

## I

*(Information)*

## COURT OF AUDITORS

## SPECIAL REPORT No 11/2000

## on the support scheme for olive oil, accompanied by the Commission's replies

*(pursuant to Article 248(4), second subparagraph, EC)**(2000/C 215/01)*

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**SUMMARY****Part 1**

This part of the report deals with production aid which is granted to about 2,2 million applicants out of 2,8 million recorded producers of olive oil. This aid is financially the most important measure in the olive oil scheme absorbing in 1997 to 1998 more than 90 % of the total annual expenditure of about ECU 2 200 million. The audit was focused on the management of the scheme by the Commission and the operation of the controls in the Member States in order to assess their contribution to the achievement of the main objectives of the scheme, i.e. to contribute to a fair income for the producers and to maintain a market balance.

The main institutional prices (production target price and representative market price) were fixed annually by the Council and had been almost frozen since 1989. The target price was an indicative price aiming to contribute to a fair income to producers and to maintain the level of Community production. The representative market price was intended to be set at a level permitting normal disposal of olive oil. The difference between these prices was the Community subsidy.

The audit revealed continuous changes in Community rules. After thirty years of operation, a sufficiently efficient and reliable system for the management and the control of the scheme has still not been achieved.

The olive oil sector is characterised by a large number of small holdings. About 40 % of the applicants in 1996/97 have less than 100 trees (area of 1 ha). The income objective of production aid has never been defined and thus, the achievement of this objective could not be evaluated. The two institutional prices were kept stable for more than 10 years and were not based on an established method of calculation. The representative market price did not follow the evolution of the actual market prices, which means that Community subsidies were not always justified. As for the market balance, the increase in number of trees and production, the relatively slow increase in consumption, the WTO constraints for subsidised exports and the increase in stocks in the last two years, indicate a risk of surpluses.

With regard to the control mechanism the Court found that the method for estimating the yields is not harmonised even within the same country and the use of the yields as a control instrument is ineffective. The administrative checks carried out by the producer organisations (PO), are incomplete in important aspects. A

crucial check of double declarations for the same parcel could not be done effectively. For the checks on the spot made by the control agencies (CA) at producer level, the sample taken is too small and they are not based on reliable documentation. At mill level, the sample selected is adequate but certain important aspects are not covered in the checks made. Moreover, the CAs complete their checks after the payments, so that cumbersome recovery procedures have to be initiated.

A percentage of the production aid was retained every year in order to finance the compilation of the olive cultivation register and the quality improvement programmes. For the register an amount of ECU 383 million was retained of which ECU 245 million (64 %) were used. The current situation of the cultivation register, to be replaced by the olive cultivation GIS, is that only Italy has succeeded in setting up a register, despite being delayed, at a cost of about ECU 195 million. The Commission should not tolerate any further delay in compiling the olive cultivation GIS, which since 1996 has replaced the register and will become one of the main tools for the control of the olive oil support scheme.

With the amendments introduced in July 1998, to be applied until marketing year 2000/01, the subsidy is fixed without any link to institutional prices. Other changes introduced for this transitional period include the abolition of the consumption aid and the small producers scheme, the apportioning of the maximum guaranteed quantity among the producer Member States, the improvement of private storage contracts and the creation of a geographical information system (GIS) in place of the olive cultivation register. New provisions clarifying and reinforcing the administrative and control rules have also been adopted. After the transitional period 1998 to 2000, an extensive reform system is intended to be put into force. The Commission is committed to submit relevant proposals in the year 2000.

**Part 2**

Consumption aid, which was abolished in November of 1998, was a subsidy paid to undertakings for packing or bottling olive oil for retail sale. It was designed to increase the market share of olive oil which was faced with competition from cheaper culinary oils. During its lifetime consumption aid cost the EU budget more than ECU 6 000 million. It was also prone to irregularities and fraud, particularly in Italy, which accounts for around 87 % of reported irregularities. The rate of recovery of unduly paid amounts is very low, only 6 % of irregularities reported between 1985 and 1998 has been recovered, leaving some ECU 429 million outstanding.

The Court's audit established that the delays in recovery in Italy were attributable, for the most part, to lengthy judicial

procedures, caused by understaffing both in the district attorney's offices and in the courts themselves. The understaffing coupled with the absence of a deterrent to appeals which may subsequently prove to be either a delaying tactic or otherwise without serious justification <sup>(1)</sup>, lead to the situation where it could take more than 10 years to arrive at definitive judgements (see paragraph 101). Delays in recovery action in the other Member States, Greece, Portugal and Spain, were caused by a mixture of slow administrative and judicial procedures. Debtors' accounts, which Member States were not obliged to keep, were incomplete (Italy and Spain). In Italy the debtors were understated by some ECU 208 million. Both Greece and Italy had failed to apply fines introduced in 1992 for irregularities concerning consumption aid.

Recovery of export refunds unduly paid was subject to similar delays, only 13 % had been recovered, although the amounts involved were much smaller (some ECU 12,5 million reported between 1990 and 1998). There was no exchange of information between the responsible bodies for export refunds and consumption aid concerning the results of laboratory tests. Olive oil could qualify for both export refunds and consumption aid and there was a considerable overlap in the chemical requirements for eligibility for these subsidies.

Member States should take urgent action to speed up recovery action and the Commission should take action within the clearance of accounts procedures to protect the Community's financial interests.

## INTRODUCTION

1. The olive oil scheme was set up by Council Regulation No 136/66/EEC of 22 September 1966 <sup>(2)</sup> establishing a common organisation of the market (CMO) in oils and fats. This regulation was adopted when the main producer Member State in the then Community of six was Italy. This situation changed totally with the accession of Greece in 1981, and Spain and Portugal in 1986. The many subsequent changes in the scheme failed to establish a satisfactory support system. Thus the need for extensive further reform remained.

2. In February 1997 the Commission, in a note to the Council of Ministers and to the European Parliament <sup>(3)</sup>, concluded that far-reaching reform of the support scheme for the olive and olive oil sector was necessary. The two options for reform contained in

that communication, i.e. improvement of the current system and aid per tree, have been the subject of discussions and formal opinions within the Community institutions. The Court has made its contribution to this discussion in the form of a document <sup>(4)</sup> summarising its observations on the reform proposed.

3. The Commission, acknowledging the current lack of reliable information for choosing between the reform options, has proposed, as an interim measure, to improve some aspects of the present system for application for the marketing years 1998/99 to 2000/01. During this period the Commission is committed to gathering reliable information, particularly about the number of olive trees, the areas planted and yields, on which to base its proposal for an extensive reform in the course of the year 2000.

4. The changes to the present system, introduced by Council Regulations (EC) No 1638/98 and No 1639/98 of 20 July 1998, which will be implemented <sup>(5)</sup> for the abovementioned three-year period are:

- (a) the special scheme whereby small producers were paid on the basis of the number of their trees and a fixed yield, is abolished; production aid is granted to all olive growers on the basis of the quantity of olive oil they actually produce;
- (b) consumption aid, the aim of which was to render olive oil more competitive with seed oils has been abolished;
- (c) the Community maximum guaranteed quantity of olive oil eligible for production aid has been increased and for the first time apportioned among the Member States in the form of national guaranteed quantities (NGQs); the total guaranteed quantity has been increased from 1,35 million tonnes to some 1,8 million tonnes and the production aid rate has been reduced from 142,2 to 132,5 EUR/100kg of olive oil;
- (d) public storage is abolished and the private storage contracts system has been improved;
- (e) the olive cultivation register will be integrated into a more efficient olive cultivation geographical information system (GIS), by adopting and complementing the information already available in the existing register.

<sup>(1)</sup> Dilatory or frivolous.

<sup>(2)</sup> OJ 172, 30.9.1966.

<sup>(3)</sup> COM(97) 57 final.

<sup>(4)</sup> Observations on the envisaged reform of the common organisation of the market in olive oil, presented by the Court to the Council, the European Parliament and the Commission on 26 March 1998.

<sup>(5)</sup> OJ L 210, 28.10.1998.

### **The audit objectives**

5. The Court has examined the olive oil scheme three times in the past. The results of these audits were published in a Special Report in 1985 <sup>(1)</sup> and in the Annual Reports for the financial years 1991 <sup>(2)</sup> and 1995 <sup>(3)</sup>. The main observations concerned the control mechanism of the scheme. The Court concluded that inadequacies in the governing regulations resulted in weaknesses in controls; the reliance placed on controls entrusted to producer organisations was a serious weakness in the system because of the conflict between their members' interests and those of the Community; management and control of production aid always required an extraordinary administrative effort both by the Commission and the Member States due to the multitude of producers, the absence of independent third-party evidence and the fact that both miller and producer stood to gain from overstating the quantity of olive oil produced.

6. This present audit examines the effectiveness of the management and control of olive oil production aid up to 1998 and the controls applied in the period 1996 to 1998. For these three years the production aid accounted for 91 % of total budgetary expenditure in this area. Although the relative budgetary importance of consumption aid and export refunds has been significantly reduced (in 1998 they accounted for 6 % and 1 % respectively), they were included in the audit due to the large number of irregularities in payments notified by the Member States to the Commission. Storage measures, having generated very low expenditure in recent years, were not covered by the audit. The producer Member States audited were Italy, Spain, Greece and Portugal. The other producer Member State, France, was not included, due to low production volumes of olive oil compared to the other countries and because most of the overpayments there had already been recovered.

7. The main objectives of the enquiry were to assess whether the management of the scheme by the Commission and the operation of the measures (including the required control systems) by the Member States contributed to the achievement of the principal declared aims of the scheme for olive oil, i.e. to provide fair incomes for producers and maintain a balance between supply and demand. It also evaluated the effectiveness of Member States' follow-up of irregularities in claims for consumption aid and export refunds. The results of the audit of production aid are presented in Part 1 of this report and those concerning consumption aid and export refunds are presented in Part 2.

### **Evolution of the expenditure**

8. The evolution of the expenditure for the period 1987 to 1998 is shown in *Table 1*. On average during this period, annual expenditure on olive oil was at ECU 1 670 million, 5,5 % of total EAGGF-guarantee expenditure, with significant variations from one year to the other and a slowly rising overall trend (see *Table 4*). More than 65 % of the expenditure over this period concerned production aid, about 27 % the consumption aid scheme, about 4 % export refunds and the remainder account for storage costs and production refunds.

9. The reduction in the proportion of consumption aid to total expenditure since 1994 has been due to a shift to production aid decided by the Council and put into force with effect from 1995. Thus the share of production aid to total expenditure increased from 60 % in 1994 to 90 % in 1998, while for consumption aid the corresponding share decreased from 34 % to 6 % and for export refunds from 3 % to 1 %. A breakdown of the expenditure by Member State between 1993 and 1998 is presented in *Table 2*.

<sup>(1)</sup> OJ C 134, 3.6.1985.

<sup>(2)</sup> OJ C 330, 16.12.1992.

<sup>(3)</sup> OJ C 340, 12.11.1996.

Table 1  
Budgetary expenditure related to olive oil, 1987 to 1998 inclusive

(million ECU)													
Budget line	Heading	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
B1-1 2 0	Export refunds	23,2	64,2	93,2	134,9	111,8	48,4	68,8	52,8	38,2	59,3	42,7	24,9
B1-1 2 1 0	Production aid	560,7	296,8	790,6	520,9	1 065,6	825,0	1 367,9	1 051,9	550,2	1 774,1	2 004,6	1 993,5
B1-1 2 1 1	Schemes related to production	16,9	22,9	27,2	25,2	18,8	25,1	18,2	20,5	16,3	17,8	25,2	52,9
B1-1 2 1	Total	577,6	319,7	817,8	546,1	1 084,4	850,1	1 386,1	1 072,4	566,5	1 791,9	2 029,8	2 046,5
B1-1 2 2 0	Consumption aid	437,6	421,5	441,8	457,5	708,9	734,4	773,6	613,3	263,3	112,6	125,6	136,0
B1-1 2 2 1	Schemes related to consumption	1,5	10,4	9,8	4,7	17,5	27,4	10,7	1,1	5,4	19,6	0,0	0,0
B1-1 2 2	Total	439,2	432,0	451,6	462,2	726,4	761,8	784,3	614,4	268,7	132,2	125,6	136,0
B1-1 2 3 0	Technical costs of storage	28,6	38,2	40,8	9,2	8,6	5,7	12,1	27,3	7,0	4,7	0,6	4,3
B1-1 2 3 1	Financial costs of storage	23,9	30,9	34,4	5,8	7,5	1,8	8,1	20,3	4,2	1,9	0,0	0,4
B1-1 2 3 2	Other public storage costs	8,7	16,9	- 31,5	- 42,5	- 40,1	- 27,5	- 13,2	- 70,8	- 106,4	- 7,2	- 26,8	- 4,5
B1-1 2 3 3	Depreciation of stocks	0,0	0,0	0,4	1,7	5,5	59,5	153,1	43,5	0,3	0,6	0,0	25,9
B1-1 2 3 9	Other storage measures	0,0	0,0	7,4	0,1	0,0	3,4	17,2	15,7	0,1	0,0	0,0	0,9
B1-1 2 3	Total	61,2	86,0	51,6	- 25,8	- 18,4	42,9	177,3	36,0	- 94,8	- 0,1	- 26,2	27,0
B1-1 2 4	Other intervention (production refund)	38,0	43,2	47,4	50,8	56,0	51,1	51,6	44,0	34,1	26,3	27,3	33,8
B1-1 2 9	Other (amounts recovered))										- 1,9	- 3,2	- 1,5
	<b>Total</b>	<b>1 139,2</b>	<b>945,0</b>	<b>1 461,5</b>	<b>1 168,2</b>	<b>1 960,2</b>	<b>1 754,3</b>	<b>2 468,1</b>	<b>1 819,5</b>	<b>812,7</b>	<b>2 007,7</b>	<b>2 196,0</b>	<b>2 266,7</b>
	EAGGF Guarantee expenditure	23 175,9	27 658,1	26 075,6	26 831,4	32 222,1	31 871,1	34 975,3	33 582,4	35 648,4	40 230,5	41 290,7	38 743,6
	% of EAGGF Guarantee expenditure	4,9 %	3,4 %	5,6 %	4,4 %	6,1 %	5,5 %	7,1 %	5,4 %	2,3 %	5,0 %	5,3 %	5,9 %

Source: Commission's financial reports.

Table 2

## Budgetary expenditure related to olive oil, 1993 to 1998 inclusive, by Member State

(million ECU)

Budget line	Heading	Greece	Spain	France	Italy	Portugal	Other Com- munity	Total
B1-1 2 0	<i>Refunds</i>							
	1993	6,8	14,9	0,3	43,0	3,6	0,1	68,8
	1994	3,7	18,4	0,3	26,1	3,8	0,6	52,8
	1995	3,3	10,7	0,3	21,0	1,5	1,4	38,2
	1996	2,5	16,9	0,3	32,9	6,0	0,7	59,3
	1997	1,6	13,5	0,3	23,3	4,8	-0,8	42,7
	1998	1,0	5,8	0,2	16,0	1,9	0,0	24,9
B1-1 2 1	<i>Production aid</i>							
	1993	384,0	423,6	5,0	556,0	17,6	0,0	1 386,1
	1994	288,6	393,3	2,7	368,4	19,1	0,2	1 072,4
	1995	78,6	103,7	0,4	376,6	7,3	-0,1	566,5
	1996	510,7	696,0	3,5	545,5	36,3	-0,1	1 791,9
	1997	600,5	473,7	3,6	903,9	44,7	3,5	2 029,9
	1998	536,9	977,6	3,3	485,3	42,4	0,0	2 046,5
B1-1 2 2	<i>Consumption aid</i>							
	1993	96,9	284,8	15,7	348,4	23,7	14,8	784,3
	1994	84,8	269,5	12,4	220,9	21,7	4,9	614,4
	1995	26,8	120,3	8,1	94,4	11,6	7,5	268,7
	1996	6,9	51,0	4,6	43,4	5,3	21,0	132,2
	1997	6,5	56,8	4,5	50,6	5,9	1,3	125,6
	1998	6,8	67,9	5,6	47,4	6,8	1,4	136,0
B1-1 2 3	<i>Storage measures</i>							
	1993	7,3	89,0	0,0	81,0	0,0	0,0	177,3
	1994	36,3	-7,2	0,0	10,3	-3,4	0,0	36,0
	1995	-11,4	-44,9	0,0	-37,4	-1,2	0,1	-94,8
	1996	3,8	-1,1	0,0	-2,7	0,0	-0,1	-0,1
	1997	-2,0	0,0	0,0	-22,1	-2,1	0,0	-26,2
	1998	1,6	29,0	0,0	-3,5	0,0	0,0	27,0
B1-1 2 4	<i>Other intervention (production refund)</i>							
	1993	0,3	7,1	1,5	40,1	2,6	0,1	51,6
	1994	0,2	8,8	1,7	30,8	2,4	0,1	44,0
	1995	0,3	7,9	1,4	22,6	1,9	0,0	34,1
	1996	0,2	5,0	1,1	18,5	1,5	0,0	26,3
	1997	0,0	6,5	1,0	18,0	1,6	0,2	27,3
	1998	0,5	12,2	1,1	18,2	1,7	0,1	33,8
B1-1 2 9	<i>Other (recovered amounts)</i>							
	1996	-0,1	-0,2	0,0	-1,3	-0,3	0,0	-1,9
	1997	-2,2	-0,1	-0,1	-2,4	-0,3	0,0	-3,1
	1998	-0,1	-0,5	-0,2	-0,5	-0,1	0,0	-1,5

Source: Commission's financial reports.

