I

(Information)

COURT OF AUDITORS

OPINION No 6/95

of the Court of Auditors on the Commission's clearance decision for the financial year 1991

(96/C 10/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community and in particular to Articles 43 and 188c, fourth paragraph, second indent thereof,

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 Council Regulation (EC) No 1287/95 [2] and to Commission Regulation (EC) No 1663/95 of 7 July 1995 [3] concerning clearance of the accounts of the EAGGF Guarantee Section,

Having regard to Commission Regulation (EEC) No 1723/72 of 26 July 1972 concerning the clearance of accounts of the European Agricultural Guidance and Guarantee Fund, Guarantee Section [4], as last amended by Commission Regulation (EEC) No 295/88 [5],

Having regard to the Commission's clearance decisions for the financial year 1991 of 29 April 1994 [6] and 21 December 1994 [7],

Having regard to the request of the Budgetary Control Committee of the European Parliament on 30 March 1995 for detailed information on the reliability of the method applied by the Commission for evaluating the amounts entered in the decision and for an opinion on the most important amounts and on the case of the areas not covered by the decision on the clearance work for the financial year 1991,

Whereas the clearance procedure constitutes the last act of the Commission's management of Community funds disbursed under the provisions of the EAGGF, Guarantee Section;

Whereas the Commission is obliged to clear the EAGGF Guarantee accounts before the end of the year following the year to which the accounts refer;

Whereas clearance is based on the Member State's annual declaration of expenditure and has to determine the '(a)... amount of expenditure effected in each Member State during the year in question, recognized as being chargeable to the EAGGF, Guarantee Section', as well as the '(b) amount of the financial resources remaining available in each Member State at the end of the year in question and arising from the disparity between the total amount of Community financial resources available at the beginning of the year or advanced during the year and the amount referred to in (a)' [8];

Whereas the Commission has established internal rules [9] for the execution of verifications necessary to achieve the objectives set out here before;

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[1] OJ No L 94, 28. 4. 1970.
[2] OJ No L 125, 8. 6. 1995.
[3] OJ No L 158, 8. 7. 1995.
[4] OJ No L 186, 16. 8. 1972.
[5] OJ No L 30, 2. 2. 1988.
[6] OJ No L 120, 11. 5. 1994, p. 59.
[7] OJ No L 352, 31. 12. 1994, p. 82.

[8] Article 8 of Commission Regulation (EEC) No 1723/72 (OJ No L 186, 16. 8. 1972, p. 1).
[9] Operational handbook for the audit of EAGGF Guarantee accounts, Doc.VI/359/89.

Whereas the Commission has decided to contract the audit of the paying agencies' accounts out to private audit firms and to concentrate its own resources on testing the compliance of transactions with Community legislation;

Whereas the Commission has recognized a number of difficulties in relation to the Member States and in particular in keeping to the timetable for clearance, on 1 July 1994 it presented a proposal [10] to amend Council Regulation (EEC) No 729/70 of 21 April 1970 on which the Court gave an opinion on 15 December 1994 [11];

Whereas the new procedure did not apply to the clearance of the EAGGF Guarantee accounts for the financial year 1991;

Whereas the Council adopted Regulation (EC) No 1287/95 [3] amending Regulation (EEC) No 729/70 without amending the text as suggested in the Court's Opinion;

Whereas the Court presented the results of the examination of the effects of the clearance for the milk quotas in Spain and Italy (ECU 1 362,9 million = 74,5 % [12] of all disallowances in 1991) to the Budgetary Control Committee of the European Parliament on 1 March 1995;

Whereas the following opinion on the Commission's clearance decisions on the EAGGF Guarantee accounts for 1991 is based on an audit at Commission level which included the examination of audit files and mission reports available in the Commission, of the summary report for 1991 and of the decisions themselves, the assessment of the Commission's methods and procedures for determining the amounts concerned and the Court's own audit work relating to this year,

THE COURT HAS ADOPTED THE FOLLOWING OPINION:

The method applied by the Commission to check expenditure in the EAGGF, Guarantee Section and the coverage achieved

1. The principles and methods laid down in the Commission's internal operational handbook correspond to generally accepted audit standards and, in principle, form the basis of a sound audit. However, when checking the application of the methods prescribed in this manual, shortcomings are observed which are partially due to a serious lack of staff, a problem which has never been solved at either Commission or DG VI level (some 35 staff as compared to about 1 000 staff for DG VI), and which the Court has already mentioned in previous reports [13]. Thus, the coverage envisaged could not be achieved and tests were insufficiently carried out.

2. The following specific audit shortcomings were noted:

   (a) as complete coverage of all EAGGF expenditure each year is not possible, the Commission examines a selection of budget lines (see Annex II, Table 1) and paying agencies following a risk analysis; although the method as such is sound, the risk analysis was hampered by the fact that the Commission did not allocate sufficient resources to ensure that it regularly receives and analyses information on all Member States' control systems and the changes they undergo; deficiencies and irregularities identified through checks other than those of the Commission's clearance department, (e.g. in the framework of enquiries on irregularities and in the Court's audits) demonstrate the shortcomings of the information on which the risk assessment was based; external auditors' work highlighted weaknesses in paying agencies which were

[10] COM (94) 240, 1. 7. 1994, OJ No C 284, 12. 10. 1994, p. 5.

[11] OJ No C 383, 31. 12. 1994, p. 31.

[12] Conversion rates as used in the 21st financial report of the EAGGF for 1991, Guarantee Section DOC/VI/400/91, 1. 9. 1992.

[13] (a) Annual reports:
- observations concerning the clearance of accounts procedure:
  - annual report concerning the financial year 1986, paragraph 5.26 (OJ No C 336 of 15. 12. 1987)
  - annual report concerning the financial year 1988, paragraphs 5.1-5.32 (OJ No C 312 of 12. 12. 1989),
- observations concerning the Member States:
  - annual report concerning the financial year 1989 (OJ No C 313, 12. 12. 1990),
  - annual report concerning the financial year 1990 (OJ No C 324, 13. 12. 1991),
  - annual report concerning the financial year 1991 (OJ No C 330, 15. 12. 1992),
  - annual report concerning the financial year 1992 (OJ No C 309, 16. 11. 1993),
  - annual report concerning the financial year 1993 (OJ No C 327, 24. 11. 1994);

(b) Special reports:
- No 2/89 on the organization of the markets in fresh and processed fruit and vegetables (OJ No C 128, 24. 5. 1989),
  No 2/90 on the management and control of export refunds (OJ No C 133, 31. 5. 1990),
- No 2/92 on the audit of export refunds paid to selected major traders in the milk products sector (OJ No C 101, 22. 4. 1992),
- No 4/93 on the implementation of the quota system intended to control milk production (OJ No C 227, 23. 8. 1993),
- No 7/93 concerning controls of irregularities and frauds in the agricultural area (OJ No C 53, 19. 2. 1994),
- No 8/93 concerning the common organization of the market in raw tobacco (OJ No C 65, 2. 3. 1994).

considered by the Commission as low risk areas (e.g. Europæisk Fællesskabsdirektoratet in Denmark, Produktschap voor Zuivel in Netherlands, the Intervention Board in the UK);

(b) in areas not covered by the 1991 clearance, the Court's own audit work for the financial year 1991 reveals serious weaknesses in the sectors set out in Annex I;

(c) the analytical reviews of the Member States' annual declarations (which include cross checking with information and data provided by different sources and the evaluation of control reports on paying agencies as an obligatory part of the clearance work to be executed) were not carried out for Belgium for oils and fats and only partly done for Spain, France, Italy and the UK for the milk sectors; where such reviews were carried out, they should have been better documented and supervised;

(d) the reconciliations of the annual declarations with the Member States' actual accounts were not completed for all budget lines, as shown in Annex II, Tables 2 to 13; external auditors' reports stated that the figures in the annual declarations were drawn from the Member States' accounts; they did not provide assurance that they were correctly established and based on legal and regular transactions;

(e) the analysis and evaluation of internal control systems in the Member States, including compliance testing of transactions, were carried out for a rather limited number of measures and paying agencies; in addition, such checks did not always include authorizing and control bodies outside the paying agencies in cases where the latter pay on the basis of documents certified by such outside bodies; they also did not always include an appraisal of whether the Member State's control system corresponds to and satisfies Community regulations;

(f) substantive testing to quantify the financial consequences of systems weaknesses, and thus determine the amounts to be excluded from EAGGF financing, were often not carried out in sufficient number and did not always include the handling of transactions by authorizing and control bodies outside the paying agencies; thus, no conclusion could be drawn in these cases as to 'whether expenditure incurred by paying agencies was in conformity with Community rules and was not materially overstated'; there were only three cases where a sufficient number of substantive tests was executed according to the audit programme, but the Commission's auditors were unable to express an audit opinion on these either, as the tests were not extended to the local authorities. For all tests on export refund expenditure (31,6 % of total expenditure), the Commission's auditors were not able to express an opinion because of other limitations in the audit coverage caused by the complexity of the system and the problems in assessing the destination and arrival of the goods.

