative changes**

Any national legislative changes relevant to the application of the Regulation that have intervened since the previous annual report.

3. **Amendments to the scrutiny programme**

A description of any amendments or modifications that were made to the scrutiny programme submitted to the Commission under Article 10 (2) of the Regulation since the date of submission of that programme.

4. **Execution of the scrutiny programme**

The execution of the programme of scrutinies for the period ending on the 30th of June preceding the latest date for submission of this report, as referred to in Article 9 (1) of the Regulation, including, both in total and broken down by control body (where more than one carries out controls under the Regulation):

(a) the number of scrutinies carried out and the number of undertakings subject to these scrutinies;

(b) the number of scrutinies still in the course of being carried out and the number of undertakings subject to these scrutinies;

(c) the number of scrutinies planned for the period in question that were not carried out and the number of undertakings that were not subject to scrutiny as a result of the non-execution of these scrutinies;

(d) the reasons why the scrutinies referred to in (c) above were not carried out;

(e) the breakdown, by amounts received by or paid to, and by measure, of the scrutinies referred to in (a), (b), and (c) above;

(f) the results of the scrutinies referred to in point (a) above, including:

— the number of scrutinies for which irregularities were discovered, and the number of undertakings involved,

— the nature of these irregularities,

— the measure concerned where an irregularity was discovered,

— the estimated financial consequence of each irregularity;

(g) the results of those scrutinies carried out pursuant to the scrutiny period prior to that covered by the present report, for which the results were not available at the time of submission of the report for that scrutiny period, including:

— the number of scrutinies for which irregularities were discovered, and the number of undertakings involved,

— the nature of these irregularities,

— the measure concerned where an irregularity was discovered,

— the estimated financial consequence of each irregularity;

(h) an indication of the average duration of scrutinies in person-days, indicating, where practicable, the time spent on planning, preparation, execution of controls, and reporting.

5. **Mutual assistance**

Mutual assistance requests made and received under Article 7 of the Regulation, including the results of scrutinies carried out as a matter of priority under Articles 7 (2) and 7 (4), and a summary of the lists both sent and received under Articles 7 (2) and 7 (3).

6. **Resources**

Details of the resources available for the carrying out of the scrutinies under the Regulation, including:

(a) the number of staff, expressed in person/years, allocated to scrutinies under the Regulation, by control body, and, where appropriate, region;

(b) training received by staff working on scrutinies under the Regulation, with an indication of the proportion of the staff referred to in paragraph (a) above who have received such training, and the nature of the training itself; and,

(c) computer equipment and tools at the disposal of staff working on scrutinies under the Regulation.

7. **Difficulties in applying the Regulation**

Any difficulties encountered in the application of the Regulation, and the measures taken to overcome them or proposals to this end.

8. **Suggestions for improvement**

Where appropriate, any suggestions for improvement, either in the application of the Regulation, or in the Regulation itself.'

ANNEX B

'ANNEX III

SHEET A

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

1. The criterion for calculation of the minimum number of undertakings required to be controlled = not less than half of the number of undertakings whose receipts or payments, or the sum thereof, amounted to more than ECU 100 000 for the EAGGF financial year .....

i.e.: [ ] × 1/2 = [ ]

2. For measures for which risk analysis has not been used as the main selection criterion:

The number of undertakings having received or made payments under the system of financing by the Guarantee Section of the EAGGF in the financial year ..... was as follows:

A (1) Total number	Total number whose receipts or payments, or the sum thereof, were in the following categories	
	A (2) Exceeding ECU 300 000	A (3) ECU 300 000 or less, but not less than ECU 30 000
[ ]	[ ]	[ ]

The number of undertakings in each of the above categories which it is intended to scrutinize in ..... are:

[ ]	[ ]	[ ]

3. Total number of undertakings proposed for scrutiny in .....:

A (4) Total number	A (5) Total based upon risk analysis	A (6) < ECU 30 000
[ ]	[ ]	[ ]

Notes on boxes:

A (2) It is compulsory to scrutinize undertakings in this category which were not scrutinized in accordance with this Regulation during the two scrutiny periods preceding this scrutiny period, unless the payments that they received were under a measure or measures for which risk analysis techniques of selection have been adopted.