**PART 1: PRODUCTION AID*****The support mechanism for production***

10. The olive oil scheme used to function on the basis of institutional prices. These prices (production target price and representative market price) were fixed annually by the Council on a proposal from the Commission, as follows:

- (a) the target price was an indicative price judged appropriate so as to provide a fair income for producers and to maintain the level of Community production;
- (b) the representative market price was set at a level that would permit normal disposal of olive oil taking into account the market conditions and trends in supply and demand of other vegetable oils and fats;
- (c) the difference between these two prices was the Community subsidy, the majority of which went to producers with the balance paid to packaging undertakings, with the objective of making the product more attractive to consumers <sup>(1)</sup>.

11. However, according to the system in force for the transitional period (1998 to 2000), the rate of production aid is no longer determined as a difference between target price and representa-

tive market price. Although the support system is still intended to contribute to the provision of fair incomes, the main determinant of the subsidy is the need to place a ceiling on expenditure. For this reason the level of production aid has been frozen until 2001.

12. Production aid is financed under budget heading B1-1 2 1. It is granted to producers of olive oil and, following the abolition of the small producer scheme, is now paid exclusively on the basis of the actual quantity produced. This aid is subject to a stabiliser mechanism with a maximum guaranteed quantity for each Member State. This contrasts with the previous situation under which an overall breach of quotas led to a reduction in the rate of subsidy to all producer Member States without any regard to responsibility for the excess. Given the national quotas and the amount of production aid fixed for the three-year period, the maximum Community support each producer Member State can receive is presented in *Table 3*. Should the quantity of olive oil eligible for payment exceed the national guaranteed quantity (NGQ), the stabiliser mechanism will make a proportional reduction in the amount of the aid. It should also be added that a percentage of the production aid is retained for financing regional measures to improve the quality of oil production and its environmental impact in each producer Member State. This percentage is fixed at 1,4 % for the 1998/99 to 2000/01 marketing years. A further percentage, fixed at 0,8 %, is withheld and paid to approved producer organisations and associations in compensation for the administrative and control tasks they perform.

Table 3

**Olive oil production aid — maximum national guaranteed quantities and Community support**

Member State	Max. NGQ in tonnes	Unit amount of production aid ECU/tonne	Total max. amount of Community aid in ECU
Spain	760 027	1 322,5	1 005 135 708
France	3 297	1 322,5	4 360 283
Greece	419 529	1 322,5	554 827 103
Italy	543 164	1 322,5	718 334 390
Portugal	51 244	1 322,5	67 770 190
<b>Total</b>	<b>1 777 261</b>		<b>2 350 427 673</b>

<sup>(1)</sup> Example for the period since 1994/95 marketing year, after the monetary realignment :

Production target price ECU	383,77/100kg of olive oil
Representative market price ECU	229,50/100kg of olive oil
Difference ECU	154,27/100kg of olive oil
Analysed: Production aid (large producers)	142,20
Consumption aid	12,07
Total	154,27.



### **The control provisions**

13. For the production aid scheme, the requirements of Council Regulation (EEC) No 2261/84 of 17 July 1984 <sup>(1)</sup> covering eligibility conditions, administrative procedures, the duties of the bodies involved and their control responsibilities continue to apply for the transitional period up to the 2000/01 marketing year. However, the Commission's implementing Regulation (EC) No 2366/98 of 30 October 1998 <sup>(2)</sup>, has clarified the above-mentioned conditions, procedures and responsibilities. The most important new provisions concern additional conditions for the approval of mills, quality control of olive oil, obligation on growers to keep records, imposition of a scale of penalties, specific on-the-spot checks and control coverage between 1 % and 10 % of the growers' declarations, additional cursory checks on mills and in-depth cross-checks for suppliers and consignees.

14. The extensive level of control resulting from the complexity of the system, in the case of olive oil, causes a significant burden on Member States due to the large population subject to that control. In 1996/97 the population subject to control in the context of the production aid scheme was about 2,8 million producers involving more than 2 million aid applications annually. There were around 380 producer organisations and associations and 10 800 mills operating during that year.

### **Observations relating to the Commission's management of the scheme**

#### **The regulatory framework**

15. Continuous modification of the relevant regulations and the introduction of various measures have been observed since the establishment of the olive oil scheme. Despite all these amendments, and the experience of thirty years, the system for the management and control of the support scheme for olive oil is still not sufficiently efficient and reliable.

16. During this period Community policy changed direction on many occasions. A striking example is the provision for dealing with the problem of structural surpluses. Council Regulation (EEC) No 1562/78 of 20 June 1978 <sup>(3)</sup> provided that production aid should be granted only in respect of areas planted with olive trees before 31 October 1978. Subsequent to the entry of Spain and Portugal this restriction was removed by Council Regulation (EEC) No 1915/87 of 2 July 1987 <sup>(4)</sup> thus allowing massive increases

in EU production capacity. The restriction was introduced again with Council Regulation (EC) No 1638/98 according to which no aid may be paid as from 1 November 2001 in respect of trees planted after 1 May 1998. Thus a measure which had been abolished was reintroduced after 11 years in the interest of efficiency.

17. Another example is the small producers regime. Initially 'small producers' were defined as growers whose production was, in principle, intended for their own consumption and who were not members of producer organisations. The limit was set at a maximum annual production of 100 kg of olive oil. Council Regulation (EEC) No 1097/84 of 31 March 1984 <sup>(5)</sup> dropped the requirement that the producers could not be members of producer organisations and all growers producing less than 100 kg of olive oil became eligible under the small producers regime. From the marketing year 1987/88 onwards, the limit was increased to 200 kg and subsequently to 300 kg (1988), 400 kg (1989) and finally to 500 kg (1990), far in excess of the annual consumption of a single household. As from 1998/99 the provisions relating to aid for small producers were repealed. It took several years to develop measures which recognise that the small producers scheme was vulnerable to irregularities and unjustified payments.

#### **Statistical data**

18. Accurate, reliable and relevant statistical data are an indispensable basis for effective management and decision making. In the olive oil sector the lack of reliable statistical data is a significant problem. The Commission in its note to the Council and to the Parliament <sup>(6)</sup> on the olive and olive oil sector, detailed a number of problems and inconsistencies in the data submitted by the Member States. Furthermore, one of the reasons the Commission has proposed the transitional period for the marketing years 1998/99 to 2000/01 is the need for more reliable information particularly on the number of olive trees, the areas planted and the yields.

19. The Commission has carried out two statistical enquiries in order to obtain the necessary information. The first is the Olistat enquiry into the number of trees, the second-called Oliarea, covers the area under olive cultivation..

20. The results of the Olistat study in 1998 present a totally different picture from that known before the beginning of the study. There are about 180 million olive trees more than the previous estimates of total number of trees, i.e., a difference of about 31 %. At the level of Member States, this difference varies significantly. This shows the extent of the unreliability of the basic data needed to manage the olive oil scheme.

<sup>(1)</sup> OJ L 208, 3.8.1984.

<sup>(2)</sup> OJ L 293, 31.10.1998.

<sup>(3)</sup> OJ L 185, 8.11.1978.

<sup>(4)</sup> OJ L 183, 3.7.1987.

<sup>(5)</sup> OJ L 113, 28.4.1984.

<sup>(6)</sup> COM(97) 57 final.

## Setting of institutional prices and producers' incomes

### *Main features of the income structure*

21. In some areas of the producer Member States parents traditionally divide their land equally between their heirs leading to over-segmentation of agricultural land. Of the growers who applied for aid in the marketing year 1996/97, in Spain 36 %, in Portugal 43 % and in Greece 35 % <sup>(1)</sup> had less than 100 olive trees (area of about 1 ha) and 38 %, 61 % and 41 % respectively had produced less than 250 kg of olive oil. The production of 250 kg of olive oil in 1998/99 attracted Community aid of ECU 330. Thus, for a significant proportion of producers, income from olive oil is a complementary rather than the main source of income. This is also supported by estimates made by national administrations requiring 1 000 to 1 500 trees to generate sufficient income for a family of four to live exclusively from olive cultivation. Only about 5 % of the holdings which applied for aid in 1996/97 have more than 1 000 trees in production.

### *Amount of production aid*

22. In principle the amount and allocation of Community subsidy should be determined by reference to its objectives. Especially for the production aid the income objective is stated as 'contributing to a fair income for producers'. In practice this objective has never been defined in a way which would make possible the measurement of its achievement. An indication of this contribution is the ratio of the subsidy to total value of production. Based on

an average of the annual market prices supplied by the Commission and the quantities of olive oil produced (IOOC data, including olive pomace oil), the Court has made an approximate estimate of the total value of production for the main producer Member States for the period 1986/87 to 1997/98. The share of the subsidy to the estimated total value of production, although it varies over time, is significant, amounting on average to about 35 % during the period (see *Table 4*).

23. The amount of the Community subsidy was until 1998/99 determined as difference between target price and representative market price. The target price which is supposed to provide a fair income to the producers was proposed by the Commission without following an established method of calculation based on objective income and cost indicators. Besides, the target price has been kept frozen for more than 10 years and it is again fixed for the whole transitional period. On the other side, the representative market price had been set not by reference to actual observed market prices, but by deducting the aid rate set for the previous year from the target price. In fact the representative market price was fixed almost at the same level for the last 10 years and it was lower than the market prices for most of this period. Since actual market prices have generally been higher than the representative market price set by the Council, the subsidy paid per tonne has exceeded the amount properly payable by reference to the target price (see *Table 5*). Indeed, in 1995/96 the registered wholesale price almost reached the target price, which logically negated the need for any subsidy at all. It should be added that during the last years an important concern in setting the prices has been the need to keep budgetary expenditure under control.

<sup>(1)</sup> This data was obtained from these three Member States only.

Table 4  
Comparison value of production with budgetary expenditure

		(million ECU)											
	Marketing year	1986/87	1987/88	1988/89	1989/90	1990/91	1991/92	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98
1	Approximate value of production	2 374,0	3 555,0	2 440,0	3 469,0	2 280,0	3 719,0	2 719,0	2 691,0	3 956,0	5 290,0	3 952,0	3 673,0
2	Budgetary expenditure	1 139,2	945,0	1 461,5	1 168,2	1 960,2	1 754,3	2 468,1	1 819,5	812,7	2 007,7	2 196,0	2 266,7
3=(1+ 2)	Total	3 513,2	4 500,0	3 901,5	4 637,2	4 240,2	5 473,3	5 187,1	4 510,5	4 768,7	7 297,7	6 148,0	5 939,7
4=2/3	Ratio	32 %	21 %	37 %	25 %	46 %	32 %	48 %	40 %	17 %	28 %	36 %	38 %

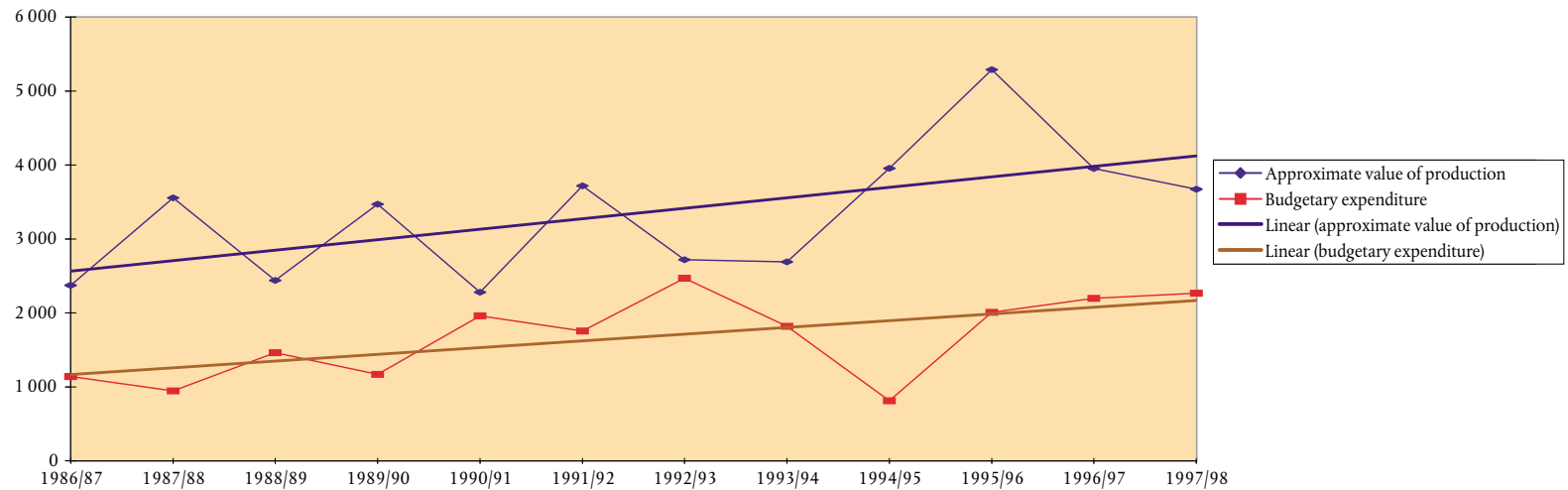
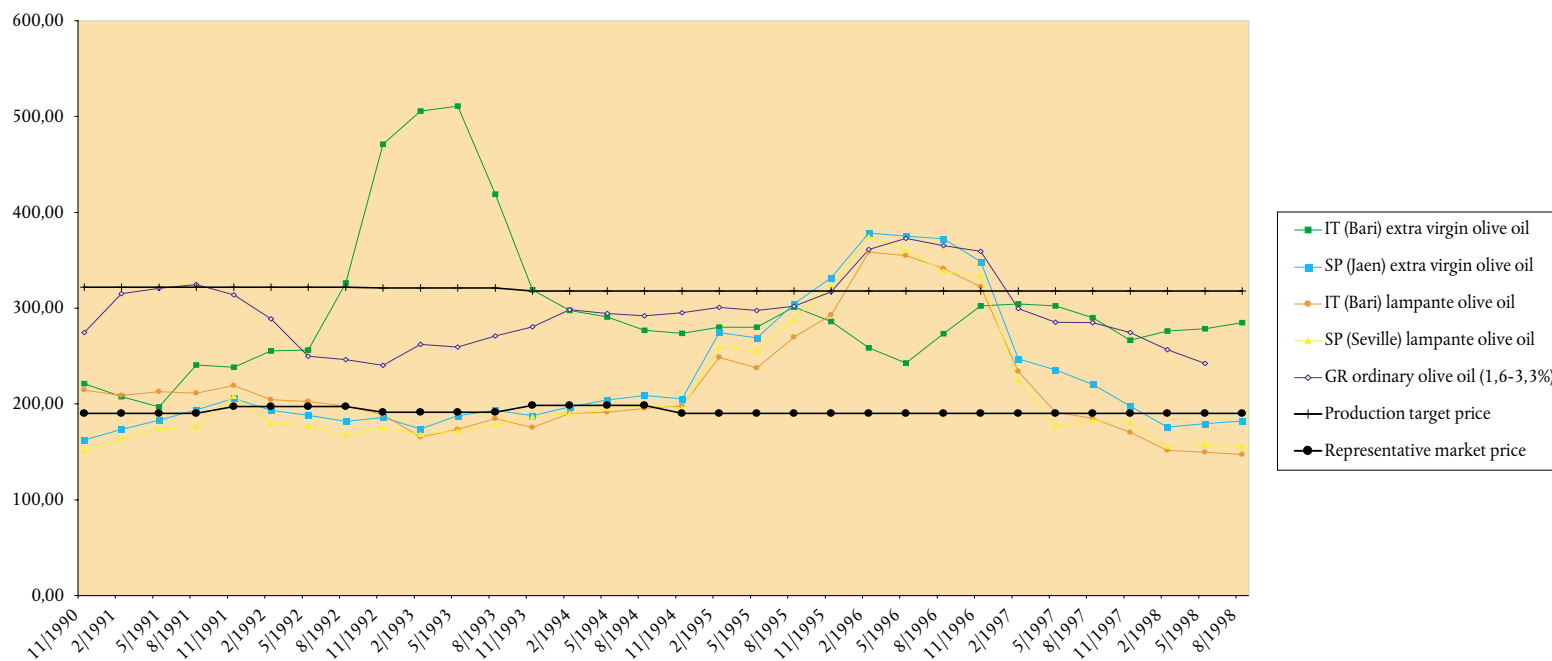


Table 5  
Olive oil: institutional prices and market prices

(ECU/100 kg oil)

	11/1990	2/1991	5/1991	8/1991	11/1991	2/1992	5/1992	8/1992	11/1992	2/1993	5/1993	8/1993	11/1993	2/1994	5/1994	8/1994	11/1994	2/1995	5/1995	8/1995	11/1995	2/1996	5/1996	8/1996	11/1996	2/1997	5/1997	8/1997	11/1997	2/1998	5/1998	8/1998	
<b>Market Prices</b>																																	
IT (Bari) extra virgin olive oil	221,10	207,69	196,93	240,85	238,44	255,47	256,10	326,34	471,20	505,81	511,04	418,79	318,90	297,71	291,00	277,04	273,91	279,96	279,96	301,36	286,08	258,80	242,78	273,15	302,45	304,26	302,45	290,11	266,53	276,00	278,35	284,97	
SP (Jaen) extra virgin olive oil	162,52	173,44	183,09	193,62	205,53	193,35	188,24	182,01	185,68	173,72	187,92	193,42	187,78	196,92	204,00	208,96	205,25	274,42	268,77	304,52	331,82	378,44	375,21	372,57	348,39	247,27	235,45	220,26	197,72	175,95	179,38	182,41	
IT (Bari) lampante olive oil	214,57	208,94	212,89	211,19	219,31	204,38	202,67	197,56	188,95	165,43	173,38	184,62	175,59	190,04	191,20	195,34	197,76	248,76	237,49	269,84	292,85	358,56	355,09	341,50	322,20	233,76	191,24	184,91	170,13	151,62	149,45	147,16	
SP (Seville) lampante olive oil	151,01	164,11	173,9	176,4	208,14	179,53	177,04	166,96	174,93	168,15	171,96	178,3	186,73	189,88	195,54	198,65	195,22	259,61	255,48	288,16	323,63	374,58	360,41	338,79	333,26	224,42	177,06	182,47	180,82	155,82	157,54	156,06	
GR ordinary olive oil (1,6-3,3%)	274,49	315,03	320,75	324,70	313,98	288,99	249,76	246,10	240,18	262,25	259,23	271,05	280,34	298,46	294,44	292,09	295,37	300,98	297,66	302,12	316,93	361,46	372,73	365,16	359,45	299,47	285,09	284,75	274,53	256,73	242,14		
<b>Institutional prices</b>																																	
Production target price	322,01	322,01	322,01	322,01	322,01	322,01	322,01	322,01	321,16	321,16	321,16	321,16	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82	317,82
Representative market price	190,28	190,28	190,28	190,28	197,28	197,28	197,28	197,28	191,27	191,27	191,27	191,27	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40	198,40



Source: Commission DG AGRI. C.4.

