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Conformément au règlement (CEE, Euratom) n° 354/83 du Conseil du 1er février 1983 concernant l'ouverture au public des archives historiques de la Communauté économique européenne et de la Communauté européenne de l'énergie atomique (JO L 43 du 15.2.1983, p. 1), tel que modifié par le règlement (CE, Euratom) n° 1700/2003 du 22 septembre 2003 (JO L 243 du 27.9.2003, p. 1), ce dossier est ouvert au public. Le cas échéant, les documents classifiés présents dans ce dossier ont été déclassifiés conformément à l'article 5 dudit règlement.

In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community (OJ L 43, 15.2.1983, p. 1), as amended by Regulation (EC, Euratom) No 1700/2003 of 22 September 2003 (OJ L 243, 27.9.2003, p. 1), this file is open to the public. Where necessary, classified documents in this file have been declassified in conformity with Article 5 of the aforementioned regulation.

In Übereinstimmung mit der Verordnung (EWG, Euratom) Nr. 354/83 des Rates vom 1. Februar 1983 über die Freigabe der historischen Archive der Europäischen Wirtschaftsgemeinschaft und der Europäischen Atomgemeinschaft (ABl. L 43 vom 15.2.1983, S. 1), geändert durch die Verordnung (EG, Euratom) Nr. 1700/2003 vom 22. September 2003 (ABl. L 243 vom 27.9.2003, S. 1), ist diese Datei der Öffentlichkeit zugänglich. Soweit erforderlich, wurden die Verschlussachen in dieser Datei in Übereinstimmung mit Artikel 5 der genannten Verordnung freigegeben.

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 412 final.

Brussels, 27 July 1976.

PROPOSAL FOR A COUNCIL DIRECTIVE

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

(submitted to the Council by the Commission)

COM(76) 412 final.

EXPLANATORY MEMORANDUM

It has been found that there is considerable variation from one Member State to another as regards the scrutiny, in particular by means of the inspection of commercial documents and accounts, of undertakings which receive or pay sums under the system of financing by the EAGGF. While in some Member States this type of scrutiny is fairly widespread, in others it is never used or only in clearly defined cases, mainly where an irregularity is suspected.

Examination of cases of irregularities notified by Member States to the Commission pursuant to Article 3 of Regulation (EEC) No 283/72 (1), shows, however, that most of them were discovered following scrutiny of undertakings on the basis of all commercial documents, in particular the accounts, correspondence and other information regarding their business activities. Further, more irregularities have been discovered and sums recovered for the EAGGF in those Member States with a system of inspecting the commercial documents of undertakings than in those without such a system (2).

Therefore, provision should be made for this type of inspection in all Member States of the Community to better protect EAGGF funds and to reinforce the campaign against irregularities in agriculture. This initiative indeed reflects a wish expressed by the Special Committee of Inquiry which has also stressed the importance it attaches to generalizing the inspection of commercial documents and accounts.

Therefore, the proposal for a directive requires Member States to scrutinize on their own responsibility and on a scale and at a pace to be decided by them according to circumstances, the commercial documents of undertakings that receive or pay sums in connection with transactions financed by the EAGGF. Further, a Community threshold is fixed after which such inspection becomes mandatory.

While the new inspection system is being launched, the obligation will be limited to part of the undertakings concerned to enable Member States to constitute the teams of inspectors required. Further, the proposal specifies some of the powers which inspectors must be given to enable them to perform their duties.

(1) Council Regulation of 7 February 1972 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the common agricultural policy and the organization of an information system in this field, OJ No L 36, 10.2.1972, p. 1.

(2) Details are given in the Annex.

Summarised statement of the irregularities cases communicated by the Member States under Article 3 of Regulation (EEC) No 283/72 (years 1973, 1974 and 1975).

Note: In certain cases the scrutiny of commercial documents may be applied following information or other types of control. In certain cases the number of irregularities detected by the scrutiny of commercial documentation could be greater than is revealed in the table below, since the information available to the EAGGF does not always allow the method of detection of the irregularities to be determined with exactitude.

Member States	Cases recorded by the Member States		Number of cases established by the scrutiny of commercial documents
	Number	Amounts in UA (rounded)	
Belgium	8	11.000*	-
Denmark	33	1.000.000	31
Germany	168	2.540.000	168
France	20	3.320.000	18
United Kingdom	14	38.000*	1
Ireland	5	22.000*	-
Italy	30	400.000	-
Luxemburg	-	-	-
The Netherlands	13	106.000	5
Total	291	7.437.000	223

* certain amounts not yet communicated.

Undertakings receiving from or paying to the EAGGF Guarantee Section more than 50.000 UA per year.