3. Clearance of accounts is a management procedure for which every step should be carefully documented, given the potential financial impact for the Member States. In several cases, findings in mission reports were not included in observation letters sent to the Member States. There was no evidence on file as to why such findings were excluded.

4. No formal conclusions were drawn from the documentation or from further information received from the Member States to explain why certain points in the observation letter were dropped and why others were carried forward to the next step in the procedure i.e. the 'Dialogue' with the Member States ([14]).

5. There was no formal explanation as to why an observation which was on the agenda for the 'Dialogue' had been modified or dropped. The fact that there had been changes could sometimes be established by comparing the letters to the Member States, the agenda for the 'Dialogue' and the telex to the Member State following the 'Dialogue'. In a few cases where the files contained notes on standard forms completed by the auditor about the results of the 'Dialogue', there was no evidence that these notes were reviewed. The telexes give arguments and conclusions for the changes in some cases, but make a request for further information from the Member States in other cases. The treatment of the new answers from the Member States is as unclear as that of the original answers.

([14]) This is a procedure whereby the Member State is given the opportunity to present additional documents and information in order to justify amounts queried by the Commission. This procedure is different from the one implemented by Commission Decision No 94/442/EC of 1 July 1994 (OJ No L 182, 16. 7. 1994) concerning the creation of a conciliation body.

6. The Commission itself recognized the growing difficulties in meeting the timetable for clearance set out in the regulations and the accumulation of financial corrections resulting from such delays. On 1 July 1994 it proposed changes to the basic Regulation in order to reform the clearance of accounts procedure which were finally adopted on 22 May 1995 ([2]).

7. The Court gave an opinion on the Commission's proposal for the reform of the procedure ([11]) insisting especially that the Commission keep control over the nomination of the external auditors, that the attestations be drawn up according to consistent and reliable working methods, that the compliance audit include checking of specific transactions and that the Commission present to the Court an evaluation of the functioning of the new system by 31 December 1998. The Court did not express an opinion on the system of flat-rate corrections because the Commission's initial proposal did not mention it (see paragraph 9 and footnote 16).

Evaluation of the main amounts disallowed

8. The Commission's clearance exercise in 1991 led to ECU 1 829 million (see Table 14) of corrections (disallowances to be recovered). The amounts disallowed are recovered by Member States including them as negative amounts in a monthly declaration stipulated in the clearance decision. Thus, amounts disallowed for the budget year 1991 reduce overall expenditure declared under the 1995 budget, except for the recovery for the milk quota scheme (Greece, Italy, Spain), which is split over four financial years until 1998 (see paragraph 26).

9. Most of the corrections are not based on errors or irregularities actually found in the accounts or transactions ('specific corrections'). In view of the limited and unrepresentative substantive testing of transactions, the real financial impact of systems weaknesses could not be established. The Commission therefore established an 'internal grid' leading to disallowances of 2 % when a system shows minor weaknesses, 5 % when a system has medium weaknesses and 10 % when the weaknesses are considered to be serious. Such flat-rate corrections may have a preventive value and act as an incentive for the Member States to improve their control systems. However, provided the level of disallowance is high enough, the clearance procedure is in this case used for a purpose which goes beyond its initial objectives ([15]).

10. Although the Commission has issued basic guidelines to fix the financial corrections in the case of control weaknesses ([16]), the application of the flat rates is insufficiently harmonized. There is no formal documentation available which explains the evaluation and conclusions which lead to the final fixing of flat-rate corrections in the clearance decision. Thus, the reasons, procedure and circumstances which led the Commission to omit from its final decision amounts which were initially indicated for disallowance in the communication to the Member States were not always evident or transparent for the Court. In some cases they were based on unchecked information supplied by Member States.

11. First priority should be given to audit methods which provide an objective basis for a correction, such as extrapolations of results found by statistical sampling methods in conformity with generally accepted auditing standards. The Court could not identify any corrections based on this approach. The types of corrections actually made are set out in the following paragraphs. These illustrate the decision-making process used in the determination of the amounts to be disallowed.

12. Some actual corrections were based on an extrapolation of a selection of files tested which did not constitute a representative sample. The extrapolation was nevertheless calculated by applying the percentage of overpayments found in the sample to the total payment to the administrative area tested (e.g. Italy, wine permanent abandonment premium, correction on budget line: B1-1 6 4 0 : Lit -7 314 669 876 (ECU -5 million)).

13. Other corrections occur where control weaknesses were found and the correction was based on national statistics. However, the reliability of the statistics was not tested. As one of the regions (Sardinia, Italy) where weaknesses were found was not liable to corrections according to these national statistics, no correction at all was made for it. Another region (Veneto, Italy), which Commission auditors did not visit, and for which they could not

([15]) A legal basis can now be found under Article 5(2c) of Regulation (EC) 1287/95, amending Regulation (EEC) No 729/70 applicable as from the clearance of accounts for the financial year 1996, an Article which was not in the version presented to the Court for its opinion.

([16]) Doc. VI/216/93 rev.1 of 12. 9. 1994, 'Evaluation of the financial consequences at the time of the preparation of the decision on the clearance of the accounts of the EAGGF Guarantee'.

form any opinion on the control system, was subject to corrections based on the national statistics (e.g.: Italy, ewe premium, correction budget line B1-2 2 2 0: Lit -67 595 110 851 (ECU -44 million)).

14. Other corrections rely on calculations based on an estimated amount, because correct documentation was not available as a consequence of the Member States' incorrect application of the Community Regulations. Such corrections account for ECU 1 319 million (e.g. Spain, additional milk levy, correction budget line B1-2 0 7 1: Pta -71 870 823 240 (ECU -558 million)).

15. As noted in paragraph 9, flat-rate corrections are made where control weaknesses are found but the selection of files was not representative and irregularities found could not be extrapolated on an objective basis. In some cases, such corrections continue to be imposed from year to year following an audit whose conclusions were sufficiently representative to be extrapolated, on the basis that later evidence confirmed the continuing existence of the problems previously identified. One example where it was possible to compare flat-rate corrections with findings based on substantive tests concerns the 'special beef premium' in Ireland. In the context of the 1989 clearance, the Commission's auditors examined a substantial number of payments of this premium in the counties of Galway and Cork. The auditors considered their sample to be representative and extrapolation suggested that 50,5 % or ECU 1,6 million of the expenditure was irregular. However, in the final clearance decision for 1989, where the grid of flat-rate corrections was not yet applied, a correction of 10,5 % was made for the two counties and, in addition, a flat rate of 2 % for all expenditure to Ireland for general weaknesses in the control system (in total, only ECU 0,7 million). For the 1990 clearance decision, the Commission auditors' investigations in the counties of Cork and Mayo established that there was little change in the situation and that the detailed conclusions in the 1989 summary report were still valid. However, the flat-rate correction for 1990 (now based on the 'grid') was fixed at 5 % or ECU 0,4 million for the two counties, with an additional flat-rate correction of 2 % of the total expenditure (ECU 0,9 million) to Ireland for general control weaknesses. Even allowing for certain doubts about the representativeness of the substantive test, the example indicates the potential cost to the Community of a less objective approach. For 1991, the Commission made a 2 % flat-rate correction for all expenditure declared by Ireland for the 1990 marketing year (ECU 0,8 million) for the above-mentioned reasons.

16. Other corrections are those based on the Commission's estimates of what constitute reasonable administrative delays in the Member States (e.g. Ireland, refund on beef/veal, correction budget line B1-2 1 0 0: Irl -1 552 534,56 (ECU -2 million)).

17. With regard to corrections relating to late payments, the Court could not obtain objective reasons for the percentages applied, but agreed with the Commission that the system ensures, in principle, equal treatment of paying agencies. However, Italy is, in addition to the generally applied 4 % 'grace' amount, allocated two months' 'grace' period for all payments. This allowance is granted in order to take account of administrative delays in issuing 'anti-mafia' certificates ([17]). Such cases account for ECU 5 million (e.g. Italy, calf premium, correction budget line B1-2 1 2 2: Lit -4 145 203 155 (ECU -3 million)).

18. One hundred percent disallowances have been made for particular transactions (e.g. in Greece for the export of tobacco to Albania and Bulgaria, correction budget line B1-1 7 0 0: Dr -602 363 307 and budget line B1-1 7 1 0: Dr -2 929 195 731. In total, ECU -16 million)).