Note: For comparability reasons the increase of target price and representative market price due to the monetary realignment of February 1995 between aid rates and conversion rates is not applied.

### The market balance

24. The prevailing market conditions when the CMO was conceived were quite different from now. Italy and France were the only producer Member States and faced the competition of important third countries. With the accession of Greece, Spain and Portugal, the Community market effectively reflected the world market, and consequently the market balance became a Community issue little affected by external factors. During the 10-year period 1986/87 to 1995/96 there was no sign of any upward trend in production and production figures oscillated around a broadly constant level of internal consumption of 1,435 million tonnes. In 1996/97 however, production jumped back up to the peak level of 1987/88 production (1,9 million tonnes) and the following year 1997/98 it reached its highest level ever of 2,3 million tonnes. The accumulated stocks at the end of 1997/98 are estimated by the International Olive Oil Council (IOOC) at 0,561 million tonnes, which represent about 24 % of the production and 30 % of the consumption of the same year.

25. In relation to future prospects, a study drawn up by the IOOC of projected olive oil production and consumption up to 2005, which is based on statistics covering the period 1960/61 to

1996/97, estimates the projected surplus for the Community market at between 86 000 and 155 000 tonnes every year. The accumulated stocks at the end of 1997/98; the increased production capacity in some countries through the planting of new trees; the relatively slow increase in consumption observed in the last two years; and the WTO limitation on subsidised exports to third countries indicate a risk of surpluses.

26. For the period 1987/88 to 1997/98, the production aid rate was generally on a rising trend although to a varying degree in each producer Member State, due to the evolution of agricultural conversion rates and the gradual increase of the aid rate in Spain and Portugal during the transitional period. Thus, with the exception of the last two years producers in some Member States experienced substantial increases of subsidies expressed in national currencies. The availability of increasing amounts of the Community subsidy has provided an incentive for increasing production by planting new trees and improving productivity. This incentive was further reinforced by the fact that small producers were exempted from the price reductions due to the overshoot of the maximum guaranteed quantity. The evolution of production aid rates as well as the actual production of olive oil for the main producer Member States are shown in *Table 6*.

Table 6

## Evolution of the production aid rate and actual production of olive oil

(in ECU and national currencies)

	1987/1988	1988/1989	1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998
<b>ITALY</b>											
<i>Small producers</i>											
Production aid rate (ECU)	77,35	78,12	78,12	80,85	80,84	91,08	95,01	123,57	149,21	149,21	149,21
Production aid rate (NC)	120 198	129 057	131 401	142 421	142 404	190 090	215 123	294 528	322 942	294 530	294 530
Annual increase %		7 %	2 %	8 %	0 %	33 %	13 %	37 %	10 %	- 9 %	0 %
<i>Large producers</i>											
Production aid rate (ECU)	46,61	67,79	67,79	67,68	66,69	79,06	76,75	104,56	124,69	95,69	77,15
Production aid rate (NC)	72 431	111 994	114 027	119 212	117 478	164 996	173 788	249 205	269 871	188 895	152 290
Annual increase %		55 %	2 %	5 %	- 1 %	40 %	5 %	43 %	8 %	- 30 %	- 19 %
Production (tonnes)	742 500	390 000	585 000	148 000	650 000	410 000	550 000	458 664	625 000	410 000	712 847
<b>GREECE</b>											
<i>Small producers</i>											
Production aid rate (ECU)	77,35	78,12	78,12	80,85	80,84	91,08	95,01	123,57	149,21	149,21	149,21
Production aid rate (NC)	9 024	12 242	12 869	18 771	20 383	28 268	31 533	43 821	46 518	46 518	46 555
Annual increase %		36 %	5 %	46 %	9 %	39 %	12 %	39 %	6 %	0 %	0 %
<i>Large producers</i>											
Production aid rate (ECU)	46,61	67,79	67,79	67,68	66,69	79,06	76,75	104,56	124,69	95,69	77,15
Production aid rate (NC)	5 438	10 623	11 167	15 712	16 815	24 536	25 474	37 078	38 873	29 834	24 072
Annual increase %		95 %	5 %	41 %	7 %	46 %	4 %	46 %	5 %	- 23 %	- 19 %
Production (tonnes)	321 718	319 231	316 372	170 869	430 147	314 432	323 161	389 904	445 000	494 218	492 364
<b>SPAIN</b>											
<i>Small producers</i>											
Production aid rate (ECU)	20,57	27,90	35,23	42,39	52,37	62,25	73,20	112,66	149,21	149,21	149,21
Production aid rate (NC)	2 999	4 068	5 387	6 440	7 846	10 339	13 936	21 820	24 649	24 649	24 941
Annual increase %		36 %	32 %	20 %	22 %	32 %	35 %	57 %	13 %	0 %	1 %
<i>Large producers</i>											
Production aid rate (ECU)	12,53	25,62	31,75	37,85	43,18	52,09	57,74	94,86	124,69	95,69	77,15
Production aid rate (NC)	1 827	3 735	4 855	5 750	6 469	8 651	10 993	18 372	20 599	15 809	12 896
Annual increase %		104 %	30 %	18 %	13 %	34 %	27 %	67 %	12 %	- 23 %	- 18 %
Production (tonnes)	770 000	408 000	573 000	700 000	610 000	636 000	588 000	583 000	375 000	986 700	1 147 000
<b>PORTUGAL</b>											
<i>Small producers</i>											
Production aid rate (ECU)	14,06	22,21	30,35	38,42	49,20	59,86	73,20	112,66	149,21	149,21	149,21
Production aid rate (NC)	2 415	4 175	5 827	8 017	10 267	12 542	17 343	26 963	29 574	29 574	30 030
Annual increase %		73 %	40 %	38 %	28 %	22 %	38 %	55 %	10 %	0 %	2 %
<i>Large producers</i>											
Production aid rate (ECU)	7,95	19,92	26,87	33,88	40,05	49,75	57,74	94,86	124,69	95,69	77,15
Production aid rate (NC)	1 365	3 746	5 159	7 070	8 356	10 423	13 680	22 702	24 714	18 967	15 527
Annual increase %		174 %	38 %	37 %	18 %	25 %	31 %	66 %	9 %	- 23 %	- 18 %
Production (tonnes)	38 000	21 570	35 100	20 000	34 992	17 075	27 486	29 220	34 000	37 000	39 600

Remarks: a) Production aid rates per 100 kg of olive oil after regulatory deductions for register and quality improvement.

b) Conversion rates ECU/national currencies valid on 1 January.

c) Production figures correspond to the eligible quantity for Community aid.

### Management of funds deducted from production aid

27. Two measures were financed from resources withheld from the payment of production aid: the quality improvement programme and the olive cultivation register. The funds were withheld by the Commission by budgeting and paying production aid at a lower rate than the rate set by the Council. For the measures to be financed appropriations were allocated to budget heading B1-1 2 1 1. For every financial year during which the system has been in operation, the amounts allocated, spent and charged to this budget heading have been lower than the amounts actually withheld. For example, in 1997 out of ECU 78,6 million withheld, only ECU 38,9 million was charged to the quality improvement programme and the olive cultivation register. Neither the budget nor the final accounts on which the budgetary authority gives discharge show the total amounts withheld nor the amounts not used. The information is only disclosed in the Commission's annual financial report of EAGGF Guarantee.

#### Funding of quality improvement programmes

28. The actions related to the improvement of the quality of olive oil production are specified in Commission Regulations adopted almost every year <sup>(1)</sup>. Each Member State is required to transmit an action programme to the Commission for approval. In the period 1979 to 98 the total amount retained for these

actions was ECU 202 million while the programme absorbed only ECU 107,3 million. The rate of utilisation is about 53 % of the amount withheld, with Greece at 83 %, Spain at 56 %, Italy at 30 % and Portugal at 42 %.

29. The Commission has not quantified the objectives of these actions either in the Regulations or at the stage of approving the programmes submitted by the Member States and has not developed any performance indicators. This makes it impossible to undertake a meaningful evaluation of their actual impact.

#### Funding of the olive cultivation register

30. The establishment of the register was financed by amounts withheld by the Commission from the payment of production aid. In accordance with Council Regulation (EEC) No 2159/92 the percentage to be withheld was 2,4 % of gross payments for the marketing years 1992/93 to 1997/98. The amounts withheld and the payment appropriations used for setting up the olive cultivation register are shown in Table 7. For the period 1979 to 1998, in average only 64 % of the amounts withheld have been used, with a significant variation between individual Member States, ranging from 0,4 % for Greece to 115 % for Italy. Over the whole period, a cumulative amount of ECU 138,4 million was withheld but not used.

Table 7

### Amounts retained and used for olive cultivation register and quality improvements (period 1979 to 1998)

(million ECU)

Member State	Olive cultivation register				Quality improvement programme			
	Amounts			% of use	Amounts			% of use
	Retained	Used	Difference		Retained	Used	Difference	
Greece	101,37	0,42	100,95	0,4 %	55,8	46,57	9,23	83,5 %
Spain	106,06	48,43	57,63	45,7 %	62,9	35,36	27,54	56,2 %
France	0,85	0,41	0,44	48,2 %	0,44	0,42	0,02	95,5 %
Italy	169,18	194,87	- 25,69	115,2 %	79,92	23,73	56,19	29,7 %
Portugal	5,64	0,56	5,08	9,9 %	2,99	1,26	1,73	42,1 %
<b>Total</b>	<b>383,1</b>	<b>244,69</b>	<b>138,41</b>	<b>63,9 %</b>	<b>202,05</b>	<b>107,34</b>	<b>94,71</b>	<b>53,1 %</b>

<sup>(1)</sup> The actions undertaken cover the control of the olive fly and other harmful organisms; the improvement of conditions for the treatment of olive trees; harvesting, storage and pressing; technical assistance to growers and mills; the improvement of the disposal of residues; the training and information of farmers and mills on oil quality and environmental impact, the creation of laboratories for virgin oil analysis, and collaboration with specialists to improve the quality of virgin olive oil and improve the environment.

### Measures to promote consumption

31. Pursuant to Article 11 of Regulation No 136/66/EEC, as amended, the Commission may undertake measures to promote the consumption of olive oil and table olives. These measures entail the dissemination of existing knowledge, market studies, publicity and promotional campaigns, research work and studies to assess the results of promotional campaigns. Until the marketing year 1993/94, these measures were financed by retaining 0,5 % of consumption aid. After the abolition of consumption aid with effect 1 November 1998 these measures may be financed by the Community budget.

32. The promotional programmes run in Member States are undertaken by the Commission, while those aiming to increase the consumption of olive oil and table olives in third countries are undertaken by the IOOC. For the period from 1979 to 1998 the total amount available for financing promotional programmes amounted to about ECU 161,2 million out of which ECU 135,9 million (84 %) were actually used. The last campaign (sixth) involving 12 Member States started in 1996 and ended in June/July 1998 at a cost of ECU 27,5 million. The next campaign (seventh) is expected to start fully in autumn 1999, with a budget of ECU 45 million for the next three years. The Community's contribution to the IOOC promotion fund is fixed annually. In 1998 the Community financed almost 100 % of its promotional programme of ECU 6,1 million.

33. The Court reviewed the sixth promotional programme as well as the preparatory work for the seventh programme. Both lack measurable objectives, for example to achieve a specific increase in consumption in absolute or relative terms, or an increase in awareness of the nutritional value of olive oil using measurable indicators, etc. On the other hand, the Commission's report on the results of the sixth programme (VI. A. II./CG D (97) 1490) claims that olive oil consumption had increased significantly between 1996 and 1997 in all countries for which data was available, without analysing the contribution to this increase made by the campaign in reaching these results and whether these results are sustainable.

34. The Commission lacks the technical expertise, the capacity and the resources to manage the various actions directly itself and therefore makes extensive use of the services of external companies. Within the Commission there are only three officials dealing with these programmes, two officials supervising the execution of the contracts (about 23 contracts ongoing at the time of the audit) and one official for the financial management of the programmes. This level of resources is insufficient as demonstrated by the lack of continuity between the latest campaigns. The seventh campaign is not expected to start until autumn 1999, i.e., about 15 months after the completion of the sixth campaign, due to the lack of human resources.

35. The Commission has not yet undertaken a general evaluation to assess whether, given the limited human and financial resources it can itself devote to these programmes, the extended use of external technical assistance and the reliance on outside evaluation of the programmes, the results obtained justify its commitment to these actions.

### *Observations relating to the implementation of the scheme in the Member States*

36. The main parties involved in administering and controlling the production aid scheme at Member State level are the producers, the producer organisations (PO) and associations thereof, the national administrations and the control agencies (CA). The producers have to submit cultivation declarations, indicating their production potential and any changes over time (total number of trees and those in production, area cultivated, varieties of trees, etc.). They also have to submit aid applications in which the quantities of olives harvested and the olive oil produced each year are declared for Community support.

37. The POs and associations process these documents for their members. After some administrative checks they computerise the information contained in the applications and forward the files to the paying agencies or to their regional services for final administrative checking and for payments. The non-associated producers, who constitute a small percentage of the total, submit their applications directly to the services of the paying agencies for administrative control and payments.

38. control agencies are responsible for on-the-spot controls. Every year they select a sample of individual growers to be checked for the accuracy of their declarations and applications. They also select a sample of POs to be checked as to whether they continue to fulfil the conditions for their approval by the national authorities and whether they are performing their tasks effectively. A sample of oil mills is also checked as to whether they are authorised to testify for their clients the quantities of oil olive produced and whether the quantities testified are correct. The cultivation register and the average yields are two important tools for facilitating effective controls in the framework described above.

### **The yields as a control instrument**

39. The quantities of oil declared in the aid applications are checked in the first instance by comparing average yields estimated every year by each Member State for homogeneous production zones with actual yields. The actual yield for each aid



application is compared with the average calculated for the zone in which the applicant's parcel is located. Abnormally high yields are taken as an indicator that the quantities declared may not be correct which usually leads to the farmer being checked on the spot. The accuracy of the estimation of the average yield is therefore of crucial importance for ensuring effective and efficient control.

#### *Estimation of the average production yields*

40. Apart from information on the area under olive trees and the trees per hectare, the estimation of any production yields requires estimates of the quantity of olives per tree, and the quantity of virgin olive oil per 100 kg of olives. Both of the latter indicators should be estimated for fairly homogeneous production zones in order to allow for valid comparisons between estimated and actual values. The Court analysed the methods and procedures applied by the Member States for the collection, evaluation and communication to the Commission of the relevant data and the results are given in the following paragraphs.

41. Under Council Regulation (EEC) No 2262/84, Article 1(2), the control agencies are responsible for collecting, verifying and processing at national level the data for ascertaining the yields. To a certain extent, this provision is respected in all Member States visited. However, the methods of data collection, the sources of the information and the processes of calculation differ not only between countries but also between regions of individual countries, resulting in non-comparable results.

