

## I

*(Information)*

## COURT OF AUDITORS

## SPECIAL REPORT No 2/98

on the Commission's Decisions of 23 April 1997 and 30 July 1997 on the clearance of accounts for 1993 of guarantee expenditure for agriculture of the European Agricultural Guidance and Guarantee Fund (EAGGF), accompanied by the Commission's replies

*(Submitted pursuant to Article 188C(4)(2) of the EC Treaty)*

(98/C 121/01)

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## 1. INTRODUCTION

1.1. Article 5(2)(b) of Council Regulation (EEC) No 729/70<sup>(1)</sup> requires the Commission to clear within one year the annual accounts submitted by the Member States of payments made by them under the Guarantee Section of the EAGGF. The aim is to ensure that only expenditure legally incurred in conformity with Community rules is financed. To achieve this, the responsible DG VI Commission department carries out inspections of expenditure in the Member States. Errors or weaknesses detected are notified to the Member States which have the opportunity to reply. Bilateral meetings are later held at which the services of the Commission and the Member States can clarify their respective positions. The Commission then notifies its conclusions to the Member States opening the way for the conciliation procedure (see Chapter 5). The Commission subsequently finalises its Summary report<sup>(2)</sup> and presents it to the EAGGF Committee before taking the final clearance decision. The final clearance decision for the 1993 financial year was only taken in July 1997 due to various reasons.

1.2. The responsibility for the supervision of paying agencies falls primarily to the Member State, which authorises them to make payments charged to the Fund. A Member State is required, under Article 8 of Council Regulation (EEC) No 729/70<sup>(3)</sup>, to satisfy itself that operations financed by the Fund are actually carried out and meet the legal requirements. However, the failure at the level of Member States to carry out adequate control checks means that significant additional effort needs to be made by the Commission. Council Regulation (EC)

No 1287/95<sup>(4)</sup> which applied for the first time to the 1996 financial year, introduced greater clarity as concerns the respective roles of the Commission and the Member States and may result in quicker clearance procedures in future.

1.3. In view of the significant findings in its previous Report on the Commission's clearance of accounts procedure, the Court has decided to examine the decisions the Commission took in clearing the 1993 accounts. The Court examined the summary reports produced by DG VI, mission reports and related correspondence with the Member States. Discussions were held with representatives of both UCLAF<sup>(5)</sup> and the Conciliation body and the reports of the Directorate General for Financial Control (DG XX) were also reviewed. The Court did not undertake any specific audit visits to the Member States.

## 2. FINANCIAL ANALYSIS

2.1. The first Commission decision of 23 April 1997<sup>(6)</sup> made 540,2 Mio ECU of corrections (see *Table 1*) relating to 1993 expenditure. As part of the 1993 expenditure was still eligible for or subject to the conciliation procedure as at 23 April 1997, the Commission took a second decision on 30 July 1997<sup>(7)</sup>, which determined 107,6 Mio ECU of additional corrections (see *Table 1*). Thus, the total amount of corrections applied for the 1993 clearance for the two above decisions amounts to 647,8 Mio ECU. However, as the 1992 clearance decision already included 106,9 Mio ECU for 1993, the total correction relating to the 1993 financial year amounted to 754,7 Mio ECU.

<sup>(1)</sup> OJ L 94, 28.4.1970.

<sup>(2)</sup> Doc. VI/5210/96 of 15 April 1997 and Doc. VI/5360/97 of 30 June 1997.

<sup>(3)</sup> OJ L 94, 28.4.1970.

<sup>(4)</sup> OJ L 125, 8.6.1995.

<sup>(5)</sup> Directorate F — Co-ordination of fraud prevention, Secretariat-General of the Commission.

<sup>(6)</sup> Commission Decision 97/333/EC (OJ L 139, 30.5.1997, p. 30).

<sup>(7)</sup> Commission Decision 97/608/EC (OJ L 245, 9.9.1997, p. 20).