19. Corrections also follow the Commission's check on the Member States' for the accounts for the additional milk levy. (Germany, additional milk levy, correction budget line B1-2 0 7 1: DM -91 266 039 (ECU -44 million)).

20. Other corrections arise from the fact that essential conditions of the milk quota re-purchase programme were not respected (e.g. Italy, correction budget line B1-3 8 0 3: Lit -103 161 494 560 (ECU -67 million)).

21. Corrections are also made for administrative faults by the Member States (e.g. Italy, consumption aid olive oil. EIMA had not asked beneficiaries to prolong guarantees during an investigation so the guarantees could not be seized. Budget line B1-1 2 2 0, correction: Lit -42 914 606 028 (ECU -28 million)).

22. Other errors occurred where the Commission did not take the correct decision or did not take a decision at all.

    (a) Greece, wine permanent abandonment premium, budget line B1-1 6 4 0: In the

([17]) The Italian legislation provides for stricter checks in order to monitor suspect movements of money.

conclusion to the mission report of 4 March 1993, the Commission's auditors write 'The Nomos Heraklion expenditure represents 41 % of the total of the premiums paid in Greece, i.e. Dr 6 831 490 963 ' (ECU 32 million) and 'must be called into question'. The conclusion is based on two observations:

(i) weaknesses in the control system found, due to the lack of cadastral or equivalent documentation;

(ii) weaknesses in the inspectors' application of the control system, 'stricter checks must be carried out'.

The conclusions on weaknesses drawn by the Commission's auditors correspond to those drawn by the Court's auditors during an on-the-spot control in the same 'Nomos' (prefecture). The weaknesses found by the Court's auditors are described in the Court's annual report concerning the financial year 1993 ([18]). In its reply to the Commission's observations, the Greek Ministry of Agriculture just describes how the control procedure should function. The observations then disappear from the documentation in the subsequent clearance procedure. It was not possible for the Court to find at the Commission any evaluation or conclusion relating to the Greek answer and therefore it could not be determined why the observations disappeared and who took the decision. The weaknesses in the control system persist and further audits should have been undertaken in order to establish their financial impact. The flat rate was not applied and the only correction made was for non-compliance with a deadline for two individual payments, in total Dr 733 908 (ECU 3 404);

(b) Denmark, Ireland, budget lines: B1-2 1 1 1, B1-2 1 1 2, B1-2 1 1 3, B1-2 1 1 4. The expenditure for a number of tenders had been disjoined ([19]) for Ireland and Denmark as the offers were considered to be speculative. In the observation letter to France, the same matter was raised. DG VI and the financial controller acknowledged the deficiency in France. The audit file did not contain any explanation as to why the deficiency was not taken into account in the clearance decision. The only (oral) explanation the Court could get was that the degree of deficiency was lower in France than in Ireland and Denmark. The summary report ([20]) also indicated that similar investigations were on-going in other Member States. However, no documentary evidence of the formal opening of an investigation, which would automatically make a reserve in the clearance decision, could be found;

(c) Spain, special beef premium, budget line B1-2 1 2 1: an examination of files revealed deficient control systems for the years 1988 to 1991. The Commission granted Spain a 'grace' period for applications lodged before 1991. Such an individual 'grace' period is contrary to equal treatment of Member States. The relevant expenditure during that period (1988 to 1990) was ECU 13,2 million;

(d) Greece, ewe premiums, budget line B1-2 2 2 0: according to the summary report, documentary checks were made on expenditure for 1991. At the same time, a systems control based on 1992 payments was executed in two 'Nomos'. The systems control showed that 10,53 % of the 1992 applications should have been rejected (ECU 1,4 million). As the Commission was in possession of the 1992 results and as the examination of files for the year 1991 disclosed a complete lack of inspection visits in the two 'Nomos', the correction should not have been limited to only 5 % of the 1991 expenditure (ECU 0,7 million);

(e) for the milk sector, Portugal has been granted a 'grace' period in respect of its inadequate control systems in the first year of application of the Regulation concerned (ECU 5 million). This constitutes unequal treatment with regard to those Member States which have good control systems;

(f) a similar example was found in Ireland for 1991 where the disallowance for the special beef premium would have meant reclaiming repayment of ECU 2,3 million from 6 000 farmers. The Commission finally accepted, in 1994, the Irish Minister for Agriculture's request and gave Ireland another year of grace to bring its control system in order.

23. Another correction related to a specific fraud case. For the marketing year 1991/92, the cotton harvest in Greece was much larger than estimated. Investigations of the Greek control system were undertaken by both the Commission and the

([18]) OJ No C 327, 24. 11. 1994, paragraphs 3.46 to 3.48.

([19]) Disjunction means separation from the clearance decision until further investigations have been undertaken.

([20]) An internal report on which the clearance decision is based Doc. VI/320/94 of 21. 12. 1994.

national authorities. The investigations are not yet finished, but many irregularities have been found. The precise loss to the Community has not been established by the Commission. The actual correction of Dr -16 735 309 160 (ECU -78 million) is a flat-rate correction of 25 % of the aid paid to Greece for the marketing year 1991/92, but with an option for the Commission to decrease the flat rate to 10 % if the Greek authorities strengthen the control system for cotton and re-establish the cooperation with the Commission before 31 December 1995. Neither of these conditions really affects the regularity and correctness of expenditure in 1991.

24. The clearance decision also includes corrections following irregularity investigations outside the clearance procedure. The two most significant examples are:

(a) A correction of DM 56 692 508,70 (ECU 28 million) is made for irregularities in connection with exports of livestock in the period 1981 to 1987. One German exporter is involved. The total amount of irregular payments was initially fixed at DM 152 373 540,85 by the national authority. The information from the Member State has not been checked on the spot by the Commission. The disallowed amount is DM 47 035 774. The Commission added a sanction of DM 9 656 734,70 for late submission of information from the German authorities, arriving at the total amount of correction of DM 56,7 million, but did not check on the spot the information submitted by the Member State which led to the disallowance.

(b) A correction of DM 54 275 090,69 (ECU 26 million) was made for irregularities in connection with exports of livestock to Poland. The final decision on the correction is based on information submitted by the Member State following the Commission's missions. The Commission did not check this final information on the spot in the Member State. The correction is a net amount which takes into account an amount of DM 4 986 855,— declared under Regulation (EEC) No 595/91. This amount has still not been recovered and credited to the EAGGF and is treated pursuant to the provisions of Article 8 of Regulation (EEC) No 729/70 [1] which permit an extended delay.

25. At the end of 1994, the Commission's clearance department drew the conclusion from its own work for 1991 that the checks made to ascertain that all measures had been taken to prevent and detect irregularities were clearly inadequate [21]. In his approval on the draft clearance decision [22] the Commission's financial controller came to the opinion that it was not possible, in each Member State, to make checks regarding the conformity of the expenditure charged except in the case of a very small number of measures. He said that it was therefore by means of the financial audits, carried out by the EAGGF for a number of years, that it was possible to obtain a degree of certainty as to the accuracy of all the amounts of expenditure declared. In his view, the sectoral and geographical coverage of the checks on the global EAGGF Guarantee expenditure for the financial year 1991 could not be entirely comparable with that of previous years, but that it nevertheless provided an acceptable basis for the decision on the clearance of the accounts [23]. The Court finds this difficult to accept in view of the weaknesses identified in the Member States' control systems.

Budgetary management

26. The decision splitting the recovery for the milk quota scheme of Dr 1 592 million, of Pta 31 020 million and of Lit 488 800 million over four financial years until 1998 is, as indicated in the decision, a compromise between the Council and the Commission, but is nevertheless a clear breach of the budgetary rules applicable to EAGGF Guarantee expenditure; this expenditure is governed by non-differentiated appropriations for which it is not permitted to have recourse to multiannual commitments. Compliance with the annuality principle and the budget remarks on line B1-3 7 0 ought to have resulted in the amounts in question being charged to the financial year during which clearance takes place (1995) and not to their being included in the Member States' monthly declarations corresponding to subsequent financial years (1995 to 1998).

27. Moreover, given that the positive amounts of the clearance decision in fact correspond to budgetary revenue to be recovered, the procedure laid down for this purpose by Articles 28 [24] and 29 [25] of the Financial Regulation ought to be followed, as this

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[21] Draft communication to the Commission for the clearance decision for the financial year 1991, Doc. DG VI — BG/vim/N94/0082.

[22] Doc. VI/358/94 — rev.1, 21. 11. 1994.