42. To assess the reliability of the data on olive and olive oil yields, the Court examined the data on the number of trees which is a basic element in the calculation of average yields and therefore has to be accurate. However, from its audit work in Spain, Greece and Italy, the Court found that the recorded number of trees was rarely accurate. Out of 35 parcels visited only in six did the number of trees found agree with that declared by the producers.

#### *The usefulness of the average yields as a control instrument*

43. Within the various zones comparisons between the average yields fixed by the Commission and the yields declared by each producer-applicant showed variations up to three times of the average yield. This situation calls into question the concept of homogeneous production zones and the usefulness of average yields as a control instrument.

44. The use of the average yields for identifying potential inaccurate aid applications gives rise to the following further comments:

- (a) each producer Member State used to set its own limits margin above and below which the declared quantities had to be considered abnormal requiring an on-the-spot check; the Court found that this margin was set too high in some production zones; for example, cases were found where margins of 49 times the average yield were tolerated; such high tolerance levels adopted by the Member States are indicative of the inadequacy of the estimation of average yields and reduce the effectiveness of yields as a control tool;
- (b) since the last marketing year two countries apply a single margin of tolerance over all zones; the maximum tolerance in these cases is 3,5 times the average yield, which is fixed for several years; the risk of this is that the applicants become aware of the limits and adjust the declared quantities to just below the upper limit thus evading any check.

#### **Reliability of the control mechanism**

45. Producers are not always well informed about their obligations in respect of the cultivation declarations, aid applications and the notification of any change concerning the number of trees, the area, etc. What is more important is that they do not seem to be aware of the consequences of failing to declare their olive groves correctly and to notify any amendment without delay. The low quality of the information provided by the producers is the main source of the large discrepancies concerning the number of trees and makes the control ineffective.

46. The tasks of the POs and their associations are confined mostly to administrative checks, i.e. identification of the applicant, completeness of declaration and application and checking for dual applications. This latter check merits special attention from an audit point of view. Within one PO it is possible to identify duplicate applications made by the same applicant but it is not possible to detect whether the same parcel of trees appears on applications of two different applicants. Moreover, the administrative checks are not always extended to cover the ownership and the basis on which the producers manage their olive groves. Such controls are however foreseen in the 1998 regulations.

47. Commission Regulation (EEC) No 3061/84 of 31 October 1984 <sup>(1)</sup> further requires producer organisations to collect copies of contracts for land use or titles of ownership. The Associations of POs are required under Council Regulation (EEC) No 2261/84 of 17 July 1984 <sup>(2)</sup> to check that POs comply with their obligations. The Court examined eight cases of 49 irregularities declared by Spain in 1996 to 1997 and found that had these provisions been correctly applied, no irregularities would have occurred.

<sup>(1)</sup> OJ L 288, 1.11.1984.

<sup>(2)</sup> OJ L 208, 3.8.1984.

48. The paying agencies in all producer Member States except Greece are equipped with computerised systems and therefore are capable of performing effective administrative checks on all individual declarations and aid applications. In Greece the paying agency relies heavily for these checks on the work of the POs, i.e. on the beneficiaries themselves. However, checking for multiple declarations in respect of the same parcel can only be done effectively when each parcel is identified by a unique code. At present, this is only possible in Italy.

49. Council Regulation (EEC) No 2262/84 required the producer Member States to set up an agency to play a key role in ensuring that Community rules in respect of olive oil are correctly applied by all operators. For the first three years (until 1986/87 for Italy, 1988/89 for Greece and 1989/90 for Spain and Portugal) the operational expenditure of these agencies was fully covered by the Community budget. Since then and until 2002 the Community contribution has been reduced to 50 %. The operational expenditure declared by the control agencies for 1996/97 was ECU 24,1 million, 50 % of which was covered by the Community. This amount represents about 1 % of the total budgetary expenditure on the olive oil sector.

50. The Community contributes to control activities which are the responsibility of the Member States. The Commission has not yet carried out an evaluation of the cost effectiveness of the activities of the agencies. Furthermore, the Commission's decisions concerning the eligibility of the agencies' expenditure are taken after long delays, putting the proper functioning of the agencies at risk. Financial information on the CAs operating in the four main producer Member States for the marketing year 1996/97 is to be found in Table 8.

51. As production aid is paid on the quantity of olive oil produced, any evaluation of the effectiveness of the controls carried out by the CA needs to concentrate on the verification of production quantities. In reality there are two main organisational arrangements:

- (a) the mills buy the olives from growers and market the oil themselves; the quantity of oil actually produced can be checked at the mill on the basis of commercial documents of purchases of olives, sales of oil, stocks and stock movements; this situation prevails in Spain for big, professional olive oil producers; however, a risk exists where trees belong to the same owner (or company) as the mill; in this case the 'miller' would certify his own quantities, thus requiring checks on a regular basis;
- (b) in the case of small producers in some countries, most of them take home their oil from the mills for own consumption and private sales and remunerate the miller either in cash or with a small percentage of the oil produced; controls at producers or in the mostly small mills, often owned by producers or their relatives, do not give the same degree of assurance as under a) above, because of the lack of reliable documentation on oil produced, sales and stocks; in response to this situation, CAs have developed a set of indicators as control tools which they apply to mills such as the ratio between olives crushed and husk or water and electricity consumption; although the actual sample size exceeds significantly the minimum sample of 10 % fixed in the Regulation (being, in the 1996/97 marketing year, 16 % for Italy, 34 % for Greece, 38 %

Table 8

**Control agencies operating in the olive oil sector (personnel, expenditure and average cost of controls)**

	Italy	Greece	Spain	Portugal	Total
<i>Total personnel</i>	197	119	97	44	457
Controllers	122	70	48	29	269
Administration	30	30	21	10	91
Informatics	13	5	9	3	30
Other	32	14	19	2	67
<i>Total expenditure (in million ECU)</i>	13,211	4,088	5,300	1,524	24,123
Personnel	9,734	3,096	3,409	1,064	17,303
Administrative exp.	2,086	0,775	1,700	0,216	4,777
Other	1,391	0,217	0,191	0,244	2,043
<i>Average cost by inspector (man/day in ECU)</i>	574	317	605	282	445
<i>Average cost of a control (1995/96, Spain 1994/95 in ECU)</i>					
Mills	2 756	1 376	658	1 221	1 503
Producer organisations	6 474	3 556	2 466	2 380	3 719
Producers	2 271	254	666	792	996

Source: Commission, DGVI. A. I.3.

for Spain and 20 % for Portugal), these checks are plausibility checks and they do not constitute a reliable proof of the quantity of oil actually produced; for example husk, water and electricity consumption can easily be manipulated in order to overestimate production, from which both the miller and the producer would benefit; in addition checks at producer level of the number of trees declared only indicate the theoretical production capacity rather than being a reliable proof of the quantity of oil actually produced; it should also be noted that checks are not made on possible sources of evidence such as weighing scales, the quality of oil in stock, the existence of proper stock records of the mills, nor are there checks to ensure that all the contents of barrels and tanks declared as olive oil stocks is really olive oil.

52. Since November 1998, Regulation (EC) No 2366/98 requires that producers have to keep documentation recording the use of oil produced. This could form the basis of effective checks at producer level. It should be noted however that the requirement is only valid for growers producing more than 200 kg, thus exempting about 36 % of growers. In practice this percentage may even increase, as it should be relatively easy to split a production of 400 kg for example between two persons.

53. The CAs reports on detected irregularities are communicated to the competent authorities in the Member States to allow recovery procedures and sanctions to be initiated. The Court observes that the recovery procedures could be avoided if the CAs completed their controls before any incorrect payment was made thus saving time and administrative resources.

### **The effectiveness of the sanctions system**

54. For individual growers, the sanction laid down in Council Regulation (EEC) No 2262/84 for false declaration for production aid is the reimbursement of the amount of aid received and a fine sufficiently high to be dissuasive. The latter is defined by individual Member States at a level of one to three times the aid unduly received. For the POs, their associations and mills, the sanction is the withdrawal of approval for participating in the olive oil scheme for a period of between one and five marketing years. Apart from the eventual withdrawal of approval, additional sanctions may be imposed, varying from warning letters requiring for administrative corrections to very severe fines.

55. With regard to the efficiency of the system of sanctions, the Court observed very long delays between notification of the

irregularities to the competent authorities and the final decision taken by the latter. The new Community rules which came into force as from 1 November 1998 do not alleviate the problem. They only stipulate that Member States shall decide on action to be taken within 12 months of the report and the sanctions to be applied in case of discrepancies in quantities of olive oil and in number of trees. They do not solve the problem of long legal and administrative procedures between this first decision and the final one after which amounts unduly paid can actually be recovered.

56. The Court examined the extent to which irregularities that were reported by the CAs led to the imposition of sanctions. Most of the sanctions on producers proposed by the CAs are based on variations from average yields or the technical standards applied by the CAs. Although this methodology has steadily been improving, individual deviations from averages cannot be considered as irrevocable proof of the inaccuracy of aid applications.

57. Although reported irregularities in the production aid scheme represent only 2 % of the total amount in the olive oil sector, the delays that occur during recovery of amounts unduly paid and the very low percentage of recovered amounts give cause for concern, particularly in cases where large amounts are involved. In practice, long administrative and judicial procedures postpone the recoveries for many years. Based on the irregularities communicated by the Member States to the Commission pursuant to Council Regulation (EEC) No 595/91, the recovery rate for production aid for all irregular cases recorded from 1991 to 1997 is only 6,8 %.

### ***The olive cultivation register***

58. Regulation (EEC) No 154/75 of 21 January 1975 required the Member States to establish a register of olive cultivation. The objective of this action was to obtain the information needed to determine the Community's potential production of olives and olive oil with a view to improving the operation of the aid system for olive oil. The deadline for the compilation of the register was February 1981 for Italy, November 1988 for Greece and November 1992 for Spain and Portugal.

59. The Commission has offered technical assistance to the Member States for the compilation of the register, but long tolerated that Member States extended the deadlines for completion leading to delays in planning the work and compiling the necessary data. The result is that the register has not been completed in most of the countries concerned thus weakening the Commission's management and control of the scheme.

60. Council Regulation (EC) No 1638/98 of 20 July 1998 stipulates that the work for the register should be redirected towards the creation of the geographical information system (GIS). Commission Regulation (EC) 2366/98 of 30 October 1998 defines the information to be contained and rules for the compilation and the completion of this system. It consists of two databases. The first is called the alphanumerical database and basically includes information which should have been already compiled in the form of computerised files for the old register and the information declared by producers on their production potential. In addition it will contain the files of mills, of producer organisations and of homogeneous production zones. The second is called the graphical reference database and should contain digital orthophotographs of all olive groves, the boundaries of parcels and the location of the individual olive trees. The compilation of the two databases is more demanding than the old olive cultivation register; however, once finished, it should render the checking of aid applications more efficient. Declarations and aid applications can be efficiently cross-checked and cases for further investigation can be identified. However, it should be noted that:

- (a) the Commission did not require Member States to finish this work by the end of the transitional period;
- (b) expenditure on setting up the GIS and the updating of the graphical database will now be eligible for distinct Community financing; the amount of ECU 138,4 million not spent for the previous register has been cancelled.

61. The current situation concerning the state of progress of the original register is that Italy is the only Member State which succeeded in setting up a register albeit with some delay, at a cost of about ECU 195 million. The register is considered completed and updated when the number of trees recorded can be reconciled to the total number of trees the producers declare as having in their ownership. Each year, the Italian authorities carry out checks on those growers who apply for aid to ensure that this condition is met. In the last four marketing years, 12 % to 23 % of the aid applications showed discrepancies. In these cases the authorities have to confirm the correct figure, if necessary through on-the-spot visits. This means that a high level of resources is needed every year in order to follow up the differences in order to update the register. In 1997/98 alone about 500 000 parcels had to be checked for this purpose.

62. According to Article 26(1c) of Commission Regulation (EC) No 2366/98, the GIS cannot be considered as completed if the number of trees in the two databases differ by more than 5 % of the declarations. The high level of discrepancies found in Italy in the case of the register indicates that at this stage even in Italy the criterion of completeness of the GIS is not likely to have been satisfied, despite having absorbed up to 1998 about 80 % of the Community funds available for the register. However, the extensive work carried out on the register should enable Italy to complete the GIS relatively quickly.

63. In Greece work on establishing the register has been unacceptably delayed and the pilot studies carried out in 1992 to 1994, four years after the first deadline for its completion, costing ECU 147 633, did not achieve any tangible result. Work recommenced with the assistance of the Commission, for the creation of the olive cultivation GIS. According to the work schedule established in January 1998, the GIS is expected to be completed by the end of the year 2000 at a cost of ECU 5,9 million. However, the 1998 work programme is again behind schedule which puts completion within the stated deadline in doubt.

64. In Spain, according to the information and documentation provided, the completion of the register was scheduled for the first quarter of 1999, i.e. seven years after the first deadline. The register was at the final stage of the compilation, but not yet fully operational for control purposes. The work carried out to date needs to be adapted for GIS requirements. This task is expected to be completed before the end of the period of application of the new Regulations, i.e. the 2000/01 marketing year.

65. In Portugal the work on the olive cultivation register effectively started in 1997, some five years after it should have been completed. The contract for the GIS was the subject of an international public tender and the work was expected to be completed by the end of 1999.

66. The situation in the Member States described above shows that the register, an important control instrument, has not been put in place in a majority of the olive oil producing Member States. Furthermore, there are doubts about the reliability of the Italian register as illustrated by the large number of discrepancies found each year by the Italian administration. Thus, payments are made without the necessary key controls such as checking for double declarations of the same parcels and testing of the accuracy of the quantities of olive oil declared for support from the individual applicants.

67. The failure to correctly compile and regularly update the register is also attributable to the lack of incentive for producers to notify on time all modifications to the number of trees, from planting to the production stage and then destruction and replacement. The establishment, the maintenance and the continuous updating of the olive cultivation GIS will call for an even greater effort and amount of financial resources, not only from the producers but also from the Member States' administrations and the Community.

### Conclusions

68. Thirty years after the introduction of a Community support scheme for olive oil, the system for its management and control is still not sufficiently efficient and reliable. There have been numerous changes in the regulatory framework and the objectives have not been sufficiently clear (paragraphs 15-17).

69. Statistical data sufficiently reliable for administering and controlling the scheme are still not available (paragraphs 18-20).

70. The target price was fixed by the Council without taking into account either producers' incomes or production costs. The 'representative market price' was set at a lower level than the actual market prices. In the last 10 years, both target and market prices were frozen at a constant level (paragraphs 22-23).

71. The sharp increase of production in 1996/97 and 1997/98 marketing years compared to the relatively low rising trend in EU demand, the existence of more trees than previously envisaged, and the limited prospects for increasing subsidised exports due to the WTO, are factors which indicate that the Community faces a real risk of structural surpluses in the olive oil sector (paragraphs 24-26).

72. With respect to the promotional campaigns, the Commission lacks the experience and expertise necessary in order to implement these measures effectively. Consideration should be given to leaving with the Member States, the producers and processors concerned the operational and financial responsibility for such measures (paragraphs 31-35).

73. Controls in the Member States by producer organisations, paying agencies and control agencies are still inadequate. Particular efforts are needed to verify quantities produced and to prevent more than one application in respect of the same trees (paragraphs 45-53).

74. The plausibility of the yields declared by each producer by comparison with average yields in each production zone should provide the basis for checks. The methods used to estimate these average yields should be harmonised in all Member States and the zones should be defined so as to be homogeneous. Account should be taken of the actual production conditions which vary from year to year (paragraphs 39-44).

75. National administrations have not hitherto taken sufficient steps to avoid delays in the recovery of overpayments and the application of administrative sanctions to discourage unjustified claims for aid (paragraphs 54-57).

76. A satisfactory olive cultivation register is an essential tool for the effective enforcement of whatever system is finally chosen for subsidies to producers. The Commission has tolerated unacceptably long delays in the compilation of such a register. Despite the technical assistance it has provided and the financial resources it has made available, work on the register still has not been completed. In 1998 the Commission replaced it by the 'olive cultivation GIS'. However, the compilation and updating of the GIS will necessitate a considerable fresh effort as well as financial resources. The Commission must not allow repetition of the unsatisfactory experience with the initial register, and no further delays should be permitted (paragraphs 58-67).

77. With regard to the pending reform, the Court's main observations are as follows:

- (a) any reform should maintain the principle expressed in Article 2 of the Community's financial regulation that no financial resources are devoted without being coupled to measurable results towards the achievement of the objectives set. The objectives of whatever support system is proposed by the Commission must be specified in such a way to make it possible to measure progress towards them;
- (b) payment of subsidy simply on the number of trees poses less control problems, but it creates the risk of owners abandoning cultivation altogether or reducing their effort to improve quality. Even if the rates of subsidy were adjusted to reflect average yields in the region concerned, it would give undeserved benefits to producers who took no care of their trees. If it were decided to link the aid per tree to some production criteria, in order to cope with the risk of abandonment, the subsidy would not only lose its character as a 'decoupled payment' but control problems similar to those experienced under the present system would remain, thereby further reinforcing the need of the GIS;
- (c) given the difficulty of precise checks on quantities produced by 2,2 million individual growers, an effective control is also required over the output of the 11 000 mills. The Court considers that control over the mills can prove more effective.