TABLE 1

## CLEARANCE OF ACCOUNTS 1993

(Commission Decision 97/333/EC of 23 April 1997, OJ L 139, 30.5.1997, p. 30 and Commission Decision 97/608/EC of 30 July 1997, OJ L 245, 9.9.1997, p. 20)

## Expenditure disallowed by market/Member State in national currency and (ecu)

Member State	By market in national currency and (ecu)									Total in national currency and (ECU)		%
	Milk and Milk Products	Export Refunds	Oils and Fats	Cereals	Meat and Fish	Rural development schemes — Ewe/suckler cow Premiums	Tobacco	Products of vine growing sector	Other <sup>(1)</sup>	National currency	ECU	
1st Decision												
Belgium	0 (0)	413 309 611 (10 145 356)	0 (0)	-285 373 (-7 005)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	413 024 238	(10 138 351)	1,6%
Denmark	-261 767 (-34 829)	0 (0)	0 (0)	-523 (-70)	987 723 (131 418)	0 (0)	0 (0)	0 (0)	0 (0)	725 433	(96 520)	0,0%
France	0 (0)	196 533 052 (29 545 845)	17 598 687 (2 645 703)	102 574 200 (15 420 518)	23 750 791 (3 570 581)	4 516 992 (679 063)	0 (0)	30 157 034 (4 533 665)	3 416 265 (513 585)	378 547 021	(56 908 960)	8,8%
Germany	602 075 (305 196)	38 372 261 (19 451 153)	56 199 (28 488)	9 079 510 (4 602 464)	-69 288 107 (-35 122 599)	69 195 613 (35 075 713)	518 964 (263 066)	0 (0)	2 405 806 (1 219 519)	50 942 321	(25 822 999)	4,0%
Greece	-391 080 215 (-1 266 324)	4 444 731 183 (14 392 115)	11 228 869 398 (36 359 269)	252 092 853 (816 281)	20 861 503 (67 550)	-19 843 837 (-64 255)	2 002 118 984 (6 482 895)	257 829 179 (834 855)	-4 670 832 (-15 124)	17 790 908 216	(57 607 262)	8,9%
Ireland	-51 715 (-69 889)	0 (0)	0 (0)	0 (0)	2 264 931 (3 060 875)	0 (0)	0 (0)	0 (0)	-34 011 (-45 963)	2 179 205	(2 945 023)	0,5%
Italy	336 386 167 986 (174 535 438)	17 361 126 678 (9 007 897)	27 188 473 822 (14 106 859)	13 114 452 131 (6 804 491)	53 652 415 828 (27 837 791)	-5 321 377 039 (-2 761 020)	23 662 386 781 (12 277 333)	17 317 359 265 (8 985 188)	3 917 012 067 (2 032 359)	487 278 017 519	(252 826 336)	39,0%
Netherlands	283 153 (127 389)	16 608 021 (7 471 868)	-297 (-134)	-2 378 (-1 070)	-4 715 (-2 121)	31 089 (13 987)	0 (0)	0 (0)	18 (8)	16 914 891	(7 609 927)	1,2%
Portugal	17 054 363 (85 390)	0 (0)	713 581 873 (3 572 840)	-193 269 689 (-967 684)	204 360 919 (1 023 217)	0 (0)	0 (0)	60 008 012 (300 455)	102 353 240 (512 473)	904 088 718	(4 526 690)	0,7%
Spain	15 082 187 605 (90 855 481)	592 758 909 (3 570 795)	735 103 559 (4 428 282)	-266 851 (-1 608)	734 804 904 (4 426 483)	-496 815 838 (-2 992 831)	0 (0)	5 902 000 (35 553)	111 841 887 (673 738)	16 765 516 175	(100 995 895)	15,6%