A (6) Undertakings in this category are to be scrutinized only for specific reasons which are to be indicated in sheet D of this Annex.

SHEET B

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Scheme of control in relation to EAGGF Guarantee Fund budget headings

B (1) EAGGF Budget Article or Item No	B (2) Number of scrutinies planned	Only for measures where risk analysis will not be applied				B (5) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were less than ECU 30 000 during the EAGGF financial year ...		B (6) Total expenditure by EAGGF budget heading to be controlled during the period ... (ECU)	B (7) Total expenditure by EAGGF budget heading during the EAGGF financial year ... (ECU)
		B (3) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof exceeded ECU 300 000 during the EAGGF financial year ...		B (4) Scrutinies planned to undertakings whose receipts or payments, or the sum thereof were in the range ECU 30 000 to ECU 300 000 during the EAGGF financial year ...					
		(i) number of undertakings	(ii) expenditure thereby controlled (ECU)	(i) number of undertakings	(ii) expenditure thereby controlled (ECU)	(i) number of undertakings	(ii) expenditure thereby controlled (ECU)		

SHEET C

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Criteria adopted in drawing up the programme in the area of export refunds and other sectors where risk analysis selection techniques have been adopted where these differ from those included in the proposals for risk analysis sent to the Commission under Article 2 (2) of Regulation (EEC) No 4045/89

Sector where scrutiny is proposed (show EAGGF budget heading as set out in column B (1) of Sheet B of this Annex)	Comments on risk and selection criteria adopted (give brief details — e.g. detected irregularities or exceptional increase in expenditure)

SHEET D

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Proposed scrutinies, if any, of undertakings whose receipts or payments, or the sum thereof, were less than ECU 30 000 during the EAGGF financial year ....

EAGGF budget heading (as set out in column B (1) of Sheet B)	Number of undertakings that it is proposed to scrutinize	Specific reason for scrutiny

SHEET E

PROPOSED SCRUTINY PROGRAMME FOR THE PERIOD .....

(Article 10 of Regulation (EEC) No 4045/89)

Control body (breakdown by region and office)	Number of controls planned	Aggregate number of controller/years allocated to controls under Regulation (EEC) No 4045/89 (where controllers work only part-time on controls under Regulation (EEC) No 4045/89, only this fraction of their working year should be included).

ANNEX C

'ANNEX IV

LIST OF UNDERTAKINGS 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 7 (1) and (2) of Regulation (EEC) No 4045/89)

Member State in which payment was made or received .....

Member State in which undertaking is established .....

Date of dispatch of the list

(1) Name and address		(2) Nature of expenditure (show each payment separately by EAGGF budgetary line and type of payment)	(3) Amount (in national currency) per individual payment which during the EAGGF financial year was:		(4) Indicate whether inspection of the undertaking requested in accordance with Article 7 (2) (see note A)
(i) of undertaking in Member State where established	(ii) to which payment made or from which payment received		(i) paid to undertaking	(ii) paid by undertaking	

Notes:

A. If so a specific request should be sent, using the the specimen form set out in Annex VI, including all the information needed to enable the recipient to correctly identify the undertaking concerned.

B. A copy of this list must be sent to the Commission (DG VI-G-3).

C. Where are no undertakings established in other Member States as far as your country is concerned, it is requested that this fact is communicated to all other Member States and to the Commission (DG VI-G-3).

D. If a request for inspection of an undertaking in accordance with Article 7 (2) is made subsequent to the dispatch of this list, a copy of the request, in accordance with Annex VI, should nonetheless be sent to the Commission (DG VI-G-3).'