[23] Doc. XX.C.1(94) D/6991 of 5. 12. 1994, Introduction.

[24] Sending to the financial controller of a proposal for his approval and to the accounting officer for provisional registration.

[25] Assumption of responsibility for recovery orders.

would eliminate the practice of negative expenditure which has been criticized on numerous occasions by the Court. Furthermore, such a procedure would have made it possible to enter in the balance sheet for the current financial year amounts due under previous clearance decisions, thus making the Community accounts more transparent.

Conclusion

28. The general weaknesses of the clearance procedure were already known and largely recognized by the Commission when it proposed a reform in 1994. The failure to implement the Court's recommendations, expressed in its opinion on the reform (see paragraph 7), will result in no significant improvement in the situation. Notwithstanding the attempts at reform made by the Commission, the Court remains critical as to the validity of the 1991 clearance decision. The weaknesses identified in the Commission's clearance procedures make them a poor basis for those decisions. It is therefore impossible to arrive at a clear opinion as to the extent to which they can be considered as correct and fair to both the Member States and the Community. As the Annexes show, there is not one amount for which the basis of calculation is not affected by one or several weaknesses. The only possible conclusion is that most of the amounts based on flat-rate deductions are, in their substance, the result of compromises with the Member States rather than the result of an audit to establish the correct amounts to be charged to the EAGGF accounts — a conclusion which the Court already drew in its Report in response to the conclusions of the European Council of 18 June 1983 ([26]). The new text of the modified Regulation (EEC) No 729/70, introduces, however, a more vague definition of the conditions ruling future disallowances, especially under the fourth sub-paragraph of Article 5 (2) (c), thus legalizing this procedure.

29. The Court is seriously concerned that, because of the Commission's omission to allocate sufficient resources, the clearance procedure foreseen was largely replaced by a system of flat-rate corrections, which are not supported by in-depth substantive testing. Although this system is now legalized by the new provision in Regulation (EC) No 1287/95, it is not in conformity with the concept of the clearance of accounts as a final management and accounting act, based on a thorough and representative audit.

30. The Court notes and recognizes the existence of serious weaknesses in Member States' internal control systems and insists that procedures for the sanctioning of such weaknesses should be strengthened and explicitly laid down in the appropriate legislation.

This opinion was adopted by the Court of Auditors at the Court meeting of 21 September 1995.

For the Court of Auditors

André J. MIDDELHOEK

President

([26]) OJ No C 287, 24. 10. 1983, paragraph 2.2.8 (c).

ANNEX I

For the financial year 1991, the Court's audit covered a number of measures which were not covered by the Commission's clearance work. The Court found errors or control weaknesses which would have led to corrections in the clearance decision:

Greece

— production aid for durum wheat [1],
— export refund-MCAs [1].

United Kingdom

— Ewe premium scheme [1].

Ireland

— Milk quota and supplementary levy [2];
— milk definitive cessation scheme [2];
— temporary suspension scheme milk [2].

Belgium

— Milk quota and supplementary levy [2];
— milk definitive cessation scheme [2];
— temporary suspension scheme milk [2].

France

— Special beef premium [1].

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[1] Annual report concerning the financial year 1991, OJ No C 330, 15. 12. 1992.
[2] Special report on the implementation of the quota system intended to control milk production, OJ No C 12, 15. 1. 1994.

ANNEX II

The following notes should be considered when reading Tables 1 to 14:

Definitions

(a) The 'coverage' means the amounts of the budget lines where some clearance work has been executed. 'Depth' describes the extent of the coverage.

(b) The clearance audit is executed according to prescribed programmes:

P1: Analytical review of the annual declarations of the Member States and of all information required by the Regulations. Cross checking of such information with other information and data. Part of this work is executed by DG VI G.2 which is responsible for the DG VI management accounts.

P2: Evaluation and verification of all information and reports available concerning the paying agencies under examination.

P3: Reconciliation of the annual declarations with the books of the paying agencies.

P4: Analysis and evaluation of internal control systems and assessment of the level of confidence to be put on internal control.

P5: Substantive testing of items in the annual declarations and formulation of quantitative conclusions on expenditure.

General notes (1)-(5)

Where no footnotes are shown, the following general notes should be applied:

(1) P3: by the external auditor.

(2) P5: The samples were not drawn according to any selection method which can ensure the representation and reliability according to generally accepted auditing standards.

(3) The interest is calculated at a flat rate of 10 %. The correct rate is the national discount rate + 3 % in the specific period in question.

(4) The corrections of late payments are based on a flat-rate system. The use of this method is not justified.

(5) The Commission's audit did not provide any basis for establishing the loss to the Community budget. The flat rate applied is an estimate of the loss.

Specific notes

Notes from (6) onwards are specific to the tables and are shown underneath the corresponding tables.

Table sources

The figures in Tables 1 to 13 are taken from the 21st financial report of EAGGF Guarantee Section for 1991 and from the Commission's summary report (see footnote ([20])).

The figures in Table 14 are taken from the Commission's decisions (see footnotes ([6]) and ([7])).

TABLE 1

EAGGF EXPENDITURE IN 1991 COVERED BY THE 1991 CLEARANCE PROCEDURE

(million ECU)

Member State	Total expenditure	Covered	Percentage	Total revenue	Covered	Percentage	Depth of audit
Belgium	1 499,30	944,13	62,97	-30,3	0	0	Table 2
Denmark	1 302,50	671,70	51,57	-82,3	70,6	85,78	Table 3
Germany	5 410,80	1 974,10	36,48	-150,8	0,3	48,47	Table 4
Greece	2 218,90	1 217,50	59,37	-7,7	0	0	Table 5
Spain	3 383,10	1 657,30	48,98	-66,5	66,5	100,00	Table 6
France	6 900,70	3 408,40	49,39	-494,7	-422,1	85,33	Table 7
Ireland	1 756,50	1 311,80	74,68	-25,7	0	0	Table 8
Italy	5 485,10	3 011,10	54,91	-99,3	-37,2	37,46	Table 9
Luxembourg	5,10	2,50	49,02	-2,4	-1,7	70,83	Table 10
Netherlands	2 775,20	1 459,70	52,60	-93,3	-32,4	34,73	Table 11
Portugal	315,60	57,00	18,07	0	0	0	Table 12
United Kingdom	2 625,30	687,70	26,19	-225,4	-12,9	5,72	Table 13
Community	33 678,10	16 402,93	48,71	-1 278,4	-368,9	28,86	

TABLE 2

SCOPE OF THE CLEARANCE AUDIT IN BELGIUM

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	824,90	721,60	48,13	P1, P2	P3 (1), P4, P5 (6)	
Cereals expenditure	8,50	0,00	0,00	P1	P3 (1)	
Sugar	33,00	0,00	0,00	P1	P3 (1)	
Oils and fats, protein	274,70	0,00	0,00		P3 (1)	
Linen, hemp and cotton	6,90	0,00	0,00		P3 (1)	
Fruit and vegetables	0,60	0,00	0,00	P1, P2	P3 (1)	
Wine	0,10	0,00	0,00		P3 (1)	
Tobacco	7,40	0,00	0,00	P1	P3 (1)	
Seeds and hops	3,00	0,00	0,00	P1, P2	P3 (1)	
Milk expenditure	237,30	164,60	10,98	P1, P2	P3 (1), P4, P5 (2)	
Meat	69,80	21,43	1,43	P1, P2	P3 (1)	
Fish	0,20	0,00	0,00	P1, P2	P3 (1)	
Other	32,90	36,50	2,43	P1, P2	P3 (1)	
TOTAL EXPENDITURE	1 499,30	944,13	62,97			
Cereals revenue	-14,50	0,00	0,00	P1, P2	P3 (1)	
Milk revenue	-15,80	0,00	0,00	P1, P2	P3 (1)	
TOTAL REVENUE	-30,30	0,00	0,00			
TOTAL	1 469,00	944,13				

(6) P5 covered 683,8 million, but the tests were not completed for any budget line. The Commission's auditors could express no opinion on the total expenditure.