Member State	By market in national currency and (ecu)									Total in national currency and (ECU)		%
	Milk and Milk Products	Export Refunds	Oils and Fats	Cereals	Meat and Fish	Rural development schemes — Ewe/suckler cow Premiums	Tobacco	Products of vine growing sector	Other <sup>(1)</sup>	National currency	ECU	
United Kingdom	199 507 (296 508)	0 (0)	0 (0)	20 804 (30 919)	13 938 264 (20 715 108)	-252 455 (-375 200)	0 (0)	0 (0)	15 204 (22 597)	13 921 324	(20 689 932)	3,2%
Total ECU	(264 834 360)	(93 585 028)	(61 141 307)	(26 697 237)	(25 708 303)	(29 575 457)	(19 023 295)	(14 689 716)	(4 913 193)		(540 167 895)	83,5%
% of 1st Decision	49,0%	17,3%	11,3%	5,0%	4,8%	5,5%	3,5%	2,7%	0,9%			
2nd Decision												
France	0 (0)	154 553 632 (23 379 243)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	154 553 632	(23 379 243)	3,6%
Italy	0 (0)	0 (0)	0 (0)	27 581 807 418 (14 267 953)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	27 581 807 418	(14 267 953)	2,2%
Spain	0 (0)	0 (0)	7 416 056 857 (44 458 641)	0 (0)	49 792 305 (298 501)	25 761 970 (154 441)	0 (0)	0 (0)	384 496 080 (2 305 022)	7 876 107 212	(47 216 604)	7,2%
United Kingdom	0 (0)	0 (0)	0 (0)	0 (0)	10 536 887 (15 671 263)	4 809 374 (7 152 868)	0 (0)	0 (0)	0 (0)	15 346 261	(22 824 131)	3,5%
Total ECU	(0)	(23 379 243)	(44 458 641)	(14 267 953)	(15 969 764)	(7 307 309)	(0)	(0)	(2 305 022)		(107 687 931)	16,5%
% of 2nd Decision	0,0%	21,7%	41,3%	13,3%	14,8%	6,8%	0,0%	0,0%	2,1%			
Grand total ECU	(264 834 360)	(116 964 271)	(105 599 948)	(40 965 190)	(41 678 067)	(36 882 766)	(19 023 295)	(14 689 716)	(7 218 215)		(647 855 826)	100,0%
% of grand total	40,9%	18,1%	16,3%	6,3%	6,4%	5,7%	2,9%	2,3%	1,1%			

Source: European Court of Auditors.

NB: Figures in brackets represent national currency converted to ecus at the date the amounts were booked.

Negative amounts represent the excess of reimbursement following Court of Justice decisions relating to a prior year, against an adjustment on the same budget line following a Commission disallowance decision.

<sup>(1)</sup> The category 'other' accounts for less than 1% of the total and includes fruit and vegetables, set-aside, sugar and other measures.

2.2. In *Table 2*, it can be seen that the largest corrections for 1993 concern milk and milk products (as was the case for 1992), followed by corrections relating to export refunds. Together, these two categories accounted for 481,9 Mio ECU or nearly 64 % of all corrections for 1993 (after adjusting for expenditure included in the 1992 clearance that relates to 1993 export refunds). Financial corrections concerning milk for 1993 decreased by 40 % compared to 1992. Export refunds represented nearly a third of the EAGGF budget, and constitute an area where the risk of irregularity is relatively high.

TABLE 2

## Analysis of expenditure disallowed for the 1992 and 1993 clearance of accounts by market

Market	Total 1992 Mio ECU	%	Total 1993 Mio ECU	%
Milk and milk products	438,8	56 %	264,3	35 %
Export refunds	12,1	1 %	217,6	29 % <sup>(1)</sup>
Oils and fats	33,6	4 %	114,3	15 % <sup>(2)</sup>
Cereals	44,5	6 %	41,1	5 %
Meat and fish	205,6	26 %	39,4	5 %
Rural development schemes — ewe/suckler cow premiums	6,3	1 %	36,9	5 %
Tobacco	31,6	4 %	19,1	3 %
Products of vine growing sector	5,2	1 %	14,7	2 %
Other	10,5	1 %	7,3	1 %
Total	788,2	100 %	754,7	100 %

Source: European Court of Auditors.

<sup>(1)</sup> Adjusting for expenditure included in the 1992 clearance of accounts that relates to 1993: Item 1002 (99,2 Mio ECU).

<sup>(2)</sup> Adjusting for expenditure included in the 1992 clearance of accounts that relates to 1993: Item 1220 (7,7 Mio ECU).

