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COMMISSION REGULATION (EEC) No 1863/90

of 29 June 1990

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

(OJ L 170, 3.7.1990, p. 23)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Commission Regulation (EC) No 2992/95 of 19 December 1995	L 312	11	23.12.1995
► <u>M2</u> Commission Regulation (EC) No 2278/96 of 28 November 1996	L 308	30	29.11.1996

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COMMISSION REGULATION (EEC) No 1863/90
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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 Economic 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⁾, and in particular Article 19 thereof,

Whereas Regulation (EEC) No 4045/89 expressly provides for a Community contribution towards the expenditure incurred by Member States in engaging extra staff, towards the costs of training staff responsible for application of the system and towards the cost of purchasing data processing and office equipment;

Whereas detailed rules specifying certain types of expenditure eligible for a Community contribution should be adopted, in order to ensure uniform application of the system;

Whereas the method for establishing estimates and actual sums to be paid and frequency of communication with the Commission should be determined;

Whereas provision should be made for Member States to keep supporting documents for a certain period to enable the Commission to scrutinize the specific expenditure financed by the Community pursuant to Article 20 of Regulation (EEC) No 4045/89;

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

HAS ADOPTED THIS REGULATION:

▼M1

Article 1

This Regulation lays down detailed rules for the application of Regulation (EEC) No 4045/89.

TITLE I

The system of Community financing

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Article 2

1. The remuneration referred to in Article 13 (3) of Regulation (EEC) No 4045/89 shall include all sums paid including family benefits and compulsory contributions to national social security and pension schemes, excluding taxes and fiscal charges.

2. The travel costs referred to in Article 13 (3) of Regulation (EEC) No 4045/89 shall include travelling expenses incurred by officials on assignment, accommodation expenses and subsistence allowances paid in accordance with national provisions and/or practices.

3. Expenditure for training as referred to in Article 14 of Regulation (EEC) No 4045/89 shall include expenditure actually incurred in the

⁽¹⁾ OJ No L 388, 30. 12. 1989, p. 18.

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organization of courses and seminars, and in particular the fees of persons responsible for training, travelling expenses of officials attending courses and the documentation supplied them.

4. 'Data processing and office equipment' as referred to in Article 15 of Regulation (EEC) No 4045/89 shall include all data-processing equipment, including software, telecommunications equipment such as telefax and telex, and the costs of installing such equipment, with the exception of usual office equipment and furniture.

5. To determine the Community participation in the expenditure foreseen in paragraphs 1 and 2, Member States are to indicate the method of calculation and the basic sums applied.

Article 3

1. Each year, before 15 June, the Member States shall send the Commission detailed estimates of expenditure pursuant to Articles 13, 14 and 15 of Regulation (EEC) No 4045/89 for the year in question.

Such estimates must be drawn up in accordance with the table in the Annex.

2. The Commission shall, within thirty days following receipt of the estimates referred to in paragraph 1, examine the declarations and pay the Member State an advance on the basis of the information contained therein.

Where applicable, the Commission shall inform the Member States that certain expenditure is not eligible for Community financing.

3. Each Member State shall, not later than 15 May each year, submit to the Commission a statement showing the expenditure during the previous year.

This statement must be drawn up in accordance with the table in the Annex.

4. Not later than three months from the date of receipt of the statement of expenditure, the Commission shall decide on the amount of expenditure to be charged to the Community; that amount shall be paid to the Member State after deduction of the advance referred to in paragraph 2.

5. For expenditure during 1990, Member States shall send to the Commission the estimate referred to in paragraph 1 not later than 15 October.

Article 4

Member States shall keep all payment records and supporting documents relating to expenditure under Articles 13, 14 and 15 of Regulation (EEC) No 4045/89 for at least three years after the financial year concerned.

▼M1

TITLE II

The content of documents*Article ►M2 5 ◀*

1. The annual report referred to in Article 9 (1) of Regulation (EEC) No 4045/89 shall contain detailed information on at least each of the aspects of the application of Regulation (EEC) No 4045/89 listed in Annex II of this Regulation, set out in clearly identified sections under the headings referred to.

2. The annual programme of scrutinies referred to in Article 10 of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex III.