78. In the Court's opinion, any reform should deal effectively with the risk of overproduction. As for other COMs, the arrangements for olive oil should complement EU rural development schemes so as to improve the competitiveness of EU olive oil production.

**PART 2: CONSUMPTION AID AND EXPORT REFUNDS****Background**

79. This part of the report deals with irregularities detected by Member States in claims for consumption aid and export refunds in the olive oil sector. It examines the way in which Member States have accounted for amounts of consumption aid and export refunds unduly paid, their recovery procedures and the application of sanctions in this connection.

80. The audit was carried out in Greece, Italy, Portugal and Spain, but not in France where nearly 100 % of the undue amounts had been recovered. More audit work was carried out in Italy than in the other countries because it accounts for some 87 % (ECU 398 million) of the unrecovered amounts. This also explains the preponderance of audit observations relating to that Member State.

81. Consumption aid for olive oil was abolished with effect from 1 November 1998 <sup>(1)</sup>. It had been designed to increase the market share for olive oil via the payment of subsidies for olive oil bottled or packaged in containers with a capacity of 5 litres or less. In order to ensure that payments were not made for poor quality olive oil or olive oil mixed with other substances such as nut oil, a range of chemical quality parameters had to be met <sup>(2)</sup>. From 1983 to 1998 consumption aid cost the Community more than ECU 6 000 million <sup>(3)</sup>. Payments, by Member State, for the period 1993 to 1998 are shown in *Table 2*.

82. Export refunds, on the other hand, continue to be paid to exporters of olive oil although the rates decreased significantly in

1998. As was the case with consumption aid, the payments are only made in respect of oil bottled or packaged in containers with a capacity of 5 litres or less and similar chemical quality parameters have to be met <sup>(4)</sup>. *Table 2* also shows the value of payments, by Member State, for the period 1993 to 1998.

83. According to the Commission database, national checks had revealed irregular consumption aid payments amounting to ECU 456 million reported in the period 1985 to 1998 which represents some 7,6 % of payments made in the same period. Of that total, only 6 % had been recovered, leaving ECU 429 million unrecovered. *Table 9* shows, by Member State, the value of irregularities detected and the related amounts recovered.

84. The two most common types of consumption aid fraud reported to the Commission are claims for fictitious quantities of oil and claims for ineligible oil mixtures. Of those reported by Italy, the majority involved the use of false invoices for the purchase and/or sale of fictitious oil or fictitious containers (bottles or cans). The incidence of false invoices from a given company being used in support of consumption aid claims submitted by a number of different companies would appear to suggest a degree of organisation. In Italy, in the period 1996 to 1998, 10 % of the cases involved charges for conspiracy <sup>(5)</sup>.

85. The incidence of irregularities in connection with the export refunds paid to olive oil exporters was far smaller than in the field of consumption aid, but it was nevertheless significant: ECU 12,5 million reported in the period from 1990 to 1998 of which only 13 % had been recovered. *Table 10* shows the value of irregularities detected and the related amounts recovered as reported to the Commission.

<sup>(1)</sup> Council Regulation (EC) No 1638/98 (OJ L 210, 28.7.1998, p. 32).

<sup>(2)</sup> Article 5 of Commission Regulation (EEC) No 2677/85 (OJ L 254, 25.9.1985, p. 5).

<sup>(3)</sup> Source: Sincom and Commission management accounts.

<sup>(4)</sup> Commission Regulation (EEC) No 2568/91 (OJ L 248, 5.9.1991, p 1, as amended by Commission Regulation (EC) No 2472/97, OJ L 341, 11.12.1997, p 25).

<sup>(5)</sup> The Italian Penal Code dealing with crime involving criminal organisations differentiates between *associazione a delinquere* (confederation to commit a crime or criminal conspiracy) and *associazione di tipo mafioso* (mafia style conspiracy).

Table 9  
Olive oil consumption aid — EAGGF Guarantee irregularities

(1 000 ECU)

Year	Greece			Spain			Italy			Portugal			Total		
	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered
<1986	0	0		0	0		2 713	10	0	0	0		2 713	10	0
1986	0	0		0	0		310	9	3	0	0		310	9	3
1987	0	0		0	0		10 290	344	3	0	0		10 290	344	3
1988	0	0		0	0		0	0		0	0		0	0	
1989	0	0		0	0		38 219	1 764	5	0	0		38 219	1 764	5
1990	0	0		0	0		18 508	0	0	0	0		18 508	0	0
1991	0	0		0	0		12 807	85	1	0	0		12 807	85	1
1992	1 310	1 234	94				62 013	2 756	4				63 323	3 990	6
1993	2 116	1 541	73	88	77	88	0	0		594	594	100	2 798	2 212	79
1994	0	0		482	454	94	60 694	3 610	6	127	101	80	61 303	4 165	7
1995	10 114	1 685	17	186	164	88	25 104	527	2	469	391	83	35 873	2 767	8
1996	77	0	0	3 993	3 338	84	26 203	58	0	49	37	76	30 322	3 433	11
1997	31 053	0	0	6 070	5 057	83	3 784	1 857	49	104	87	84	41 011	7 001	17
1998	1 322	1 195	90	44	36	82	137 160	167	0	46	30	65	138 572	1 428	1
Total	45 992	5 655	12	10 863	9 126	84	397 805	11 187	3	1 389	1 240	89	456 049	27 208	6

Source: OLAF database of irregularities notified under Regulation (EEC) No 595/91.

Table 10  
Olive oil export refunds — EAGGF Guarantee irregularities

(ECU)

Year	Greece			Spain			Italy			Portugal			Total		
	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered	Reported	Recovered	% Recovered
<1991	0	0		0			0	0		20 821	20 821		20 821	20 821	100
1991								0			0		0	0	
1992							332 592	332 592	100	5 297	0	0	337 888	332 592	98
1993	5 724 000	0	0	203 101	44 543	22	1 132 277	631 424	56	499 480	499 480	100	7 558 858	1 175 447	16
1994	0	0		16 332	16 332	100	617 469	0	0	34 754	34 754	100	668 555	51 086	8
1995	0	0		5 810	0	0	84 670	5 555	7	0	0		90 480	5 555	6
1996	0	0		54 565	29 733	54	1 714 999	0	0	8 049	0	0	1 777 612	29 733	2
1997	0	0		39 528	4 380	11	1 803 787	0	0	0	0		1 843 315	4 380	0
1998	0	0		19 801	8 686	44	179 233	0	0	0	0		199 034	8 686	4
Total	5 724 000	0	0	339 137	103 673	31	5 865 027	969 571	17	568 400	555 055	98	12 496 564	1 628 299	13

Source: OLAF database of irregularities notified under Regulation (EEC) No 595/91.



### **Judgment of the European Court of Justice on measures taken to recover sums lost as the result of irregularities or negligence**

86. Member States are required to take the measures necessary to recover sums lost as the result of irregularities or negligence. According to the relevant legislation, 'in the absence of total recovery the financial consequences of irregularities shall be borne by the Community, with the exception of the consequences of irregularities or negligence attributable to administrative authorities or other bodies of the Member States' <sup>(1)</sup>.

87. In the context of relations between Member States and the Commission, the European Court of Justice (ECJ) has said that the responsibility for negligence as described in paragraph 86 above must be determined by Community law which imposes a number of requirements on Member States and the Commission with respect to rules capable of having financial consequences. In the first instance, the ECJ ruled that Member States should respect the obligation of diligence in Article 5 of the EC Treaty. This obligation 'implies that the Member States must take steps to rectify irregularities promptly', adding that 'with the passage of time, recovery of sums wrongly paid is likely to become more complicated or impossible for reasons such as the fact that the undertakings may have ceased trading or accounting documents may have been lost.' In the case under consideration, the ECJ decided that, in waiting four to ten years before starting proceedings to recover amounts wrongly paid, the Italian authorities had not acted with the necessary diligence <sup>(2)</sup>.

88. In the light of this judgment, the Commission should consider the introduction of a reasonable time limit for recovery action. Any sums not recovered by Member States within this period should be credited to the EAGGF pending definitive judgments in the related cases. The Commission has acknowledged that 'recovery procedures can take time but considers that a period of four years should be enough to take the necessary measures and to ascertain that the amount is recoverable' <sup>(3)</sup>. It has also stated in its reply to Special Report No 8/98 <sup>(4)</sup> on the Commission's services specifically involved in the fight against fraud that 'Where the Member State does not provide sufficient elements which exclude any irregularity or negligence attributable to it the Commission will not fail to charge the amounts to the Member State in accordance with Article 8 of Regulation (EEC) No 729/70 without necessarily waiting for the final outcome of proceedings pending in court.'

<sup>(1)</sup> Article 8 of Council Regulation (EEC) No 729/70 (OJ L 94, 28.4.1970, p. 13).

<sup>(2)</sup> Case C-34/89 of 11 October 1990, *Italian Republic v Commission of the European Communities*.

<sup>(3)</sup> 'Protecting the Communities' financial interests and the fight against fraud — Annual Report 1998, paragraph 1.5.2'.

<sup>(4)</sup> OJ C 230, 22.7.1998.

### **Control framework**

89. Both consumption aid and export refund payments were subject to the normal *ex post* checks on commercial records that Member States must carry out on most EAGGF expenditure <sup>(5)</sup>.

90. In addition, for consumption aid, Member States had to carry out specific on-the-spot checks on the regularity of claims on the basis of stocks and accounts <sup>(6)</sup>. They also had to take random samples of olive oil for laboratory analysis to ensure that the quality parameters had been met <sup>(7)</sup>. In the countries audited, these specific checks were carried out by the olive oil control agencies referred to in paragraph 38 of part 1 of this report.

91. For export refunds, selected physical checks should be carried out by the Member States' customs services at the time the oil is placed under customs control <sup>(8)</sup>. These checks included taking samples for laboratory analysis to ensure compliance with the quality parameters.

92. Investigations into irregular consumption aid and export refund payments were undertaken by the competent fraud investigation services in the Member States.

### **Consumption aid**

#### **Debtor accounts**

93. The Commission does not require the Member States' paying agencies to keep debtor accounts. Member States may provide information on debtors to the Commission in Table 105 <sup>(9)</sup> when submitting their claims for the reimbursement of EAGGF expenditure, but this is not obligatory. Consequently, in Greece, there were no debtor accounts for olive oil consumption aid at the time of writing; in Italy there were none prior to 1996 and in Spain only nine of the 14 paying agencies kept debtor accounts.

<sup>(5)</sup> Council Regulation (EEC) No 4045/89 (OJ L 388, 30.12.1989, p. 18).

<sup>(6)</sup> Article 12 of Commission Regulation (EEC) No 2677/85 (OJ L 254, 25.9.1985).

<sup>(7)</sup> Commission Regulation (EEC) No 2677/85, Article 5(1) (OJ L 254, 25.9.1985, as amended by Commission Regulation (EEC) No 643/93, OJ L 069, 20.3.1993, p. 19).

<sup>(8)</sup> Commission Regulation (EEC) No 386/90 (OJ L 42, 16.2.1990, p. 6).

<sup>(9)</sup> Table 105 may be submitted to the Commission by Member States on a monthly basis with Table 104, the declaration of EAGGF expenditure. Table 105 summarises sums unduly paid and the progress of recoveries.

94. Member States are required to notify the Commission of all irregularities involving more than ECU 4 000 and of amounts recovered. <sup>(1)</sup> The Commission did not systematically test the completeness of these notifications nor did it systematically check that the amounts recovered had been credited to the EAGGF budget. <sup>(2)</sup>

95. In the absence of complete debtor accounts, the Court requested the Member States concerned to construct and/or provide complete accounts of all cases of olive oil consumption aid irregularities where the undue amounts had not been recovered. Italy has provided such an account and even though it is incomplete, it shows that the undue sums to be recovered have been understated in Table 105 by some ECU 208 million. Greece and Spain provided information on irregularities totalling ECU 12 million and ECU 2,9 million respectively. This information was also incomplete since the irregularities notified to the Commission in accordance with the provisions mentioned in the preceding paragraph totalled ECU 45,9 million for Greece and ECU 10,8 million for Spain for the same period. Portugal has provided details of unrecovered amounts of ECU 380 000 relating to irregularities detected in the period 1995 to 1997.

### Completeness of data on amounts to be recovered

#### Italy

96. The Italian authorities took six months to prepare the account of the amounts to be recovered, and, during that period, they provided four different versions. The first of these had a total of ECU 181,9 million and the most recent had a total of ECU 403,6 million. At the time of writing, a definitive and complete version had yet to be received.

97. The Court checked the earlier versions for completeness against data on irregularities obtained from Agecontrol (the body responsible for the specific on-the-spot checks on consumption aid) and the Guardia di Finanza, which is responsible for fraud investigation and also participates in the normal EAGGF *ex post* checks. Of 157 cases checked, 20 were incorrectly omitted, 13 could not be traced, and, in seven instances, the amounts were inaccurate.

<sup>(1)</sup> Council Regulation (EEC) No 595/91 (OJ L 67, 14.3.1991, p. 11).

<sup>(2)</sup> See also paragraphs 1.8 and 4.5 of Special Report No 8/98 on the Commission's services specifically involved in the fight against fraud notably UCLAF/OLAF (OJ C 230, 22.7.1998).

98. In a further six cases recoveries had actually been made. However, there were delays of between seven and 37 months in crediting these amounts to the EAGGF and one amount, recovered in March 1997, had still not been credited to the EAGGF at the time of the last audit visit in February 1999. In view of the systematic nature of this failure, further investigations were requested, which revealed amounts recovered but not credited to the EAGGF of ECU 166 000 for olive oil consumption aid alone. Despite request, at the time of writing, the Italian authorities had not provided information on amounts recovered but not credited to the EAGGF relating to other measures managed by AIMA <sup>(3)</sup> (the responsible paying agency).

99. A comparison with information received from the District Attorney for Bari, one of many district attorneys dealing with, *inter alia*, consumption aid cases, revealed a further two cases relating to the Bari region that could not be traced in AIMA's database of irregularities.

100. The AIMA database has now been updated to include the cases mentioned in the preceding paragraphs that were incorrectly omitted. Given these discrepancies, however, the Court asked the Italian authorities to check the completeness of the final version of their account of amounts to be recovered against all irregularities recorded in the Guardia di Finanza database. This check has not yet been completed. The figure of ECU 403,6 million for amounts to be recovered arising from irregularities must still be regarded as incomplete.

### Delays in recovery

#### General

101. Recovery procedures in all Member States were characterised by long administrative and judicial delays. National regulations quite rightly allowed individuals or undertakings to appeal against administrative decisions or court judgments affecting them but none of the Member States concerned had any procedures for deterring appeals which may subsequently prove to be either a delaying tactic or otherwise without serious justification (such as requiring the appellant to deposit the amount under appeal or provide an appropriate guarantee before the appeal could be heard). Appeals were lodged in the vast majority of cases examined by the Court.

<sup>(3)</sup> The State agency for intervention in the agricultural market.

## Italy

102. Although concurrent civil recovery action was provided for by law <sup>(1)</sup>, because most irregularities were treated as criminal cases, the civil claim was almost always inserted in the criminal proceedings and therefore recovery action was suspended until the final judgment had been passed in the relevant criminal case. As recognised by the Italian authorities, it could take more than 10 years before a definitive judgment was reached. <sup>(2)</sup> A contributory factor was the shortage of staff in the District Attorneys' offices as acknowledged in a report of the Corte dei Conti <sup>(3)</sup>. Table 11 shows the delays in open cases.

Table 11

**Italy: Open cases — Delays from date of report of irregularity to 25.2.1999**

Delay	No of cases	%	Amount to be recovered in ecus	%
Less than 1 year	26	4	16 011 184	4
1 to 2 years	62	9	134 226 337	35
2 to 5 years	227	32	67 639 673	18
5 to 8 years	277	39	108 237 901	28
8 to 10 years	69	10	34 850 635	9
Over 10 years	54	8	23 014 982	6
<b>Total</b>	<b>715</b>		<b>383 946 309</b>	

Source: AIMA.

103. AIMA, the paying agency responsible for recovery, normally only issued a 'request' for the recovery of sums unduly paid to the beneficiary concerned. This request was not enforceable. The basis for the enforcement of recovery action in respect of a debt was an injunction or a court judgment. AIMA considered that, once a case had been referred to a district attorney, it was not required to take further action since it was the district attorney's duty to initiate civil recovery action before the relevant court. Further, it was not AIMA's normal practice to issue injunctions, because, it argued, injunctions could only be issued on the basis that 'the debt should be certain, quantified and enforceable, based upon written evidence that is to say based on a definitive court judgment'.

<sup>(1)</sup> Nuovo Codice Di Procedura Penale Article 75.

<sup>(2)</sup> See also Reports on the Administration of Justice (in Italy) during 1997 and 1998 by the Supreme Court of Cassation and the regional Appeal Courts of Venice, Florence, Turin, Naples and Salerno.

<sup>(3)</sup> See Report 71/98 of 27 March 1998 of the Italian Corte dei Conti on 'Sanctions in respect of Community aid' which reads that 'the task [of recovery of fines] is made all the more difficult by the fact that the District Attorneys now refuse to defend the Inspectorate [for the fight against fraud] claiming that they do not have enough staff'.