2.3. In *Table 3*, details are shown of the expenditure by Member State disallowed by the Commission for the 1992 and 1993 clearance years and taking into account 106,9 Mio ECU that was disallowed in 1992 but which related to the 1993 financial year. Overall the expenditure disallowed decreased from 788,2 Mio ECU to 754,7 Mio ECU between 1992 and 1993 (a reduction from 2,6% to 2,3% of total declared expenditure coming under the 1993 clearance). However, 1 565,9 Mio ECU (see paragraph 8.1) representing 4,8% of the total expenditure declared was excluded from the 1993 clearance and carried forward to future clearance years. For the Member States with the highest percentage rates of disallowance in the 1992 clearance, the situation improved in 1993 in the case of Ireland (where the disallowance was reduced from 6,3% to 0,2%) as well as Spain (7,1% to 4,6%). Greece remained unchanged at approximately 2,5%. However, the situation worsened in Italy (8,3% to 8,6%) and France (0,9% to 1,1%).

TABLE 3

Amount and percentage of expenditure disallowed by Member State for the 1992 and 1993 clearance years

(Mio ECU)

1992 clearance of accounts	Belgium	Denmark	France	Germany	Greece	Ireland
Expenditure declared	1 473,80	1 249,04	7 370,69	5 175,59	1 747,12	1 418,84
Disallowed in respect of 1992	-3,09	-4,24	-66,54	-27,55	-42,93	-90,22
Disallowed in 1992, relating to 1993	0,00	0,00	-7,70	0,00	0,00	0,00
% expenditure disallowed in respect of 1992	0,21	0,34	0,90	0,53	2,46	6,36
1993 clearance of accounts						
Expenditure declared	1 296,68	1 310,88	7 710,63	4 735,44	2 305,04	1 736,83
Disallowed in respect of 1993	-10,14	-0,10	-80,29	-25,82	-57,61	-2,95
Disallowed in 1992, relating to 1993	0,00	0,00	-7,70	0,00	0,00	0,00
Total disallowed in respect of 1993	-10,14	-0,10	-87,99	-25,82	-57,61	-2,95
% expenditure disallowed in respect of 1993	0,78	0,01	1,14	0,55	2,50	0,17

  

1992 clearance of accounts	Italy	Luxembourg	The Netherlands	Portugal	Spain	United Kingdom	Total
Expenditure declared	4 117,14	1,21	2 572,57	375,24	2 871,70	2 139,28	30 512,22
Disallowed in respect of 1992	-340,90	-0,01	2,72	-4,19	-202,87	-8,42	-788,24
Disallowed in 1992, relating to 1993	-99,20	0,00	0,00	0,00	0,00	0,00	-106,90
% expenditure disallowed in respect of 1992	8,28	0,83	-0,11	1,12	7,06	0,39	2,58
1993 clearance of accounts							
Expenditure declared	4 236,55	7,11	2 305,75	423,17	3 243,12	3 085,45	32 396,65
Disallowed in respect of 1993	-267,09	0,00	-7,61	-4,53	-148,21	-43,51	-647,86
Disallowed in 1992, relating to 1993	-99,20	0,00	0,00	0,00	0,00	0,00	-106,90
Total disallowed in respect of 1993	-366,29	0,00	-7,61	-4,53	-148,21	-43,51	-754,76
% expenditure disallowed in respect of 1993	8,65	0,00	0,33	1,07	4,57	1,41	2,33

Source: Commission clearance decisions for the 1992 and 1993 financial years.

2.4. Although the Commission was aware during the first half of 1997 (at the time of the 1993 clearance decisions), that certain adjustments totalling approximately 68,3 Mio ECU were also needed for the 1994 financial year, no immediate decision was taken to recover these funds. An additional 12 months may now elapse before recovery. The cases involved include:

- (a) the prefinancing of beef and cereals involving Belgium (9,5 Mio ECU), Germany (17,3 Mio ECU), France (29,7 Mio ECU), Italy (2,4 Mio ECU) and The Netherlands (7,5 Mio ECU);
- (b) fruit and vegetables in Spain<sup>(8)</sup> and in Italy<sup>(9)</sup>, amounting to nearly ECU 1,9 million.