TABLE 3

SCOPE OF THE CLEARANCE AUDIT IN DENMARK

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	784,80	389,40	29,90	P1, P2	P3 (1), P4, P5 (2) (7)	
Cereals expenditure	80,40	63,80	4,90	P1, P2	P3 (1), P4, P5 (2)	P4 (10)
Sugar	16,50	15,20	1,17	P1, P2	P3 (1), P4, P5 (2)	P4 (10)
Oils and fats, protein	141,60	23,20	1,78	P1	P3 (1)	P4 (6), P5 (2)
Linen, hemp and cotton	0,20	0,00	0,00	P1	P3 (1)	
Fruit and vegetables	0,80	0,00	0,00	P1, P2	P3 (1)	
Wine	0,00	0,00	0,00			
Tobacco	0,00	0,00	0,00			
Seeds and hops	17,50	17,50	1,34	P1, P2	P3 (1), P4, P5 (2)	P4 (10)
Milk expenditure	117,30	71,70	5,50	P1	P3 (1), P4, P5 (8)	P5 (9)
Meat	113,60	90,90	6,98	P1, P2	P3 (1)	
Fish	1,50	0,00	0,00	P1, P2	P3 (1)	
Other	28,30	0,00	0,00			
TOTAL EXPENDITURE	1 302,50	671,70	51,57			
Cereals revenue	-50,40	-50,40	61,24	P1, P2	P3 (1), P4, P5 (2)	
Milk revenue	-31,90	-20,20	24,54	P1	P3 (1), P4	
TOTAL REVENUE	-82,30	-70,60	85,78			
TOTAL	1 220,20	601,10				

(6) P4, P5 at one beneficiary.
(7) P5 Due to limitations in the audit coverage the Commission's auditors could express no opinion on the total expenditure.
(8) P5 Aid for the production of casein — four files checked: private storage of butter, technical costs, butter, financial costs, butter, other costs, butter. Deprecitation butter: three files checked. Other measures: four files checked.
(9) P5 One beneficiary visited.
(10) One beneficiary visited.

TABLE 4

SCOPE OF THE CLEARANCE AUDIT IN GERMANY

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	1 771,20	860,00	15,89	P1, P2	P3, P4, P5 (2) (9)	
Cereals expenditure	738,30	627,60	11,60	P1, P2	P3 (1), P5 (2)	
Sugar	113,10	0,00	0	P1, P3	P3 (1)	
Oils and fats, protein	868,00	184,30	3,41	P1	P3 (1)	P4(6)
Linen, hemp and cotton	0,70	0,00	0	P1	P3 (1)	
Fruit and vegetables	36,90	36,40	0,67	P1, P2	P3 (1)	P4 (8)
Wine	4,60	0,00	0	P1	P3 (1)	
Tobacco	39,80	0,00	0	P1	P3 (1)	
Seeds and hops	4,10	0,00	0		P3 (1)	
Milk expenditure	1 171,60	205,30	3,79	P1, P2	P3 (1), P4, P5 (2)	
Meat	642,40	60,50	1,12	P1, P2	P3 (1)	P4 (6)
Fish	0,10	0,00	0	P1, P2	P3 (1)	
Other	20,00	0,00	0		P3 (1)	
TOTAL EXPENDITURE	5 410,80	1 974,10	36,48			
Cereals revenue	-151,10	0,00	0	P1, P2	P3 (1)	
Milk revenue	0,30	0,30	48,47 (10)	P1, P2	P3 (1), P4, P5 (2)	
TOTAL REVENUE	-150,80	0,30	48,47			
TOTAL	5 260,00	1 974,40				

(6) P4 in two regions out of 16.
(8) P4 in one Land out of 16. Four beneficiaries visited.
(9) Due to limitations in the audit coverage, the Commission's auditors could express no opinion on the total expenditure.
(10) The amount covered is a net amount. The percentage expresses the gross coverage.

TABLE 5

SCOPE OF THE CLEARANCE AUDIT IN GREECE

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	191,50	0,00	0,00	P1	P3 (1)	
Cereals expenditure	225,20	-7,50	-0,34	P1	P3 (1), P4	P4 (10)
Sugar	10,60	0,00	0,00	P1	P3 (1)	
Oils and fats, protein	392,30	282,40	12,73	P1	P3 (1) follow-up P4	
Linen, hemp and cotton	335,80	335,60	15,12	P1	P3 (1), P4 (7)	P4 (7)
Fruit and vegetables	287,60	0,00	0,00	P1, P2	P3 (1)	
Wine	92,40	77,00	3,47	P1, P2	P5 (11)	P4 (12)
Tobacco	421,50	390,40	17,59	P1, P2	P3 (1), P5 (13)	
Seeds and hops	0,60	0,00	0,00	P1, P2	P3 (1)	
Milk expenditure	3,40	1,50	0,07	P1, P2	P3 (1), P4, P5 (9)	
Meat	231,70	229,50	10,34	P1, P2	P3 (1)	P4 (6)
Fish	0,80	0,00	0,00	P1, P2	P3 (1)	
Other	25,50	8,60	0,39	P1, P2	P3 (1)	P4
TOTAL EXPENDITURE	2 218,90	1 317,50	59,37 (14)			
Ceereals revenue	-7,70	0,00	0,00	P1, P2	P3 (1)	
Milk revenue						
TOTAL REVENUE	-7,70	0,00	0,00			
TOTAL	2 211,20	1 317,50				

(6) P4 2 Nomos covered.
(7) P4 Special investigation cotton.
(8) Special investigation.
(9) P5 'Cheese in store', no representative sample.
(10) P4 In one region. No beneficiaries checked.
(11) P5 The test was not completed. No opinion can be drawn.
(12) P4 One Nomos visited.
(13) P5 The test was not completed. No conclusion can be drawn.
(14) The gross coverage of expenditure is 60,05 %.

TABLE 6

SCOPE OF THE CLEARANCE AUDIT IN SPAIN

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	402,80	0,00	0,00	P1	P3 (1)	
Cereals expenditure	132,40	1,40	0,04	P1	P3 (1)	
Sugar	32,30	0,00	0,00	P1	P3 (1)	
Oils and fats, protein	1 055,70	499,50	14,76	P1	P3 (1), P4 (7)	P4 (7) (8), P5 (2)
Linen, hemp and cotton	152,60	0,00	0,00	P1		
Fruit and vegetables	166,30	52,00	1,54	P1, P2	P3 (1)	P4 (9) (10)
Wine	436,70	289,80	8,57	P1, P2	P3, P5 (11)	
Tobacco	82,70	82,70	2,44	P1, P2	P5	P4 (12)
Seeds and hops	7,20	0,00	0,00	P1, P2	P3 (1)	
Milk expenditure	181,80	70,50	2,08	P1, P2	P3 (1), P4	
Meat	670,10	661,40	19,55	P1, P2	P3 (1)	P4 (6)
Fish	11,30	0,00	0,00	P1, P2	P3 (1)	
Other	51,20	0,00	0,00	P1, P2	P3 (1)	
TOTAL EXPENDITURE	3 383,10	1 657,30	48,98			
Cereals revenue	-59,00	-59,00	88,72	P1	P3 (1)	
Milk revenue	-7,50	-7,50	11,28	P1	P3 (1), P4	
TOTAL REVENUE	-66,50	-66,50	100,00			
TOTAL	3 316,60	1 590,80				

(6) P4 in one region.
(7) P4 of olive oil, consumption aid, the audit did not allow the auditors to arrive at an opinion on the control system.
(8) P4 of olive oil, production aid in two regions.
(9) Withdrawal at one producer organization.
(10) Nuts, two producer organizations visited.
(11) P5 The tests were not finished for any of the budget lines. No conclusion can be drawn.
(12) P4 One beneficiary visited.

TABLE 7

SCOPE OF THE CLEARANCE AUDIT IN FRANCE

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	2 940,30	2 103,70	30,49	P1, P2	P3 (7), P4, P5 (8)	
Cereals expenditure	465,00	18,50	0,27	P1	P3 (1), P4, P5 (2)	
Sugar	161,90	0,00	0,00	P1	P3 (1)	
Oils and fats, protein	1 149,40	164,30	2,38	P1	P3, P4	P4 (6)
Linen, hemp and cotton	21,50	0,00	0,00	P1	P3	
Fruit and vegetables	80,80	16,60	0,24	P1, P2		
Wine	230,20	86,30	1,25	P1, P2	P3, P5 (10)	
Tobacco	70,90	0,00	0,00	P1		
Seeds and hops	9,70	0,00	0,00	P1		
Milk expenditure	1 012,10	715,80	10,37	P1, P2	P3 (1), P4, P5 (2) (9)	
Meat	766,80	303,20	4,39	P1, P2		
Fish	6,80	0,00	0,00	P1, P2		
Other	-14,70	0,00	0,00	P1, P2		
TOTAL EXPENDITURE	6 900,70	3 408,40	49,39			
Cereals revenue	-391,00	-391,00	79,04	P1	P3 (1), P4, P5 (2)	
Milk revenue	-103,70	-31,10	6,29	P1	P4, P5 (2)	
TOTAL REVENUE	-494,70	-422,10	85,33			
TOTAL	6 406,00	2 986,30				

(6) P4 Two beneficiaries visited.
(7) P3 Partly covered by external auditors.
(8) P5 No test was finished for any budget line. For this reason, and due to other limitations in the audit coverage, the Commission's auditors could express no opinion on the total expenditure.
(9) P5 Samples were drawn from FF 46,4 million. The samples were not representative.
(10) P5 The test of samples drawn on ECU 65,1 million were not completed. No conclusion can be drawn.