## Greece

104. All reports of irregularities detected in Greece had to be submitted to a committee of the Ministry of Agriculture for a final decision as to whether or not recovery action was justified. At the time of writing, this committee had given decisions in 129 cases. In a further 80 cases decisions are still pending, 79 of which for more than four years. No information has been provided on the amounts involved. The sums unduly paid had still not been recovered more than one year after the date of the decision in 93 of the 129 cases <sup>(4)</sup>.

## Spain

105. The Spanish paying agency, FEAGA <sup>(5)</sup>, provided information on 1 721 cases involving ECU 2,9 million out of a total of ECU 10,1 million where recovery was pending as notified to the Commission as at 31 December 1997. The cases dated back as far as 1991. An analysis of the higher value cases (429 cases with a value of ECU 2,7 million) revealed that most delays were administrative and were attributable to the time taken to arrive at the definitive recovery decision, which, in over 60 % of the cases, was over five years. Table 12 below details the delays. According to the Commission's data as at 31 December 1998, Spain had recovered 84 % (ECU 9,1 million) of the amounts notified, compared with 6 % (ECU 668 000) as at 31 December 1997.

Table 12

**Spain: Delays in recovery**

Delay	No of cases	%	Amount unduly paid in ecus	%
less than 4 years	52	12	357 676	13
4 to 5 years	103	24	506 360	18
5 to 6 years	237	55	1 496 562	55
More than 6 years	37	9	377 100	14
<b>Total</b>	<b>429</b>	<b>100</b>	<b>2 737 699</b>	<b>100</b>

Source: FEAGA cases >ESP 100 000.

## Portugal

106. In Portugal delays were noted both in the notification of control reports by the control agency to the paying agency and in taking the final decision on recovery action. According to the Commission's database, as at 31 December 1998, Portugal had recovered 89 % (ECU 1,2 million) of the amounts notified, compared with 20 % (ECU 260 000) at 31 December 1997.

<sup>(4)</sup> The analysis in these paragraphs is based upon incomplete data supplied by the Greek authorities.

<sup>(5)</sup> Fondo Español de Garantía Agraria.

**Monitoring the progress of criminal proceedings***Italy*

107. AIMA did not systematically follow the progress of criminal cases and its own civil claim within them. The Avvocatura dello Stato, which was responsible for defending AIMA's (and therefore the Community's) interests, did not systematically report back to AIMA on the progress of the court cases and AIMA did not have a system for periodically obtaining updated information from the relevant district attorneys or Procura della Repubblica. Further, there was no system in force to ensure the timely communication of court decisions to AIMA.

108. At the Court's suggestion, AIMA wrote to the competent district attorneys (or, if not known, to the responsible reporting bodies) to establish the current situation of cases under their responsibility <sup>(1)</sup>. The replies showed that it was difficult to ascertain from the judgments on the criminal cases whether or not it had been accepted that undue aid payments had been made and sometimes even to which civil case these payments related, since the names of the beneficiary companies were not always mentioned.

109. The replies from the district attorneys further revealed 46 cases involving ECU 29 million where judgments had been made but AIMA had not pursued recovery action. The oldest of these judgments dated back to 1989. AIMA is currently making further enquiries as to the exact status of these cases.

*Spain*

110. Eleven cases involving some ECU 697 000 reported in 1996 and 1997 were still awaiting decisions on criminal proceedings and recovery action at the time of the last audit visit in November 1998 because of a dispute over competence between FEGA, the former paying agency, and the autonomous authorities who have latterly assumed this function.

<sup>(1)</sup> The replies showed, firstly that the defendants in any given criminal case may have been involved in more than one civil case liable to lead to recovery action and, secondly, that a given criminal case relating to only one civil case may have many defendants. The situation was further complicated by the fact that, often, in one single case of undue payments, some defendants were found guilty, some plea bargained, some were granted amnesties and some were acquitted.

*Greece*

111. Of 27 cases reported between 1991 and 1994 which should be the subject of court proceedings, there has been a definitive judgment in only one case. In 12 of the remaining cases, proceedings have been commenced, five are under appeal and nine cases have yet to have legal proceedings initiated.

**Case where recovery action was taken against the supplier rather than the aid recipient**

112. This case, detected in Italy, involved the falsification of customs documents to disguise the non-Community origin of a large quantity of oil, some of which was actually a blend of olive and hazelnut oil. Irregular consumption aid claims were not made by the importer but by his customers. Recovery action, on the other hand, was initiated in the framework of the criminal case against the importer but not against the customers (who had actually made the irregular claims). The total value of payments to the aid applicants to which they are not entitled, and which they still have, was ECU 8,7 million. At the time of writing, the criminal case was before the Court of Cassation, the importer was in liquidation but assets of ECU 22 million had been blocked.

113. In order to protect the Community's financial interests in such cases, recovery action should be taken against the recipients of the aid. Such action may be initiated independently of the criminal action against the importer. Fraudulent behaviour by a third party with whom the aid recipient has entered into a contract constitutes an ordinary commercial risk <sup>(2)</sup> that should not exclude repayment by the beneficiary.

**Guarantees**

114. Payments of consumption aid were made in advance of the on-the-spot checks carried out by the olive oil control agencies but were subject to the lodging of guarantees which were released once entitlement to aid had been recognised on the basis of the checks.

115. In both Spain and Greece the guarantees were actually released on the basis of the results of a desk check which was necessarily limited in scope. This is contrary to the legislation, in force since 27 March 1993, which requires the recognition of entitlement to aid (and therefore the release of the guarantee) to be based on the results of the on-the-spot checks <sup>(3)</sup>.

<sup>(2)</sup> Case C-366/95, Steff-Houlberg Export e.a. [1998] ECR I-2661, paragraph 28.

<sup>(3)</sup> Commission Regulation (EEC) No 2677/85, Article 11(2) (OJ L 254, 25.9.1985, as amended by Commission Regulation (EEC) No 643/93, OJ L 69, 20.3.1993, p. 19-21).

## Clearance of accounts

116. As a result of the inspections carried out under the clearance of accounts procedures the Commission has disallowed expenditure for olive oil consumption aid for a total of ECU 84 million for the EAGGF years 1992 to 1995. Table 13 summarises these corrections by Member State. The corrections were mainly for shortcomings in the control system but there were also instances of corrections for failure to withdraw approval from certain undertakings that had made irregular claims. Withdrawal of approval results in loss of entitlement to consumption aid payments.

Table 13

### Clearance of accounts corrections for olive oil consumption aid

(million ECU)

	1992	1993	1994	1995	Total
Greece	0,0	0,0	0,0	9,4	9,4
Spain	5,6	0,6	0,0	37,6	43,8
France	7,8	0,0	0,2	0,2	8,2
Italy	5,2	11,7	0,0	1,0	17,9
Portugal	0,1	3,5	0,0	1,1	4,7
<b>Total</b>	<b>18,7</b>	<b>15,9</b>	<b>0,2</b>	<b>49,2</b>	<b>84,0</b>

Source: Commission summary reports 1992 to 1995.

117. Corrections made regarding the two problems mentioned in the previous paragraph were upheld by the Court of Justice. One relevant case <sup>(1)</sup> concerned Italy. The responsible authority, the Ministry of Industry, did not withdraw approvals until the Ispettorato Centrale Repressione Frodi (ICRF) had imposed the administrative fine (see also paragraphs 119-123 below). In its judgment the ECJ refers to the opinion of the 'Conciliation Body' <sup>(2)</sup> which 'formed the view that the more recent improvements in the management of securities, and ... the introduction of a fairly rigorous system of penalties should also be taken into consideration'.

<sup>(1)</sup> Case C-253/97 of 28 October 1999.

<sup>(2)</sup> Commission Decision No 442/94 of 1.7.1994 (OJ L 182, 16.7.1994) setting up a conciliation procedure states that the Conciliation Body's purpose is "to try to reconcile the divergent positions of the Commission and the Member State concerned" with regard to corrections proposed by the Commission in the context of the clearance of accounts procedure. The Body forms an integral part of the clearance procedure. Member States may choose to make use of the conciliation procedure, subject to certain minimum values, without prejudice to their right to refer the matter to the European Court of Justice. The opinions of the Body are not binding on the Commission's final decision on the clearance of accounts.

However, a correction was still judged appropriate by the ECJ because it found that 'In as much as it took ten years to resolve the jurisdictional dispute between the Italian authorities, and no effective monitoring was possible during that time, it is reasonable to presume that there were deficiencies entailing a risk of loss to the EAGGF'.

118. In another case the ECJ confirmed corrections concerning Greece <sup>(3)</sup> maintaining that '... the Greek Government does not challenge the Commission's statements to the effect that the checks carried out by the Ministry of Agriculture were ineffective because of the insufficient number of qualified staff responsible for the checks and the absence of reports on the checks enabling them to be verified'.

## Fines <sup>(4)</sup>

119. With effect from 1992, fines <sup>(5)</sup> were introduced for olive oil which laboratory tests showed not to meet the quality requirements necessary to qualify for consumption aid <sup>(6)</sup>. The fine to be imposed was twice the amount of the consumption aid applied for in one of the months following that in which the samples were taken. With effect from 1996, the rate was reduced to between 20 % and 80 % of the monthly average of the consumption aid applied for in the 12 months preceding that in which the samples were taken <sup>(7)</sup>. The fines collected were to be credited to the EAGGF.

120. As of February 1999, neither Greece nor Italy had imposed the required fines. Italy has provided information on the value of fines which should have been imposed. The information is, however, incomplete since it only covers the period from 1992 to 1995 for which period fines which should have been imposed total some ECU 7,8 million. The Italian authorities were unable to provide the information for 1996 to 1998. Greece has some 90 cases that were detected in the 1992 to 1998 period for which it has not notified the required fines. The Greek authorities have yet to calculate the value of the fines involved. In addition, during the period 1994 to 95, because of a dispute between the State Laboratory and the Olive Oil Control Agency, no samples were sent for analysis and those already in the possession of the Laboratory were not analysed. In Spain, of fines proposed by the control agency of some ECU 913 000, for the period 1992 to 1998, some ECU 394 000 has been collected. In Portugal for the period 1995 to 1997, fines of ECU 2 290 have been collected from a total of ECU 32 453 proposed.

<sup>(3)</sup> Case C-61/95 of 29 January 1998.

<sup>(4)</sup> Article 5(2) of Commission Regulation (EEC) No 2677/85 (OJ L 254, 25.9.1985, p. 5).

<sup>(5)</sup> Commission Regulation (EEC) No 1008/92 (OJ L 106, 24.4.1992, p. 12).

<sup>(6)</sup> Commission Regulation (EEC) No 2568/91 (OJ L 248, 5.9.1991, p. 1).

<sup>(7)</sup> Commission Regulation (EC) No 887/96 (OJ L 119, 16.5.1996, p. 16).

121. The delays in notification of fines in Italy were attributed to staff shortages <sup>(1)</sup>. In its defence, the Ispettorato Centrale Repressione Frodi (ICRF), responsible for the imposition of these fines, maintains that all fines will be notified within the five years laid down by the statute of limitations. Whilst such delays are permissible under the law, the systematic failure to notify these fines promptly and pursue recovery action is damaging to the financial interests of the Community (see also paragraph 88).

122. As of 1993, fines <sup>(2)</sup> were introduced in respect of applications for quantities of consumption aid that were greater than those for which entitlement was recognised. The fines should be between three and eight times the unduly claimed aid. The Regulation is silent as to whether or not these fines should be credited to the EAGGF. However, a letter from the Commission to the Italian authorities in 1998 <sup>(3)</sup> indicated that they were to be credited to the national budgets. Amongst the arguments given for this interpretation was that Member States would be more inclined to impose the highest rate of penalty and thereby obtain the greatest deterrent effect. The Court considers that the Regulation should have required the fines to be credited to the EU budget as for fines in respect of quality infringements.

123. In contrast with the Commission's idea that crediting these fines to the national budget should increase their efficacy, their deterrent effect was seriously undermined by delays in notification (and, consequently, collection) for example, in Italy, where the majority of fines are notified in the last year of the five provided for by the statute of limitations. In Greece, of a possible 468 cases where fines have been recommended by the Control Agency since 1993, decisions to apply fines have only been taken in 121 cases. In 60 % of these cases the delay between the date of the report and the date of the decision was more than four years.

### Exchange of information on laboratory tests

124. Exports of olive oil could and did attract both consumption aid and export refunds. The chemical parameters which had to be met for consumption aid and export refunds were mostly identical. Despite this, there was no systematic exchange of information in any of the Member States between the bodies responsible for export refunds and those responsible for consumption aid in respect of irregularities detected in laboratory tests.

125. Italy and Spain were requested to check whether or not consumption aid had been claimed for a selection of export refund transactions where irregularities had been detected in laboratory tests. Spain has reported one case, involving penalties of some ECU 83 000 which should have been applied. Enquiries involving 12 cases are still under way in Italy. There were no cases to be followed up in Greece and Portugal.

### Export refunds

126. Irregularities in payments of export refunds for olive oil, as reported to the Commission, are considerably less than consumption aid irregularities, some ECU 12,5 million for export refunds in comparison with ECU 456 million for consumption aid. The rate of recovery is only marginally higher, 13 % for export refunds as compared with 6 % for consumption aid but the delays in recovery are considerably shorter. Some 43 % of amounts to be recovered for consumption aid irregularities relates to years prior to 1993, whereas almost 100 % of unrecovered amounts for export refund irregularities relates to 1993 and subsequent years.

127. This does not imply that the rate of recovery for export refund irregularities is acceptable. Some 87 % (ECU 10,9 million) is outstanding for the years 1993 to 1996. The reasons for the delays, administrative and judicial, are similar to those for consumption aid. Member States should therefore take urgent steps to improve their recovery procedures.

### Conclusions

128. According to information on debtors supplied to the Commission by the Member States (Table 105), Italy accounts for about 60 % of debts two thirds of which relate to consumption aid. These figures are known to be inaccurate since most of the Member States' paying agencies do not have accurate and complete debtor accounts. For example, this audit showed that Italy alone had understated debts by ECU 208 million in Table 105. The information provided, though incomplete, points to a disturbing scenario of fraud and irregularities at the expense of the EU budget, coupled with inadequate recovery and sanction procedures in the Member States (see paragraphs 83, 93-111, 117-123).

129. The Commission bears responsibility for not having introduced regulatory requirements for effective checks and fines from the outset and for failing to ensure that Member States kept debtor accounts, set up effective recovery procedures and applied the fines once they had at last been introduced (see paragraphs 89-92, 93, 117-123).

<sup>(1)</sup> See Report 71/98 of 27.3.1998 of the Italian Corte dei Conti on 'Sanctions in respect of Community aid' which reads that 'the task [of recovery of fines] is made all the more difficult by the fact that the District Attorneys now refuse to defend the Inspectorate [for the fight against fraud] claiming that they do not have enough staff.'

<sup>(2)</sup> Commission Regulation (EEC) No 643/93 (OJ L 69, 20.3.1993, p. 19).

<sup>(3)</sup> Reference VI 18672 of 5 May 1998.

130. The lengthy administrative and/or judicial procedures in Member States are the principal causes of the delay in the recovery of sums unduly paid. There are several factors contributing to the length of these procedures in Member States, principally the shortages of staff in administrations, Courts and district attorney offices, but also the lack of a deterrent for appeals which may subsequently prove to be either a delaying tactic or otherwise without serious justification, (see paragraph 101) and the failure to monitor systematically the progress of criminal cases. These are matters for the Member States concerned to remedy. However, in that their actions to recover unduly paid sums of some ECU 429 mil-

lion relating to the period 1983 to 1998 were inadequate and in that they failed to collect fines, Greece and Italy have not acted with the necessary diligence referred to by the ECJ (see paragraph 87). The Commission should therefore take urgent action within the context of the clearance of accounts to protect the Communities' financial interests. The Commission should also consider introducing a time limit for Member States to recover sums unduly paid. Any sums not recovered within such a time limit should be credited to the EAGGF budget within the clearance of accounts procedures pending a definitive court judgment (see paragraph 88).

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 4 May 2000.

*For the Court of Auditors*

Jan O. KARLSSON

*President*

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## ANNEX

## REVIEW OF THE WORLD OLIVE OIL MARKET

1. Olive oil represents about 3 % of the edible oils on the world market. According to the statistics of the International Olive Oil Council (IOOC), in the course of the last 12 years the average world production of olive oil, including olive residue oil, is situated at 2, 018 million tonnes, varying from 1, 532 million tonnes in 1988/89 to 2,628 million tonnes estimated production for 1997/98. The corresponding consumption is estimated on average to be 2,050 million tonnes (from 1,836 million tonnes in 1990/91 to 2,402 million tonnes in 1997/98). Comparing consumption with production, it could be said that, on average, there is an equilibrium in the world market for the period of reference, but the situation changes considerably from one year to the next, especially with regard to production, which varies compared with a relatively stable level of consumption. *Table 14* shows the olive oil supply balance at world and EU level for the period 1986/87 to 1997/98.