### 3. METHODOLOGY OF THE COMMISSION

#### Staff resources

3.1. The European Parliament has already drawn attention to the matter of staff resources at the Commission, in its discharge resolution for the 1991 EAGGF clearance of accounts<sup>(10)</sup>. More recently, it has stressed the importance of this issue in its discharge resolution of 21 February 1997<sup>(11)</sup> postponing the granting of a discharge on agricultural expenditure for the 1992 financial year and calling for the enlargement of the Commission service responsible for the clearance of accounts by 15 posts. The Court noted that the Commission had allocated one new post between 21 February 1997 and 31 December 1997.

#### Risk Analysis

3.2. The lack of sufficient staff meant that risk analysis was again a vital consideration for allocating resources. Nevertheless, no overall work plan for 1993 was prepared. However, the approach applied for 1993 was much the same as for 1992.

3.3. In its Special Report on the 1992 clearance of accounts<sup>(12)</sup>, the Court observed that risk analysis was carried out by market and not at a central level. This meant that priorities were set and the work planned according to the staff resources available per market rather than by reference to the amounts at stake or the relative risks as between different markets. Nevertheless

for 1993, while the teams for the different markets still remained responsible for preparing the detailed control plans and risk analyses per market, they were at least provided at central level, with the necessary information and guidelines to plan their work.

3.4. The Commission has also made progress towards ensuring increased on the spot coverage of all the important markets judged to be at risk, and the more important beneficiary countries involved. With the exception of milk and milk products (see paragraph 3.7 (a)), their control coverage of the measures on the spot in the Member States ranged from nearly 61 % in the case of fruit and vegetable expenditure, to over 85 % for expenditure concerning oils and fats.

3.5. More attention was paid than previously to coverage of export refund measures. The Commission's work covered the prefinancing of export refunds, ex-post scrutiny carried out under the terms of Council Regulation (EEC) No 4045/89<sup>(13)</sup>, and to a limited extent measures relating to non-Annex II products<sup>(14)</sup>.

3.6. According to the Commission's clearance of accounts work on Regulation (EEC) No 386/90<sup>(15)</sup> dealing with customs controls, in most of the countries visited there was a lack of suitably qualified staff with sufficient experience in the often complex fields (i.e. non-Annex II products). There was also an absence of instructions on the respective roles and duties of the customs offices and the paying agencies in each Member State. These factors gave rise to the numerous problems encountered.

3.7. The approach adopted precluded regular coverage of all other smaller market measures or countries. Thus, there remains a risk that by excluding particular Member States or smaller measures from periodic on the spot control coverage, important weaknesses, errors, or systematic abuses of the systems concerning different measures, may remain undetected for extended periods. Several types of expenditure were excluded from examination for 1993, the most important of these being:

- (a) *Milk and milk products intervention expenditure* (2 923,8 Mio ECU): despite the amount of expenditure concerned, and the previous experience of the need for substantial corrections in this sector, the risk analysis was not implemented. This was because all available staff were engaged in following up the consequences of the Council Decision on the milk quotas in Italy, Greece and Spain and the milk

<sup>(8)</sup> Mission undertaken to Spain from 12–16 September 1994, in connection with compensation for withdrawals from the market of tomatoes.

<sup>(9)</sup> Mission undertaken to Italy from 13–17 March 1995, in connection with the processing of citrus fruit.

<sup>(10)</sup> OJ C 141, 13.5.1996, p. 107, paragraph 7.

<sup>(11)</sup> OJ C 85, 17.3.1997, p. 185.

<sup>(12)</sup> Court of Auditors Special Report No 1/97 (OJ C 52, 21.2.1997, part 2.3).

<sup>(13)</sup> OJ L 388, 30.12.1989.

<sup>(14)</sup> Products not covered by Annex II to the Treaty.

<sup>(15)</sup> OJ L 42, 16.2.1990.

quota system in force since the 1992 clearance<sup>(16)</sup>. Therefore, there was only very limited coverage undertaken of other types of expenditure and no control plan identifying priorities for the audit of 1993 expenditure was prepared. Also, no control coverage was carried out for Belgium, which represented nearly 6% of the total milk budget for 1993;

- (b) *Dried fodder* (267,9 Mio ECU): this measure was not reviewed for France, The Netherlands, and Germany, (which together accounted for 74% of the market);
- (c) *Cotton* (183,6 Mio ECU): no mission was carried out to Spain for aid for cotton for at least five years due to lack of both time and staff resources;
- (d) *Fish* (32,4 Mio ECU): there has been no coverage of fish for the past 7–8 years since it accounts for only a low proportion of the expenditure;
- (e) *Prefinancing of export refunds* (15,0 Mio ECU): no on the spot control was carried out in the United Kingdom during the three year period up to February 1996 for the prefinancing of export refunds despite evident problems found in other Member States.