TABLE 8

SCOPE OF THE CLEARANCE AUDIT IN IRELAND

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	279,9	185,2	10,54	P1, P2	P3, P4, P5 (2) (6)	
Cereals expenditure	11,8	9,2	0,52	P1, P2	P3, P5 (2)	
Sugar	8,3	6,8	0,39	P1, P2	P3, P5 (2)	
Oils and fats, protein	3,5	0	0	P1		
Linen, hemp and cotton	0	0	0	P1		
Fruit and vegetables	0,1	0	0	P1, P2		
Wine	0	0	0			
Tobacco	0	0	0			
Seeds and hops	0,1	0,1	0,01	P1, P2	P3, P5 (2)	
Milk expenditure	589,7	279,7	15,92	P1, P2	P3, P4, P5 (2)	
Meat	832,2	830,8	47,30	P1, P2	P3, P5 (2)	P4 (8)
Fish	1,1	0	0	P1, P2		
Other	29,8	0	0	P1 P2		
TOTAL EXPENDITURE	1 756,5	1 311,8	74,68			
Cereals revenue	-11,9	0	0			
Milk revenue	-13,8	0	0			
TOTAL REVENUE	-25,7	0	0			
TOTAL	1 730,8	1 311,8				

(6) P5. Due to limitations in the audit coverage the Commission's auditors could express no opinion on the total expenditure.
(8) P4 in three counties.

TABLE 9

SCOPE OF THE CLEARANCE AUDIT IN ITALY

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	903,70	0,00	0,00	P1		
Cereals expenditure	604,30	259,60	4,73	P1, P2	P3 (1), P4, P5 (2)	P4 (10)
Sugar	67,20	0,00	0,00	P1, P2	P3 (1)	
Oils and fats, protein	1 675,80	1 035,00	18,87	P1	P3 (1), P4 (9)	P4 (6) (7) (8) P5 (2)
Linen, hemp and cotton	0,10	0,00	0,00	P1	P3 (1)	
Fruit and vegetables	395,70	255,40	4,66	P1, P2	P3 (1)	
Wine	440,30	366,30	6,68	P1, P2	P3, P5 (11)	P5 (11)
Tobacco	630,00	607,60	11,08	P1, P2	P3, P5 (11)	P4 (12)
Seeds and hops	7,00	0,00	0,00	P1, P2	P3 (1)	
Milk expenditure	290,10	20,60	0,38	P1	P3 (1), P4, P5 (2)	
Meat	547,40	466,60	8,51	P1, P2	P3 (1), P4, P5 (2)	
Fish	1,90	0,00	0,00	P1, P2	P3 (1)	
Other	-78,40	0,00	0,00		P3 (1)	
TOTAL EXPENDITURE	5 485,10	3 011,10	54,91			
Cereals revenue	-62,10	0,00	0,00	P1, P2	P3 (1)	
Milk revenue	-37,20	-37,20	37,46		Special investigation	
TOTAL REVENUE	-99,30	-37,20	37,46			
TOTAL	5 385,80	2 973,90				

(6) P4 olive oil consumption aid in two regions.
(7) P5 olive oil consumption aid — two beneficiaries.
(8) P4 aid sunflower one beneficiary visited.
(9) Olive oil production aid limited P4.
(10) P4 One region, two beneficiaries visited.
(11) P5 The tests were not finished for any of the budget lines. No conclusion can be drawn.
(12) P4 One region and four beneficiaries visited.

TABLE 10

SCOPE OF THE CLEARANCE AUDIT IN LUXEMBOURG

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	0,90	0,00	0,00	P1		
Cereals expenditure	-0,10	0,00	0,00	P1, P2	P3	
Sugar	0,00	0,00	0,00			
Oils and fats, protein	0,10	0,00	0,00			
Linen, hemp and cotton	0,00	0,00	0,00			
Fruit and vegetables	0,00	0,00	0,00			
Wine	0,00	0,00	0,00			
Tobacco	0,00	0,00	0,00			
Seeds and hops	0,10	0,00	0,00	P1, P2	P3	
Milk expenditure	2,90	2,50	49,02	P1, P2	P3, P5 (2)	P5
Meat	1,10	0,00	0,00	P1, P2		
Fish	0,00	0,00	0,00			
Other	0,10	0,00	0,00			
TOTAL EXPENDITURE	5,10	2,50	49,02			
Cereals revenue	-0,70	0,00	0,00	P1, P2	P3	
Milk revenue	-1,70	-1,70	70,83	P1, P2	P3, P4, P5 (2)	
TOTAL REVENUE	-2,40	-1,70	70,83			
TOTAL	2,70	0,80				

TABLE 11

SCOPE OF THE CLEARANCE AUDIT IN THE NETHERLANDS

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	1 565,50	1 134,40	40,88	P1, P2	P3 (1), P4, P5 (7)	
Cereals expenditure	86,20	0,00	0,00	P1	P3 (1)	
Sugar	39,90	0,00	0,00	P1	P3 (1)	
Oils and fats, protein	292,20	96,30	3,47	P1	P3 (1), f. u. P4	P4 (6)
Linen, hemp and cotton	2,30	0,00	0,00	P1	P3 (1)	
Fruit and vegetables	0,90	0,00	0,00	P1, P2	P3 (1)	
Wine	0,10	0,00	0,00	P1	P3 (1)	
Tobacco	0,00	0,00	0,00			
Seeds and hops	12,30	0,00	0,00	P1	P3 (1)	
Milk expenditure	722,00	229,00	8,25	P1, P2	P4, P5 (2)	
Meat	21,10	0,00	0,00	P1, P2	P3 (1)	
Fish	0,00	0,00	0,00			
Other	32,70					
TOTAL EXPENDITURE	2 775,20	1 459,70	52,60			
Cereals revenue	-11,40	0,00	0,00	P1	P3 (1)	
Milk revenue	-81,90	-32,40	34,73	P1, P2	P3, P5 (2)	
TOTAL REVENUE	-93,30	-32,40	34,73			
TOTAL	2 681,90	1 427,30				

(6) P4 One beneficiary.
(7) P5 No test was finished for any budget line. For this reason, and due to other limitations in the audit coverage, the Commission's auditors could express no opinion on the total expenditure.

TABLE 12

SCOPE OF THE CLEARANCE AUDIT IN PORTUGAL

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	17,50	5,80	1,84	P1, P2	P3, P5 (2)	
Cereals expenditure	18,20	17,90	5,67	P1, P2	P3, P4	P4 (9)
Sugar	15,90	0,00	0,00	P1, P2	P3	
Oils and fats, protein	101,30	16,40	5,20	P1	P3, P4 (7)	P4 (6) (7), P5 (2)
Linen, hemp and cotton	0,00	0,00	0,00	P1	P3	
Fruit and vegetables	39,30	0,00	0,00	P1, P2	P3	P4
Wine	18,20	18,20	5,77	P1, P2	P3, P4, P5 (10)	
Tobacco	12,90	0,00	0,00	P1		
Seeds and hops	0,30	0,00	0,00	P1, P2	P3	
Milk expenditure	4,60	-1,30	-0,41	P1, P2	P3, P4	P4 (8)
Meat	72,20	0,00	0,00	P1, P2		
Fish	0,80	0,00	0,00	P1, P2		
Other	14,40	0,00	0,00	P1, P2		
TOTAL EXPENDITURE	315,60	57,00	18,07 (11)			
Cereals revenue	0,00	0,00	0,00			
Milk revenue	0,00	0,00	0,00			
TOTAL REVENUE	0,00	0,00	0,00			
TOTAL	315,60	57,00				

(6) Olive oil production aid one region.
(7) Limited P4.
(8) P4 One beneficiary visited.
(9) P4 At two local offices of the Ministry of Agriculture and two producer organizations.
(10) P5 The test was not completed. No conclusion can be drawn.
(11) The gross coverage is 18,89 %.