***Community production and consumption***

2. The world market situation is strongly influenced by the trend in the Community market, since the European Union counts on average for 78 % of production and 73 % of consumption for the same period. Based on the same statistics, the European market shows average production of 1,579 million tonnes compared with 1,487 million tonnes of consumption. Since 1993/94 an increasing tendency has been registered concerning production, which reached its highest level at 2,294 million tonnes in 1997/98. Consumption, after having been relatively stable for a number of years, has been increased in the last two marketing years, reaching 1,841 million tonnes in 1997/98.

3. The information for the 1996/97 and 1997/98 marketing years gives an indication of the current situation in the olive oil market. Contrary to the world market, the Community market has registered for the last four consecutive marketing years a positive balance (surplus) and thus the stocks at the end of the period have reached the highest level.

***Trade***

4. During the reference period from 1986/87 to 1997/98 the volume of trade (imports and exports) in olive oil and olive-residue oil was, world-wide, about 0,73 million tonnes on average. The corresponding volume relating to intra- and extra-Community trade is 0,49 million tonnes for imports and 0,58 million tonnes for exports, i.e., 67 % to 79 % of world trade. At Community level, trade with third countries represents a minor part compared to that between the Member States of the Community. For example, in the last two marketing years imports from third countries were about 18 % to 21 % of the total, while exports were 31 % in 1996/97 and 38 % in 1997/98.

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Table 14  
Olive oil supply balance — world

(1 000 t)

		1986/1987	1987/1988	1988/1989	1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998
1	Production	1 639	2 172	1 532	1 918	1 543	2 367	1 942	1 954	1 969	1 848	2 709	2 628
5	Consumption	1 940	1 980	1 917	1 836	1 841	2 024	2 096	2 072	2 051	1 929	2 370	2 547
6=(4-5)	Balance	- 301	192	- 385	82	- 298	343	- 154	- 118	- 82	- 81	339	81
7=(1/5)	Ratio production/ consumption	84 %	110 %	80 %	104 %	84 %	117 %	93 %	94 %	96 %	96 %	114 %	103 %

Olive oil supply balance — EU

(1 000 t)

		1986/1987	1987/1988	1988/1989	1989/1990	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998
1	Production	1 205	1 879	1 166	1 582	1 077	1 869	1 509	1 463	1 486	1 518	1 899	2 294
2	Importations	518	306	345	387	624	465	474	556	559	487	729	701
3	Exportations	649	420	461	474	652	508	585	551	545	599	796	851
4=(1+ 2- 3)	Available quantity	1 074	1 765	1 051	1 495	1 050	1 826	1 398	1 468	1 501	1 407	1 832	2 144
5	Consumption	1 409	1 478	1 409	1 402	1 311	1 459	1 495	1 474	1 475	1 402	1 687	1 841
6=(4-5)	Balance	- 334	286	- 358	93	- 261	367	- 97	- 7	25	5	145	303
7=(1/5)	Ratio production/ consumption	86 %	127 %	83 %	113 %	82 %	128 %	101 %	99 %	101 %	108 %	113 %	125 %
	EU/world production	74 %	87 %	76 %	82 %	70 %	79 %	78 %	75 %	75 %	82 %	70 %	87 %
	Consumption	73 %	75 %	73 %	76 %	71 %	72 %	71 %	71 %	72 %	73 %	71 %	72 %

Source: IOOC and DG AGRI. C.4 Olive oil and olive-pomace oil.

## THE COMMISSION'S REPLIES

### SUMMARY

The Commission would point out that one of the main objectives of the scheme is to contribute to providing a fair income. This objective is derived from the Treaty, where it is expressed, furthermore, as a political principle rather than a quantifiable target; the Commission doubts that political agreement could ever be reached on the kind of definition capable of the evaluation that the Court appears to want.

The changes to the regulatory framework proposed by the Commission and/or adopted by the Council over the past 30 years were designed to improve the situation and adapt the scheme to major changes, in particular Greek accession, followed by Spanish and Portuguese accession. The examples of changes to the regulatory framework given by the Court may equally be interpreted as a willingness on the part of the Commission and the Council to draw conclusions based on experience, and to adapt to the complex socio-economic problems of this sector. The small producers' scheme provides an example of a trial solution to certain control problems which was withdrawn when it was found to be unsuccessful. The basic principle of the organisation of the olive oil market — the granting of aid directly to olive oil producers on the basis of the quantities of oil — has on the other hand remained unchanged since 1966.

Looking to the future, the Court points to the socio-economic difficulties of a scheme based on aid per tree. It stresses the importance of effective controls on mills, which has been the objective for 30 years, but does not point to any new measures that could improve the situation. Under its reform proposals for 2001, the Commission will examine various avenues, taking account of the initial results of the action already taken and measures introduced since 1998. The Commission also points out that the Court has been no more able than the Commission to objectively quantify the extent of unjustified production aid claims in the various Member States.

The Commission shares the Court's concern that there should not be any further delay in bringing the olive cultivation geographical information system (GIS) into operation, and it has warned the Member States that any failure to comply with this requirement will be taken into account appropriately in the clearance of accounts procedure. Member States will also have to increase their control rates if their GIS systems are not operational.

Although it has introduced new control requirements with a view to ensuring more effective management of the scheme, taking into account practical limitations, budgetary constraints and the different structures and market habits in the different Member States, the Commission is well aware that the current system does not yet reach the desired level of efficiency and reliability, and it therefore continues to seek improvements in the context of the reform.

### INTRODUCTION

#### *The audit objectives*

5-7. The Court's report covers a period prior to implementation of the Council Decision of July 1998.

best way to contribute to fair incomes. The total production aid available to producers has been increased by the amount previously budgeted for consumption aid and through abolition of the 2,4 % deduction which contributed to meeting the costs of the register.

#### *The control provisions*

### PART 1: PRODUCTION AID

#### *The support mechanism for production*

11. The level of support in this sector was frozen for the 1998/99 to 2000/01 marketing years, as it was impossible to determine the

13. After the period audited by the Court, the Commission introduced measures relating to Regulation (EC) No 2366/98 in particular to improve the method for determining olive yields.

13-14. New control requirements were introduced with a view to ensuring more effective management of the scheme, taking into account practical limitations in the olive oil sector and different structures and market habits in Member States.

The Commission will monitor the application of the new control requirements closely and, if Member States do not respect the controls prescribed, will apply the necessary corrections.

### **Observations relating to the Commission's management of the scheme**

#### **The regulatory framework**

15. The basic principles of the organisation of the olive oil market, in particular the granting of aid directly to olive oil producers on the basis of the quantities of oil, have remained unchanged since 1966. Continuous amendment of the relevant regulations reflects the need to adapt to changing circumstances and the constant effort for improvement, given the political priorities, the budgetary constraints and the numerous practical limitations inherent in the production of olive oil, such as the differing systems and market habits of the different Member States, and the large number of producers. The Commission agrees that the current system does not reach the desired level of efficiency and reliability. The Commission considers that improvements are desirable, and it is in particular continuing to seek ways of improving the control system. This will be one of the major issues in the next reform of the olive oil market organisation, which the Commission is planning to put forward during the second part of 2000.

16. The Commission has always been wary of the danger of structural surpluses if production rises too rapidly. The first series of measures taken in this respect in 1978 were aimed at keeping olive oil production limited to traditional areas against the background of Greek accession. The measures put in place in 1984 were also designed to meet budgetary concerns, with a budgetary stabiliser being introduced in the shape of maximum guaranteed quantities. At the same time, the restrictions on planting previously introduced were lifted to avoid situations in which growers are doubly penalised by the system.

Restructuring of the sector in some Member States and the level of aid resulted in a renewed risk of overproduction, leading the Community to adopt new measures restricting the grant of aid in 1998.

17. To relieve the problems of controls in the sector, the small producer regime was designed to better target and rationalise controls by exempting a large number of producers, who accounted for a small share of the production, from the usual control requirements. This did not prove to be very effective, and the

scheme was abolished in 1998, following indications that the production was passed on from small to big producers with a view to benefiting from Community aid twice.

#### **Statistical data**

20. The Olistat and Oliarea studies produced final results in 1999. It seems that the main divergences in data provided by the Member States depend on what is deemed to be an olive tree in production. The national definitions have been clarified and harmonised as from 1999/2000.

#### **Setting of institutional prices and producers' incomes**

##### *Main features of the income structure*

21. The Commission would point out that in many production areas olive growing is not the only activity carried out by farmers but complements other farming and non-farming activities.

However, earnings from the sale of olive oil and the related aid account for a significant part of producers' income, and ownership of an olive grove is an additional asset.

Although it does not fundamentally alter the Court's conclusions in this paragraph, assessment should not be based on a maximum aid of EUR 330 for 250 kg but on the aid plus the proceeds of sales, i.e. a total of EUR 900 to EUR 1 000 for 250 kg.

In addition to revenue derived directly from olive growing, in some regions the production of olive oil accounts for a highly significant proportion of agricultural income and supports an extensive network of small and medium-sized businesses providing full- and part-time jobs.

##### *Amount of production aid*

22. The objective of contributing to a fair income is political in nature, and it is doubtful if an agreement could be reached to quantify it specifically for a single sector of the market organisation. The Commission would also mention that the objective is to 'contribute' to a fair income; there can be no doubt that the objective of 'contribution' is met, even if it is not quantifiable.

In spite of the imprecision of the idea of fair income, the contribution to its achievement, especially as regards the low agricultural incomes of the olive oil production areas, can always be

considered as lower than desirable. Budgetary constraints and the need to share agricultural support out among different types of agricultural production will always limit it.

The Commission doubts that the share of the subsidy in the estimated value of production is a good indicator of its contribution to a fair income.

23. Income and costs vary a lot depending on the region, the mode of production and the year. So, even if an objective method of calculation of the target price could be established, these variable data at microeconomic level would be of little help.

The representative market price being fixed as a theoretical price to permit normal disposal of olive oil on the market, the target price could be considered as the maximum contribution to fair income which is possible taking account of the budget.

When the actual market prices are higher than the representative market price, the rate of contribution to fair income is higher than foreseen, but the producer income may be even worse as that situation may result from a shortfall in the harvest. In that case, the returns from the market and from the aid may be especially low.

### **The market balance**

24. An analysis of production trends in the decade 1986/87 to 1995/96 must also take account of the severe drought in Spain, the world's main producer, over the three marketing years preceding 1996/97. During that decade, a very large number of new olive trees were planted and there was a significant rise in production potential, especially in Spain.

For 1996/97 and the following marketing years, it was a combination of improved weather conditions and the entry into production of young trees that led to the output of around 2,3 million tonnes in 1997/98.

25. As regards consumption, IOOC statistics indicate an increase in 1996/97 and 1997/98 equivalent to the rise in production pointed to by the Court.

The Commission nevertheless remains wary of the risk of structural imbalance on the market in the medium term.

For the 1993/94 marketing year onwards, the Commission entered a reservation at the IOOC on the validity of the statistics communicated by the Member States, in particular on end-of-marketing year stocks. In 1999, together with the IOOC, the Commission audited the data on both olive oil supply and demand. The exercise resulted in the data being revised, as was confirmed by the IOOC member countries at the 81st session of the IOOC in Jaen (Spain).

The Commission is aware of the danger of an unrestrained rise in production. Nevertheless, the measures taken to curb the planting of new olive trees and the rise in world consumption without using export refunds could help to absorb the additional production.

26. The increasing trend stopped in 1995/96. It was followed in 1996/97 and 1997/98 by a sharp decrease for large producers due to the overshoot of the maximum guaranteed quantity (MGQ) and some stabilisation for small producers. Increases in subsidies in national currencies over the period 1987/88 to 1995/96 are quite different, depending on the Member States concerned. In Italy and Greece, it was 2,7 times the initial amount; in Spain it was about 10 times and in Portugal 15 times their small post-accession amounts.

### **Management of funds deducted from production aid**

27. The difference between the amounts withheld and amounts spent is due to the fact that the deduction is laid down in a Council Regulation whereas spending depends on the Member States' absorption capacity.

As the Court points out, information on the amounts withheld and the amounts spent is available in the EAGGF Guarantee Section financial report. The amounts spent are also given in the budget documents.

Specific budgetary monitoring of deductions is not required since they are not revenue earmarked for a specific purpose.

### *Funding of quality improvement programmes*

29. Designing quality improvement programmes involves a great deal of subsidiarity to ensure that they are geared to real local needs. Quantifying these qualitative objectives is a delicate matter. Laying down clear objectives as part of the overall quality improvement strategy which the Commission is currently devising will make it easier to define performance indicators.

*Funding of the olive cultivation register*

30. The slow absorption of the available funds is due to the slow progress in setting up the olive oil register in certain Member States. The difficulties in setting up the register have been the main basis for financial corrections of the expenditure for olive oil production aid.

**Measures to promote consumption**

32. In June 1999, as a consequence of the Berlin summit, the budget for the seventh campaign was cut by 22 % from EUR 45 million to EUR 35 million. This resulted in an additional delay since the open call for tenders had to be closed and a negotiated procedure was opened immediately after, and as, Austria, Finland and Sweden were included for the first time in the campaign. The last contracts were signed in December 1999.

In its future promotion strategies, the Commission will take into account the results of the general evaluation of promotion.

33. The lack of measurable objectives has been addressed in the seventh campaign which provides for an institute for consumer studies to investigate the purchase, household penetration and price of olive oil, and to provide quantitative results which will allow the Commission to draw conclusions about the efficiency of the measures in relation to the consumption of olive oil. Obviously these Community activities are not the only parameters affecting consumption. The price of olive oil has an effect on consumption as well, as was demonstrated as a result of the record crops in the 1995/96 and 1997/98 marketing years.

The latest official statistics support the assumption made after the sixth campaign that consumption has increased in countries where the measures were implemented. The same figures also indicate clearly that without the promotion campaign a decrease in consumption can be observed.

34-35. Taking into account the complexity of direct management, the Commission plans to submit a proposal to the Council in the coming months, which harmonises the promotion schemes from directly managed campaigns towards indirect management. In consequence, the tasks will change and manpower allocations will be made on the basis of the new situation in the future.

**Observations relating to the implementation of the scheme in the Member States**

38. The inspection of mills by the control agencies is the most important control tool of the scheme, since the aid is paid on the basis of quantities produced, as certified by the mills. The sample

of mills inspected annually by the various agencies exceeds 30 % of the operating mills. The Commission has recently issued detailed guidelines on inspection procedures, which are necessary to obtain an adequate degree of assurance from the agencies' checks on the mills. Furthermore, beyond the usual clearance controls, the Commission closely monitors the control activities of the agencies by analysing the quarterly activity reports, quarterly meetings, etc.

**The yields as a control instrument**

39. Comparison of the actual yield for each aid application with the average zone yield is a useful control tool, which identifies abnormally high production claims, but it is not a sufficient means to ensure that only quantities actually produced receive Community aid. There are many inherent control limitations resulting from the specific characteristics of olive oil production. Yields may vary enormously even in the same year and within the same zone. Comparison of the actual with the average yield can only take place after the harvest, the milling of the olives, the lodging of the application for aid and the introduction of the relevant information in the computer systems of Member States. When high yields are identified in this way, there are no means of obtaining direct evidence as to the reality of the claim. Inspection of the producer's trees will offer limited evidence, given that it will take place when the trees bear the next year's crop and that the production of a tree may vary enormously between two consecutive years.

*Estimation of the average production yields*

41. A harmonised method for estimating yields has been devised and was incorporated into the regulatory framework in 1999.

*The usefulness of the average yields as a control instrument*

43-44. The variations of producer yield around the average yield of a homogeneous zone are frequently much greater than three times, and may be much higher than 10 times the average. The examples mentioned by the Court concerning the tolerated margin of 49 times the average yield are indicative of the actual difficulties on the ground.

A much higher yield than the average is not in itself proof of fraud. There are practical limitations in the use of the yields as a control tool but it may help to highlight certain cases, which require further investigation. At local level and especially at the level of the individual producer, use of the average yield as a control instrument focuses checks on farms with old olive trees but leaves free of checks olive groves which have low production. However, it can detect divergent results which are questionable at the level of a large area, an important mill or a producer organisation.

The average yield instrument cannot be the only tool, and cannot be used in too systematic a way, for example with a fixed margin of tolerance. However the system has eliminated the cases known

in the first years of the scheme when some requests for aid were quite incompatible with the number of olive trees belonging to the producer in question.

### Reliability of the control mechanism

45. The problem of low quality of information provided by producers may in fact be a consequence of the possibility for them to confirm the previous declaration if no change occurred. At the end of 1998 the renewal of all cultivation declarations between 1999 and 2001 was provided for.

As the total number of producers is very high it is possible that a proportion of them are not well informed of their rights and obligations. This, in principle, is the task of the Member States' authorities and of the producers' organisations (POs).

46. The POs cannot cover the full range of controls required for ensuring the sound management of the scheme. The applications for aid submitted by POs for their members are subject to further (sample) controls by national administrations who bear the final responsibility. Furthermore, the control agencies regularly inspect a considerable sample of POs.

48. The lack of computerised files in Greece is a problem known to the Commission and it is taken into account in the EAGGF Guarantee Section clearance procedure. The problems of identification of parcels will be resolved with the establishment of the geographical information system (GIS). Until this system becomes operational, Member States should carry out a rapidly increasing number of on-the-spot inspections (1 % of all producers for 1998/99, 5 % for 1999/2000 and 10 % for 2000/01).