#### Execution of the work

3.8. Most of the work scheduled for the 1993 clearance was carried out by the Commission as originally planned. The Commission services also sought to improve inter-service communication between DG VI and DG XX, and the other services involved.

3.9. To keep track of missions and work carried out on the spot in the Member States, DG VI established a computer programme<sup>(17)</sup> for this purpose. However, the extent to which DG VI were able to use this programme was limited due to the insufficient information contained in the various data fields.

3.10. Where problems are encountered, it can take up to three years before further missions are undertaken to evaluate their full impact<sup>(18)</sup> and resolve them. Also, on occasion, despite evidence of important control weaknesses relating to particular measures, the Commission services do not always necessarily extend its control coverage to other Member States not yet visited<sup>(19)</sup>.

<sup>(16)</sup> Council Regulation (EC) No 1288/95 (OJ L 125, 8.6.1995).

<sup>(17)</sup> Database entitled *Avancement des travaux — exercice 19XX*.

<sup>(18)</sup> Case involving the additional milk levy in Ireland.

<sup>(19)</sup> Cases relating to the promotion of milk and milk products in the United Kingdom, Germany, France and Ireland.

3.11. The average delay between missions and the report conveying the results to the Member State was found to be approximately five months, extending to 12 months in some cases representing an improvement over the situation in the previous year. However, there is still room for improvement in this area.

3.12. The two previous Special Reports<sup>(20)</sup> of the Court on the clearance of accounts referred to the need for the Commission to introduce computer tools, which would, *inter alia*, allow statistical sampling methods to be used. During the current 1993 clearance, monetary unit sampling has been used in the case of the controls of the paying agencies and where possible in the on the spot compliance controls, except when practical reasons did not permit it (i.e. where the Member States transmitted the necessary computer data late).

#### 4. CORRECTIONS MADE BY THE COMMISSION

4.1. The Commission's clearance of 1993 expenditure led to three types of correction: flat rate corrections, other *ad hoc* corrections and accounting corrections.

##### Flat rate corrections

4.2. A Commission document<sup>(21)</sup>, agreed by the EAGGF Committee, governed the use of these flat rate corrections. Under it, flat rate corrections of 2%, 5% or 10% were imposed, depending on the seriousness of the systems weakness identified. The Commission only takes into account remedial action — if effective — by the Member State concerned in cases where there is doubt as to which of the three rates (2, 5 or 10%) to apply. Higher rates may be applied in exceptional circumstances as occurred for livestock premiums in Corsica where a correction rate of 25% was applied.

4.3. As the Court already mentioned in its previous report<sup>(22)</sup> recourse to the flat rate corrections is only necessary in cases where the actual financial impact of systems weaknesses cannot be established. Furthermore, there must be coherence and transparency in their application. A new guideline concerning flat rate corrections was formally introduced by the Commission on 8 December 1997. In this guideline, a new higher correction rate of 25% is included, as demanded in a resolution adopted by the European Parliament on 21 February 1997<sup>(23)</sup>.

<sup>(20)</sup> OJ C 10, 15.1.1996 and OJ C 52, 21.2.1997.

<sup>(21)</sup> Doc. No VI/216/93 Rev.1, 12.9.1994.

<sup>(22)</sup> OJ C 52, 21.2.1997.

<sup>(23)</sup> OJ C 85, 17.3.1997, p. 186.

4.4. As in respect of 1992, many flat rate corrections were made. Out of a total of 647,8 Mio ECU (see *Table 1*) 41%, 265,1 Mio ECU were flat rate corrections. 53% by value of all flat rate corrections were at the 10% rate; 16% at the 5% rate and 14% at the 2% rate; 8% related to a combination of the different rates; 9% concerned corrections applied using a penalty rate of 1% per day, or 10% per month.