TABLE 13

SCOPE OF THE CLEARANCE AUDIT IN THE UNITED KINGDOM

(million ECU)

Measures	Expenditure	Covered	Percentage of Member State total expenditure/ revenue	Depth of the audit		
				Desk audit	Audit at paying agency	Audit at control bodies/regional bodies
Export refunds	562,20	313,70	11,95	P1, P2	P3, P4, P5 (2) (8)	
Cereals expenditure	65,60	0,00	0,00	P1, P2	P3 (1)	
Sugar	64,80	20,60	0,78	P1, P2	P5 (2)	
Oils and fats, protein	387,90	52,80	2,01	P1	P3 (1)	P4 (6)
Linen, hemp and cotton	0,00	0,00	0,00			
Fruit and vegetables	3,40	1,20	0,05	P1, P2	P3 (1)	P4 (7)
Wine	0,10	0,00	0,00	P1		
Tobacco	0,00	0,00	0,00			
Seeds and hops	5,80	0,00	0,00	P1, P2	P3 (1)	
Milk expenditure	427,30	66,20	2,52	P1	P3 (1), P4, P5 (2)	P4 (9)
Meat	1 076,10	233,20	8,88	P1, P2	P3 (1), P4, P5 (2)	
Fish	1,70	0,00	0,00	P1, P2	P4 (7)	
Other	30,40	0,00	0,00	P1, P2		
SUB-TOTAL	2 625,30	687,70	26,19			
Cereals revenue	-166,20	0,00	0,00	P1, P2	P3 (1)	
Milk revenue	-59,20	-12,90	5,72	P1	P3, P4, P5 (2)	P4 (9)
SUB-TOTAL	-225,40	-12,90	5,72			
TOTAL	2 399,90	674,80				

(6) P4 One region and two beneficiaries visited.
(7) P4 One region three beneficiaries.
(8) P5 Due to limitations in the audit coverage, the Commission's auditors could express no opinion on the total expenditure.
(9) P4 One beneficiary visited.

TABLE 14

CLEARANCE OF ACCOUNTS 1991

EXPENDITURE DISALLOWED BY MARKET/MEMBER STATE

Member State	Export refunds		Cereals, sugar, seeds, hops		Oils, fats, protein		Linen, hemp, cotton		Wine	
	National currency	ECU	National currency	ECU	National currency	ECU	National currency	ECU	National currency	ECU
Belgium										
Denmark	938 101,10	118 921	338 086,56	42 858	205 496	26 050				
Germany	156 567 553,40	76 229 395	13 040 703,06	6 349 240						
Greece	650 662 326	3 017 452	83 521 994	387 334	2 476 647 907	11 485 477	16 735 309 160	77 610 149	733 908	3 404
Spain	-13 896 153	-107 984	-11 256 912	-87 475	26 409 616	205 224				
France	429 045,10	61 677	16 864 266	2 424 302	2 814 504	404 596				
Luxembourg										
Italy	12 156 278 030	7 919 864	45 541 044 728	29 670 173	52 002 737 040	33 879 991			3 937 167 601	2 565 080
Ireland	4 335 764,80	5 640 401	-37 904,86	-49 310						
Netherlands	1 796 131,50	775 498	-708 535,97	-305 918						
Portugal	14 805 492	82 529	-70 982 476	-395 670	161 174 966	898 421			83 287 646	464 262
United Kingdom	880 186,51	1 257 896	535,19	765	38 546	55 087				
Total market		94 995 648		38 036 297		46 954 846		77 610 149		3 032 746

Member State	Tobacco		Milk and milk products		Meat and fish		Other		Total Member State	
	National currency	ECU	National currency	ECU	National currency	ECU	National currency	ECU	National currency	ECU
Belgium			101 394 471	2 394 728	3 736 843	88 257			105 131 314	2 482 985
Denmark			1 337 048,60	169 494	86 465,31	10 961			2 905 197,57	368 285
Germany			91 219 009	44 412 585	3 132 135,96	1 524 970			263 959 401,42	128 516 189
Greece	9 847 935 040	45 669 888	2 010 015 663	9 321 466	148 428 230	688 337	237 660 605	1 102 153	32 190 914 833	149 285 661
Spain	29 073 478	225 924	71 870 823 240	558 493 268	200 924 405	1 561 342	9 159 316	71 175	72 111 236 990	560 361 474
France			67 628 373	9 721 833	2 728 128,84	392 179	14 615,33	2 101	90 478 932,27	13 006 686
Luxembourg			1 447 191	34 204					1 447 191	34 204
Italy	31 732 825 833	20 674 063	1 238 046 669 626	806 592 354	95 469 690 713	62 198 885	5 149 601	3 355	1 478 891 563 172	963 503 765
Ireland			48 787,57	63 468	1 495 126,15	1 945 011			5 841 773,66	7 599 569
Netherlands			-2 691 569,21	-1 162 113	28 371,39	12 250			-1 575 602,29	-680 282
Portugal							6 557 630	36 554	194 843 258	1 086 095
United Kingdom			268 733,38	384 054	3 707 322,09	5 298 240	-2 767 091,7	-3 954 519	2 128 241,44	3 041 522
Total market		66 569 875		1 430 425 341		73 720 431		-2 739 181		1 828 606 152

REPLY OF THE COMMISSION

Preliminary remarks

The Court has, at the request of the European Parliament, drafted its opinion on the decision taken on 21 December 1994 regarding the clearance of the accounts of the financial year 1991. The essential part of the preparatory work for this decision was performed between March 1992 and mid-1993. The Commission's clearance of the accounts of that year should not be seen in isolation from the progress being made by the Commission in improving the techniques applied in its clearance enquiries, nor from the reform of the clearance process undertaken both at the working level and in the legal provisions.

Many of the critical comments raised by the Court concern matters which have been long recognized by the Commission, which in 1991 instructed the 'Belle' working group to identify their root causes and to propose workable solutions. The conclusions and proposals of this group were presented in October 1992 and approved by the Commission in March 1993. After long and detailed discussions with the Member States, and after receiving the opinions of the Parliament and the Court of Auditors, the legal bases for this reform were adopted by Council on 23 May 1995, and the detailed rules by the Commission on 7 July 1995. The reform will come into effect in the 1996 financial year.

It is inevitable that the clearance of the intervening years will take place on the unreformed legal basis, tempered by the progressive introduction of those principles of the reform which can be adopted without a modification of the legal framework.

The reform will in particular allow the Commission to undertake more exhaustive enquiries in selected areas instead of spreading its resources thinly in an effort to cover all sectors in each financial year, an unrealistic task which gives rise to many of the imperfections noted by the Court regarding the 1991 clearance exercise.

Method applied by the Commission to check expenditure

1. The Commission's internal operational handbook provides sound guidance to its auditors, but is not to be followed exhaustively in all enquiries. Certain verifications are rendered unnecessary by the work performed by external audit firms contracted by the Commission, and others are irrelevant, when for example tests on documents are impossible in an enquiry undertaken into Member States' control procedures on a preventive basis, before payments are executed. The auditors are required to adapt the principles laid down in the handbook in function of the objectives particular to each enquiry.

It is however correct that the work envisaged for each enquiry could not always be completed due to the restricted availability of human resources. The Commission has recognized the need for some 15 additional staff for the unit responsible for clearance, but budgetary restrictions have prevented the staff from being made available.

2. (a) The Commission cannot systematically analyze and evaluate all the Member States' instructions and procedures regarding every one of the measures financed by the Guarantee section of EAGGF. It responds to specific queries from Member States, and evaluates those procedures selected in its annual work plan. The deficiencies and irregularities detected are factors which influence the risk ratings allocated to each measure in the following year's work plan.

2. (b) Since the end of 1994, the Court has communicated to the Commission copies of its letters to the Member States which allow the Commission to take appropriate measures including, where it shares the Court's interpretation of the Regulations and the Member State does not contest the facts reported, a financial correction under the clearance of the accounts.

2. (c) The work of each auditor is supervised by a team leader responsible for three to four auditors. Documentation will be improved in the light of the Court of Auditor's observations.

2. (d) The reconciliations were performed for all except two material budget expenditure items. It is correct that the work of the external auditors expressly excluded an examination of the compliance of expenditure with Community rules, but

their work extended beyond the simple verification that the annual declarations were drawn from the accounts: they also verified and evaluated the paying agencies' control systems which aim to ensure that compliance is checked before payments are executed. In some cases the external auditors concluded that the control systems did not provide the assurance sought.

2. (e) and (f) It is correct that all control systems are not examined each year, and that certain audits concentrate on one element of a control procedure (for example Customs controls over exported goods) and not the activities of every body implicated in the administration of a measure. For 1991, 12 paying agencies were examined by external auditors: this number doubled in subsequent years. In view of the large number of paying agencies (over 150) and the far larger number of services responsible for checking and authorizing claims, the Commission is obliged to be very selective when undertaking enquiries. Even after the reform of the clearance procedure, the Commission will be faced with the task of clearing the accounts of more than 100 paying agencies, over which, in decentralized countries such as Germany and Spain, the national authorities have no powers of control.