Member States	50.000 - 100.000 UA	100.000 - 500.000 UA	more than 500.000 UA	TOTAL
Belgium	62	101	66	229
Denmark	70	125	110	305
Germany	500	800	430	1.730
France	176	338	210	724
United Kingdom	1.023	360	104	1.487
Ireland	81	115	99	295
Italy	1.294	904	136	2.334
Luxemburg	2	6	1	9
The Netherlands	122	151	121	394
Total	3.330	2.900	1.277	7.507

Proposal for a
COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof;

and having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament¹⁾;

Whereas Article 8 of Regulation (EEC) No 729/70 on the financing of the common agricultural policy²⁾, as last amended by Regulation (EEC) No 288/72³⁾ provides that Member States shall 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 the inspection of the commercial documents of undertakings receiving or making payments is a very effective means of checking the transactions financed by the Guarantee Section of the EAGGF and should therefore be made general in the Community by laying down minimum number of inspections to be carried out by the Member States;

Whereas the basic documents for such inspections should be those which allow a full inspection of the business activities concerned;

Whereas Member States should in the first place determine the frequency and scope of these inspections in the light of the nature of the transactions that take place under their responsibility; whereas, however, a minimum frequency should be laid down for inspecting the commercial documents in cases of special interest because of their financial scale;

Whereas the specific stock records kept by undertakings should not only be inspected but should also be compared with other information to verify their accuracy;

1)

2) OJ No L 94, 28. 4.1970, p. 13.

3) OJ No L 25, 30.12.1972, p. 1.

Whereas the powers of the officials responsible for the inspection and the obligations of undertakings to make the commercial documents available to them during a specific period should be specified; whereas provision should be made for the seizure of commercial documents in certain cases;

Whereas the international structure of the trade agricultural products requires a degree of cooperation between the Member States;

Whereas information should be exchanged at Community level so that the results of applying this Directive may be used to the best advantage;

Whereas the commercial and industrial secrecy of the undertakings that have been subject to inspection must be respected;

Whereas pursuant to this Directive the Member States must set up a new system of inspection which will require a team of specialized inspectors; whereas there should therefore be a transitional period during which the number of inspections may be restricted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive relates to the inspection of the commercial documents of undertakings receiving or making payments, hereinafter referred to as "the undertakings", to ascertain that transactions forming part of the system of financing of the Guarantee Section of the EAGGF have actually been carried out and 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 business activity of the undertaking.

Article 2

1. Without prejudice to the right to make random checks or special inspections, particularly in the case of a suspected irregularity, Member States shall carry out the inspection of the commercial documents of the undertakings. The scope and frequency of such inspection shall be determined by the competent authorities in the Member States, account being taken of the type of transactions to be inspected.

Nevertheless, where the receipts of a single undertaking or its payments to the Guarantee Section of the EAGGF, or the total thereof, exceed 100 000 units of account per year, the commercial documents shall be inspected at least once every two years. The inspection shall extend over a appropriate period to be determined by the competent authorities of the Member States.

Article 3

Where undertakings keep specific stock records in accordance with Community or national provisions, the inspection of these records shall in appropriate cases include a comparison with the commercial documents and, if necessary, the actual quantities in stock.

Article 4

Member States shall require undertakings to keep the commercial documents referred to in Article 1 (2) for at least five years.

Article 5

1. Member States shall take all necessary steps to ensure that the officials responsible for the inspection have access to the premises and commercial documents of the undertakings.
2. Member States shall provide that the officials responsible for the inspection may take extracts or copies of the documents referred to in paragraph 1.

Article 6

Where it is suspected that an irregularity which may give rise to legal or administrative proceedings has been committed by an undertaking undergoing inspection, the officials responsible for the inspection shall be authorized to take possession of the commercial documents concerned, or to arrange for the competent persons to do so.

Article 7

Member States shall assist each other in carrying out the inspection provided for in Articles 2 and 3 when an undertaking is established in a Member State other than that in which the payment of the amount concerned has been or should have been made or received.

Article 8

1. In the reports drawn up pursuant to Article 4(3) of Regulation (EEC) No 729/70 Member States shall devote a special chapter to the application of this Directive.
2. At the request of the Commission, Member States shall forward inspection reports of specific sectors or transactions.

Article 9

1. Information collected in the course of inspections in pursuance of this Directive shall be covered by the obligation of professional secrecy. It may not be communicated to any persons other than those who by reason of their duties in the Member States or Community institutions are required to have knowledge thereof.
2. In exchanges of information between Member States and between them and the Commission, information jeopardizing the commercial and industrial secrecy of undertakings shall not be forwarded unless this is necessary in order for the inspection referred to in this Directive to be carried out.

Article 10

During the first three years following the year when this Directive is put into effect as provided in Article 11, the inspection referred to in Article 2(2) may, at the choice of the Member State, be confined to:

- undertakings where the amount referred to therein is not less than 250 000 units of account; or
- a representative number of the undertakings referred therein, such number being at least one third of such undertakings.

Article 11

Member States shall bring into force the measures necessary to comply with this Directive within twelve months of its notification and shall inform the Commission thereof without delay.

Article 12

This Directive is addressed to the Member States.

Done at

For the Council

The President