50. The agencies were set up in response to the Commission's findings and the various criticisms by the budget authority relating to difficulties and weaknesses of national administrative structures in carrying out the checks provided for in Community rules in the olive oil sector.

Objective evaluation of the cost effectiveness of the activities of the agencies must take into consideration the complexity of the system, the large number of subjects to be controlled (see also point 14) and the absence of basic control instruments in producer Member States (cultivation register, computerised files, etc.).

While it is true that in the past decisions recognising agency expenditure took some time to be adopted, the situation today has improved. However, it must be borne in mind that, as the Commission pays the agencies an advance equivalent to its contribution to scheduled spending each quarter, any delay in recog-

nising their expenditure does not jeopardise the agencies' operation in any way.

51. The minimum sample of 10 % has been increased to 30 % as from 1998/99.

In the guidelines on procedures for the inspection of mills, which were given recently to the control agencies by the Commission, the specific features of these two main organisational arrangements have been sufficiently taken into account. Specific verifications, responding to the characteristics of each control environment, have been proposed with a view to compensating for the inherent control limitations.

It is noted however that in situations where the mill does not buy the olives, but offers only a milling service, the control risk appears to be higher. This is because the price/commission is often agreed between the mill and the producer for each batch of olives. Since the precise quantity of oil actually produced does not affect the remuneration of the mill, there are no opposing interests between the mill and the producer to ensure certification of the exact quantities of olive oil. Furthermore, this places limitations on the *ex post* verifications because it is difficult to establish consistent quantitative links between the olives or the oil and the amounts that the milling services received in remuneration.

52. As a rule, producers have their olives pressed by a mill, which keeps the oil. This applies to almost all producers in Spain (where bulk sale is forbidden) and most producers in Italy and Greece.

In some production areas in Italy and Greece, producers take back the oil produced, or some of it, either to cover their own domestic requirements or for direct sale, or to sell on to intermediaries.

These provisions are expected to improve the checks on the scheme. It is noted however that national laws often exempt producers from issuing official commercial documents (for example invoices or receipts) and from a number of tax obligations. Therefore, the documentation to be kept according to Regulation (EC) No 2366/98 may not be based on the opposition of interests between the producers and the buyers of olive oil and therefore, it may not offer, alone, the desired degree of assurance.

53. The Commission regularly reminds the agencies and the national authorities of the need to complete quickly the checks and administrative procedures relating to the imposition of sanctions and the recovery of amounts paid. However, according to national rules, these administrative procedures usually include an opportunity for a beneficiary who is accused of committing an irregularity to present his case, and for evaluation of the opposing arguments and of any available evidence by an independent committee. These procedures inevitably require a certain time.

As not all mills and producers can be visited each year, it is inevitable that some irregularities are discovered after payment.

### **The effectiveness of the sanctions system**

55. Legislation concerning legal and administrative procedures falls within the exclusive competence of the Member States. Therefore Community legislation can only stipulate when action must be taken, and it is not entitled to lay down how long the relevant legal procedures may last. With the latest reform, the Commission has acted in this matter and laid down that action must be taken within 12 months of the report.

56. The Commission shares the Court's view that individual deviations from averages cannot be considered as proof of the inaccuracy of aid applications, especially in the light of the large variations in the olive and oil yields, even in the same year and within the same zone. This is an inherent control limitation (among several others) in the area of the production aid for olive oil.

57. In view of the poor recovery results, the Commission and UCLAF/OLAF have repeatedly insisted that Member States improve and speed up their recovery procedures. In 1999 they announced that all amounts not recovered due to negligence of the Member States would be charged to them under the clearance of accounts procedure. Currently the Commission is identifying these cases of negligence.

### ***The olive cultivation register***

59. Although this does not explain all the delays, there have been real technical and legal difficulties in completing the register, as the Member States have often pointed out.

However, the Commission has been applying corrections under the clearance of accounts procedure. For Greece a 10 % correction of the expenditure was applied until the 1992/93 marketing year, followed by a 5 % correction until 1994/95. For later marketing years the procedure is still ongoing, and a correction is proposed by the Commission. For Spain, a 10 % correction of the expenditure was applied for the 1992/93 marketing year, followed by a 5 % correction until 1994/95. For later marketing years the procedure is still ongoing, and a correction is proposed by the Commission.

60. There are regulatory requirements for an increasing number of on the spot inspections, reaching 10 % of the total number of applications for aid in 2000/01, if the GIS is not by then operational. The Commission has warned the Member States that any failure to comply with this requirement will be taken into account

appropriately in the clearance of accounts procedure. It can be reasonably concluded therefore that Member States have sufficient motivation to bring the GIS into operation quickly.

The Commission considers that the financing of the GIS is unrelated to any sums which may have been underspent on the old olive cultivation register.

Under Article 26(2) of Regulation (EC) No 2366/98, expenditure on setting up the olive cultivation GIS and the periodical updating of the graphical reference database is eligible for the 1998/99 and 2000/01 marketing years. The Member States may mobilise the funds available or any part of them only for financing such measures and with the Commission's prior approval.

61. The high rate of differences for 1997/98 is also due to the need for methodological improvements. In the future, that rate is expected to decrease.

62. The Commission shares the Court's view but stresses that the problem arising in Italy is due essentially to the entry into force of the new GIS Regulation. However, transition to the new system has not made the original version of the Italian GIS inoperative to the extent that it was used for control purposes. In any case, if the Italian GIS is not completed within the meaning of Article 26(1) of Regulation (EC) No 2366/98, Italy is required to carry out on-the-spot checks in accordance with Article 28(2) of that Regulation.

63. As regards Greece, the Commission is aware of the major delay that has occurred. Nevertheless, it is hopeful that work will speed up after the contracts for orthophotos and pilot studies have been awarded.

64. Despite the delay in completing the GIS in Spain, it is now almost ready. Of course it must be approved in accordance with Article 26(1) of Regulation (EC) No 2366/98, otherwise Spain must carry out on-the-spot checks in accordance with Article 28(2) of that Regulation.

65. The GIS in Portugal will be completed a little later than scheduled. The Commission estimates that work will finish towards the end of 2000.

66-67. The Commission considers the register (and its successor the GIS), together with the estimation of yields, to be a useful control tool but it cannot offer, alone, the assurance required as to the sound implementation of the scheme. Even if the GIS were operational and producers correctly declared the number of trees and

quickly notified any change, the degree of assurance would still not be sufficient, because the Community aid is currently paid on the basis of the quantity of olive oil actually produced, as certified by the mills, and not on the basis of the number of trees.

An updating rate for the olive cultivation GIS of about 5 % seems unavoidable as a consequence of changes in the cultivation declarations. However the GIS can be used to check all the other declarations.

### **Conclusions**

68. The principle of production aid granted to producers on the basis of the quantity of the olive oil has remained central, from the beginning of the market organisation in 1966. The adjustments reflect the need to adapt to the changing circumstances, in particular to the successive enlargements of the EU and the search for solutions to specific problems of the sector.

69. The results of ongoing investigations are expected soon.

70. The Community subsidy takes account of a maximum contribution to a fair income for producers and unavoidable budgetary constraints. The representative market price was fixed according to the criteria provided for, at the desired level for the market.

71. The Commission shares the Court's concerns over the balance between production and consumption as indicated in the reply to paragraph 16.

72. The Commission is examining changes to its strategy for the promotion of agricultural products.

73. The effectiveness of controls carried out by the producer organisations, paying agencies and control agencies is closely monitored by the Commission and any weaknesses identified are taken into account appropriately in the clearance of accounts procedure. The Commission considers that there is still room for improvement of the current system and is examining the possibility of further reinforcing controls, taking into account the additional costs imposed. However, it cannot share the Court's view that the controls are currently inadequate, especially in the light of the control provisions introduced in 1998.

Most of the control efforts are devoted to verifying that only quantities of olive oil actually produced receive Community aid. However, there are inherent control limitations due to the specific characteristics of olive oil production. Verification of the number of trees is one of the means used to compensate for these limitations, but it is not a control objective in itself.

74. Harmonisation of the methods of estimating the average yield was completed in 1999. However, in any production zone, variations in the yields at producer level will be significant. This is a result of many factors, for example the age of the various olive groves, their biological state, their maintenance, etc. For this reason, the Commission considers that the analysis of yields is a useful control tool, able to identify abnormally high production, but it is not a sufficient means on its own to ensure that only quantities of olive oil actually produced receive Community aid.

75. The Commission monitors the recovery of overpayments and the follow-up by national authorities of any irregularities detected.

76. The olive cultivation register (and its successor the GIS) is a useful tool in checking the support scheme for olive oil. The Commission insists on its establishment and on its regular updating by Member States. Absence of or late introduction of the register is taken into account appropriately in the clearance of accounts procedure.

77. The Commission will present its reform proposal by the end of 2000, after a thorough examination of the new data available and the results of the provisions decided in 1998. The Court's comments will be taken into consideration during this process.

The difficulty of checking the output of 11 000 mills has been demonstrated throughout the history of the common market organisation for olive oil. Improvements decided in 1998 are currently being tested.

## **PART 2: CONSUMPTION AID AND EXPORT REFUNDS**

### **Control framework**

90. See points 107 to 113.

### **Consumption aid**

### **Debtor accounts**

93 and 95. The Commission, from its own work and from information supplied by the certifying bodies of the paying agencies and the Court, has identified the administration and control of debt as a major weakness. It has taken several steps to improve the recording and administration of debt in the paying agencies.



Regulation (EC) No 2761/99 <sup>(1)</sup> has now made it compulsory for the Member States to provide the Commission with Table 105 twice per year. The Commission also recently adopted Regulation (EC) No 2245/99 <sup>(2)</sup> amending Commission Regulation (EC) No 1663/95 <sup>(3)</sup>, requiring paying agencies to set up a system for the recognition of all amounts due to the EAGGF and for the recording in a debtors' ledger of all such debts prior to their receipt (paragraph 11 of the annex); it also makes debtors' figures subject to formal audit by the Certifying Body.

All paying agencies reported figures for recorded debt in the 1998 clearance of accounts process.

An enquiry by the clearance of accounts unit into the administration of debtors was undertaken in 1999. This enquiry, which covered Italy, Spain and Portugal, found that the situation today is reasonable, but that there are major problems in dealing with old cases.

94. See point 100.

### Completeness of data on amounts to be recovered

96-106. The Commission is concerned about the incomplete and inaccurate data available in the Member States. It will follow up the problems highlighted by the Court, particularly in Italy and Greece.

The delays caused by the legal systems in the Member States are regrettable. However, the Commission has no competence to interfere in these legal processes.

### Delays in recovery

103. See reply to points 107-111.

### Monitoring the progress of criminal proceedings

107-111. Whilst it is up to Member States to organise their legal systems, their internal organisation may not jeopardise effective recovery. According to the jurisprudence of the European Court

of Justice, the acceptable delay due to administrative or judicial proceedings must be determined by Community law. A Member State may not plead provisions, practices or circumstances existing in its internal legal or judicial system in order to justify a failure to comply with obligations under Community legislation (Court judgment in Case No 137/80).

### Guarantees

115. Regulation (EC) No 2367/98 amends certain provisions of Regulation (EEC) No 2677/85 on checks on consumption aid, which had just been abolished at the time. The reason for the amendments was the Council's wish to focus checks more on production aid and mills, being the essential link in the olive oil production chain.

Important financial corrections to the expenditure on consumption aid have been imposed on these two Member States, as part of the clearance of accounts procedure.

### Fines

119. Experience showed that the fines imposed on packaging plants under the regulations prior to 1996 related to months in which the plants were practically idle. Although it may appear less rigorous in terms of the percentage applied, the amendment introduced covers the average over 12 months of activity and is thus more effective. There is no reduction in the actual rate of fines.

120. Following an exchange of correspondence with the Greek authorities, the Commission was informed that in April 1999 they adopted official decisions relating to a considerable number of pending cases (amounts to be recovered and corresponding interest to the benefit of the EAGGF and amounts of sanctions to the benefit of the Member State). These cases have been forwarded to the relevant offices of the revenue service for recovery of the corresponding amounts. The Commission is monitoring the settlement of any pending cases and the actual receipt of the said amounts.

As regards Italy, the Commission has been informed that a small number of cases is still under examination. The number of irregularities should normally be lower from 1996 onwards than previously, as the system was changed so that following the communication of irregularities by Agecontrol, payments are blocked to operators whose authorisation has been withdrawn.

122. Letters indicating that the amounts of the fines are to be credited to national budgets were communicated to all Member States concerned.

<sup>(1)</sup> OJ L 331, 23.12.1999, p. 57.

<sup>(2)</sup> OJ L 273, 23.10.1999, p. 5.

<sup>(3)</sup> OJ L 158, 8.7.1995, p. 6.

In the Commission's view, the fines should not be credited to the EU budget for the following reasons:

- the penalty is not a sum of money that has come from the EAGGF, like an aid already paid;
- the sum of the penalty is not known in advance because of the discretionary power of the Member State concerned, and the internal system and logic of the Regulation and its various Articles require such a fixed sum in the case of a deduction from the EAGGF claim.

### **Conclusions**

128-130. In spring 1999 the Commission started a number of initiatives to verify in detail the recovery situation in all EAGGF Guarantee domains. Special missions have been undertaken to establish a detailed view of the debtors ledger situation in a number of paying agencies and in particular concerning the recoveries in irregularities notified before 1995 on the basis of Regulation (EEC) No 595/91.

On the basis of the results of these missions and additional information supplied later by the Member States, the Commission and UCLAF/OLAF are currently:

- identifying the amounts that are irrecoverable for objective reasons and that should be borne by the EAGGF Guarantee Fund;
- preparing proposals for financial corrections under the clearance of accounts procedure, to be applied to the Member States that did not proceed with due diligence.

Financial corrections are proposed for those cases of irregularities where:

- (a) no adequate follow-up action was taken; or
- (b) administrative proceedings or judicial proceedings have taken more than four or eight years respectively.

The Commission is aware of the problems with the consumption aid scheme and has already applied considerable financial corrections on Member States. The scheme was abandoned on 31 October 1998.

It is expected that the provisions of Regulation (EC) No 2245/1999 will considerably improve the situation as to recording and collecting debts by Member States.

## Olive oil consumption

(1 000 tonnes)

Member State	1990/91 marketing year	1991/92 marketing year	1992/93 marketing year	1993/94 marketing year	1994/95 marketing year	1995/96 marketing year	1996/97 marketing year	1997/98 marketing year (a)	1998/99 marketing year (b) forecast	% variation 1995- 1996/97	% variation 1995- 1996/98	% variation 1995- 1996/99	% variation (a) (b)
D	10,3	9,8	10,5	13,4	16,9	16,4	16,1	23,6	25	- 1,8	43,9	52,4	5,9
DK	0,7	1,2	1,2	2,5	1,1	1,1	2,3	2,5	2,2	109,1	127,3	100,0	- 12,0
IRL	0,5	0,8	0,9	1	1	1,3	1,4	1,5	1,6	7,7	15,4	23,1	6,7
UK	6,8	9,4	12	16,8	17,3	15	25,1	25,6	27,5	67,3	70,7	83,3	7,4
NL	1	1,5	2	3,2	3,9	2,3	3,5	4	3,4	52,2	73,9	47,8	- 15,0
EL	204	203	197	196	197	200	208	240	245	4,0	20,0	22,5	2,1
E	394,1	418,7	421,4	421	420	352,1	470,2	550,4	500	33,5	56,3	42,0	- 9,2
I	540	630	640	600	600	600	640	698	705	6,7	16,3	17,5	1,0
F	28	34,8	43,8	43,7	41,6	48,5	58,8	75,6	78,8	21,2	55,9	62,5	4,2
P	27	45	49,9	59	58	58,4	62	69,6	67	6,2	19,2	14,7	- 3,7
BLEU	2,1	2,6	3,9	4,9	4,9	6,5	7	8,7	7	7,7	33,8	7,7	- 19,5
A					0,2	1	2,6	3	3,5	160,0	200,0	250,0	16,7
FIN					0,3	0,2	0,5	0,6	0,7	150,0	200,0	250,0	16,7
S					1	1,2	2,2	2,3	2,5	83,3	91,7	108,3	8,7
<b>Total EU</b>	<b>1 214,5</b>	<b>1 356,8</b>	<b>1 382,6</b>	<b>1 361,5</b>	<b>1 363,2</b>	<b>1 304</b>	<b>1 499,7</b>	<b>1 705,4</b>	<b>1 669,2</b>				

(a) provisional figures

(b) estimated

Consumption	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998
EU	<b>1 214,5</b>	<b>1 356,8</b>	<b>1 382,6</b>	<b>1 361,5</b>	<b>1 363,2</b>	<b>1 304</b>	<b>1 499,7</b>	<b>1 705,4</b>
World	1 693,72	1 862,08	1 928,32	1 906,24	1 886,92	1 774,68	2 128,88	2 399,36
% EU	71,71	72,86	71,70	71,42	72,24	73,48	70,45	71,08

Source: IOOC statistics — November 1999.