▼ **M1**

3. The list of undertakings referred to in Article 7 (2) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex IV.
4. The list of undertakings referred to in Article 7 (3) of Regulation (EEC) No 4045/89 shall be drawn up in accordance with the specimen form set out in Annex V.
5. A request by a Member State for a priority inspection of an undertaking in another Member State, as referred to in Articles 7 (2) and 7 (4) of Regulation (EEC) No 4045/89, shall be drawn up in accordance with the specimen form set out in Annex VI.

*Article ► **M2** 6 ◀*

The information to be submitted under Article 4a (SIC! 5) may be communicated in documentary form or on computer file in a format to be agreed between the sender and the recipient.

▼ **M2**

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,
 - 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.

▼ **B***Article ► **M2** 8 ◀*

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

▼ **M2***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,

▼ M2

(c) computer equipment and tools at the disposal of staff working on scrutines 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.

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 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 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 Date of dispatch of the list

Member State in which undertaking is established

(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 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).

ANNEX V

LIST OF UNDERTAKINGS ESTABLISHED IN THIRD COUNTRY FOR WHICH PAYMENT OF THE AMOUNT IN QUESTION HAS OR SHOULD HAVE BEEN MADE OR RECEIVED IN THAT MEMBER STATE

(Article 7 (3) of Council Regulation (EEC) No 4045/89)

Member State in which payment was made or received Date of dispatch of this list

Third Country in which undertaking is established

(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) Additional comments (e.g. itemize any difficulties in control, suspicion of irregularity analysis of risk, etc.)
(i) undertaking in third country where established	(ii) to which payment made or from which payment received		(i) paid to undertaking	(ii) paid by undertaking	

Note:
If there are no undertakings established in other third countries as far as your country is concerned, it is requested that this Annex should be returned to the Commission (DG VI-G-3) clearly indicating this to be the case.

▼M1

ANNEX VI

REQUEST FOR INSPECTION UNDER ARTICLE 7 (2) OR 7 (4) OF REGULATION (EEC) No 4045/89

Items marked with an asterisk should be completed in all cases ; other items should be completed where appropriate

This request is based upon : Article 7 (2)

Article 7 (4)

A (*)	1. Requesting Member State (*) 2. Name of special department (*) 3. Address (*) 4. Telephone number 5. Fax number 6. Telex number 7. Responsible official 8. Name of control organization responsible 9. Address 10. Telephone number 11. Fax number 12. Telex number 13. Responsible official	
B (*)	1. Requested Member State (*) 2. Organization	
C (*)	1. Date of request (*) 2. Scrutiny programme	
D	Beneficiary data (*) 1. Name (a) in requesting Member State (b) in requested Member State (*) 2. Reference number (*) 3. Address : (a) in requesting Member State (b) in requested Member State	
E	For requests under Article 7 (2) only Payment data (*) 1. Paying agency (*) 2. Payment reference number (*) 3. Payment type (*) 4. Amount (specific currency) (*) 5. Accounting date (*) 6. Payment date (*) 7. EAGGF budget code (chapter — article — post — line) (*) 8. Marketing year or period to which payment applies (*) 9. EU Regulation serving as legal base for payment	

▼ **M1****F Transaction details**

1. (Export) declaration or application number
2. Contract :
- number
- date
- quantity
- value
3. Invoice :
- number
- date
- quantity
- value
4. Date of acceptance of declaration
5. Authorizing office
6. Certificate or licence number
7. Certificate or licence date
- For storage schemes
8. Tender number
9. Tender date
10. Price per unit
11. Entry date
12. Exit date
13. Increase or reduction in quality
- For export refunds
14. Claim number (if different from export declaration number)
15. Customs office of taking into customs control
16. Date of customs control
17. Prefinancing (code)
18. Export refund code (11 digits)
19. Destination code
20. Prefixed rate
- in ecus
- in national currency
21. Date of prefixation

G Risk Analysis

- (*) 1. Rating — high
- medium
- low
- (*) 2. Narrative justification for rating
- (continue on separate sheet if necessary)

▼ M1

H Scope and objective of control

1. Proposed scope

2. Objectives and their supporting technical details

.....

(continue on separate sheet if necessary)

I (*) List of supporting documents supplied

.....

(continue on separate sheet if necessary)