3. and 4. The reports and the letters communicating the Commission's findings to the Member States contain a large number of observations of very varied importance. Very often the Member States' replies are satisfactory and the reason for not carrying the comment forward are evident from the replies. Where this is not the case, a greater effort can be made to record the information sought by the Court.

5. The dialogue held with each Member State serves as an opportunity for its representatives to supply information and explanations still awaited at that date, or to note those which are still awaited. Provisional conclusions of the findings are discussed, and the Member State has a better opportunity to develop arguments in such a meeting than by letter. The conclusions of each meeting are minuted, and communicated to the Member State by telex. The final conclusions depend on further bilateral discussions and on inter-service consultations.

Evaluation of the main amounts disallowed

9. Conscious of a need for more representative sampling, the Commission has introduced advanced computer tools which permit it to examine Member States' records of payments, to identify anomalies and to select samples based on criteria of risk and on statistically valid sampling techniques. First introduced in 1993, these tools are now generally applied. However, it is rare that any loss to the fund can be determined by an extrapolation of the results of examining selected documents. A weakness in controls does not imply that every transaction was irregular, but that the risk of irregularity remaining undetected by the control body was increased. For this reason, the Commission has applied in such circumstances rates of correction based on its evaluation of the losses which the weakness occasioned.

10. The evaluation of the risk is based on criteria concerning the number of control deficiencies and their nature. The Member State concerned is informed of the deficiencies found. The assessment of the risk must be made in the first instance by the auditor who was present on the spot, and concluded in consultation with all associated services. As from the clearance of the 1992 year, at the Member State's request the Conciliation Body set up by Commission Decision 94/442/EC may examine the correction proposed and report its conclusions on the rate applied.

It is correct that the resources available do not permit the Commission to verify all the explanations given by Member States, but as far as possible, supporting documents are required to be submitted for examination.

11. As described in 9 above, the Commission is now equipped to sample transactions on a statistical basis which permits valid extrapolations.

13. Through its verifications in six selected regions, the Commission concluded that the controls exercised by Italy over the ewe premiums were deficient through the inadequacy of the national instructions and through the absence of supervision over the implementation of the controls. These weaknesses had remained uncorrected over many years. The national statistics are established by a body independent from the paying agency, and showed that the number of sheep and goats in Italy was substantially lower than that on which premiums had been claimed. It was therefore considered appropriate to refuse expenditure on the basis the difference between the two numbers.

15. A flat rate of 2 % was considered appropriate with regard to the risk presented by the Irish national system which included a rate of on-the-spot verifications of up to 100 %, modulated in function of the application of that system in the regions visited.

16. In the case mentioned by the Court, Ireland had failed to call on guarantees relating to long-outstanding advances.

17. The Commission has endeavoured not to penalize Italy for the effects on agricultural expenditure of its efforts to combat organized crime.

18. In the case of the export of tobacco from Greece, the Commission had evidence that the absence of controls had led to extensive irregularities concerning tobacco exported to Albania and Bulgaria. The corrections amounted to 100 % of the subsidies paid on tobacco exported to those destinations.

22. (a) The absence of cadastral register and of the means to accurately measure fields is common to all aid schemes in Greece. Heavy investment is required to remedy this structural deficiency. Under Commission pressure, and with Community cofinance, pilot plot identification studies were undertaken and the mapping work is now under way for substantially all agricultural land in Greece. In these circumstances, a financial correction was not thought appropriate.

22. (b) The conclusions to be drawn from enquiries under way in Member States other than Ireland and Denmark will be determined under the 1992 clearance.

22. (c) All Member States experience difficulties in implementing new schemes, and Spain had joined the EC only shortly before the first difficulties in administering the beef premium were experienced, in the 1987 to 1989 years. To remedy these difficulties, Spain changed to the slaughter system in 1989, and remedied deficiencies in this system as soon as they were pointed out by the Commission. In view of Spain's prompt and decisive action, it was not considered appropriate to apply corrections for periods earlier than the communication of the Commission's findings.

22. (d) The results of the Commission's examination of the controls in the 1992 year will be considered under the 1992 clearance. There were no inspections in the two prefectures concerned because of localized bandit activity.

22. (e) and (f) The practical difficulties faced by Member States in applying new measures are recognized by the Commission, and appropriate allowance is made for these difficulties when clearing the accounts, and in an even-handed way which aims to avoid unequal treatment.

23. Apart from greatly improving its controls over the cotton sector in the current and future marketing years, Greece is being required to undertake *ex-post* controls over selected beneficiary ginners. The implementation of these controls is being monitored by the Commission services, and an evaluation of their effectiveness will be submitted in late-1995. A better assessment of the true losses through irregularity will then be available, as will information on the sums recovered by the Greek authorities from beneficiaries.

24. (a) The German authorities submitted the details long requested by the Commission six months after the deadline fixed for the submission of information and applicable to all Member States. After hesitating to accept the late information, the Commission applied a correction which reflects the failure to comply with the deadline.

24. (b) Staff resources are insufficient to verify on the spot all information submitted by Member States.

25. When adopting the 1991 clearance decision, the Commission considered that no greater assurance could be given on the accounts with the resources available. The effect of the decision was to recover from Member States over ECU 1 500 million [1], 5 % of the total declared.

Budgetary management

26. The conclusions reached jointly by the Council and the Commission on 21 October 1994 made it possible to resolve the dispute between the Commission and some Member States.

As a result, on 30 November 1994 the Commission adopted a decision amending the clearance of accounts decision for 1989 and 1990. A decision to spread the cost to the Member States over four equal annual instalments spread over the years 1995 to 1998 is not contrary to the principle of annuality.

Spreading the amounts to be recovered over several financial years cannot be considered to infringe the annuality principle since the outcome of the accounts clearance, because of its unpredictable nature, is not the subject of either a budget estimate or a budget entry (except provisionally and in the case of amounts which do not include possible additional recoveries).

Moreover, Article 102 (3) of the Financial Regulation no longer entails the obligation, as previously, to book the outcome of the clearance to the financial year in which the decision was taken.

The other texts governing the accounts clearance, in particular Regulation (EEC) No 729/70 on the financing of the CAP and Regulation (EEC) No 1723/72 on the clearance of accounts, have nothing to say on this point.

27. The amounts made available by the Member States do not represent payment of an own resource. Since they are the outcome of the clearance of accounts, such amounts must be booked in accordance with Article 102 (3) of the Financial Regulation, which provides that 'the outcome of the clearance decision ... shall be booked under a single Article, as additional expenditure, or a reduction in expenditure.'

Conclusions

28 and 29. The majority of the Court's recommendations in its opinion on the reform of the clearance procedure were taken into account in the legal texts. As the opinion was received very late, they are principally reflected in the detailed rules rather than in the Council's Regulation.

When corrections are based on flat-rate percentages, there is an objective assessment of the number and nature of the control weaknesses which put the Community funds at risk of undetected irregularities. There is seldom a better way of evaluating, *ex-post,* the true losses to the Fund through irregularity, and as pointed out by the Court, this approach has been formalized through a modification to Regulation 729/70.

30. The greatest obstacle faced by the Commission when clearing the accounts is the very large number of services in the Member States which are responsible for verifying and authorizing expenditure, particularly when no national authority implements any effective level of supervision over those services, either because of their independence (the German *Länder,* the Spanish autonomous communities, and increasingly the British and Belgian regions), or because of a lack of control infrastructure (Greece, Italy). In these circumstances, the Commission cannot rely on the Member State's control systems to gain assurance over the national declarations of expenditure, but must undertake its own enquiries in as many of the independent services as resources permit.

Since the adoption of the reform of the clearance procedure, the Member States are required to put into place a sufficient

[1] At 1995 rates of exchange.

level of financial control and of coordination of their paying agencies, and to limit the number of these agencies. Once this reform is implemented, the Commission may expect to obtain a reasonable level of assurance without a completely disproportionate effort. However, the Commission needs to assess the effectiveness of the control instruments to be put into place by the Member States, the accreditation of paying agencies and the certification of their accounts, in order to appraise the level of assurance which they offer, and will afterwards continue to undertake enquiries into the compliance of payments executed by the some 100 paying agencies.

The Commission did intend to allocate 15 additional posts to reinforce the clearance of the accounts unit but budgetary resources have not been available. With these additional posts, and with recruitment of qualified staff successful in competitions organized jointly with the Court of Auditors, the task is feasible, and a reasonable level of assurance on the legality and regularity of guarantee expenditure can be gained. With present staffing levels, the Commission can only trust that all Member States will shoulder their new responsibilities under the reform of the clearance procedure.