4.5. The lack of clearly defined criteria means that the choice of a particular correction rate still remains a rather subjective exercise. There were some apparent inconsistencies in the Commission's decisions:

- (a) in the case of expenditure for milk and milk products market development measures (Budget Item B1-2062), the final flat rate corrections adopted were: Ireland 10%, Germany 2%, and the United Kingdom 2%. Following an earlier report of the Conciliation body, the Commission had decided to revise the adjustment for the United Kingdom from 5 to 2%. However there appears to be some inconsistency in applying a 2% correction to the United Kingdom, since on the basis of the Court's analysis of the Commission's reports it would seem that there were more systems weaknesses in the United Kingdom than Germany. Germany has since appealed to the European Court of Justice against the decision of the Commission;
- (b) a 2% correction initially envisaged for Ireland for beef arising from the non-use of proper sealing procedures, was also later dropped, whereas Germany and Italy were both still penalised with a 5% correction for the same weakness.

4.6. In one case relating to consumption aid for olive oil in Portugal, a correction of 15% was initially proposed but later reduced to 10%, following the Conciliation body's observation that the mission control report did not justify the presence of exceptional

circumstances necessary for a 15% correction and that subsequent improvements had not been properly taken into consideration. The Court notes that subsequent improvements alone cannot justify a reduction from 15 to 10% since the improvements at issue only occurred after the end of 1993.

#### *Ad hoc* corrections

4.7. The Commission also made corrections on the basis of the estimated amount of actual financial loss. However, in at least one case, Member States appeared not always to have been treated equally. For a budget line involving 225,3 Mio ECU for ewe premiums, physical inspections carried out by the national authorities in Ireland and Portugal revealed fewer ewes than claimed. In the case of Ireland, documents were produced by farmers within 10 days following the disappearance of the ewes and accepted as adequate proof by the national authorities while being later rejected by the Commission. In the case of Portugal, however, comparable documents were accepted by the national authorities and later by the Commission. As a consequence, a limited correction for Ireland (1,4 Mio ECU) was proposed, based on the actual shortfall observed<sup>(24)</sup>, while no correction was applied for Portugal.

#### 5. CASES INVOLVING THE CONCILIATION BODY

5.1. Flat rate corrections by definition bear no direct relation to the amounts of losses to the EAGGF budget. Despite the use of statistical sampling procedures it is often not possible to determine the actual amount of financial loss. Re-examination of a referral to the conciliation body<sup>(25)</sup> can sometimes bring the Commission's officials to moderate their views as to the seriousness of the non-compliance, and therefore to the size of the corrections required.

<sup>(24)</sup> This correction is recorded under *Table 1* heading — meat and fish for Ireland.

<sup>(25)</sup> See paragraphs 3.1—3.4. of the Court's Special Report on the clearance of accounts 1992 (OJ C 52, 21.2.1997).

5.2. A total of 29 cases were submitted to the Conciliation body (see *Table 4*). Three cases were judged to be 'non-receivable', as the amounts fell under the minimum level of 0,5 Mio ECU, and one was withdrawn.

TABLE 4

**Analysis of 1993 corrections notified to the Member States**

*(as at 30 July 1997, the date of the second Commission clearance decision)*

	Number	%
(I) Total cases involving corrections for 1993 notified to the Member States	77	100
(II) Cases relating to 1993 corrections submitted to the Conciliation body	29	38
(i) cases rejected by Conciliation body	3	4
(ii) cases withdrawn after being received	1	1
(iii) cases examined by Conciliation body	23	30
— correction finally reduced or dropped in the Commission decision	11	14
— correction maintained in the Commission decision	12	16
(iv) cases still in procedure <sup>(1)</sup>	2	3
(III) Cases for 1993 submitted to the Court of Justice	27	35
(i) directly	8	10
(ii) after submission to the Conciliation body	19	25

*Source:* DG VI internal statistics.

<sup>(1)</sup> These cases were submitted on 19 June 1997 and 29 July 1997 respectively and were still in procedure as at 31 December 1997.

5.3. The conciliation procedure has added additional delays of up to six months to the overall clearance process. The supplementary decision taken on 30 July 1997 reflected the fact that two important cases were still before the body on 23 April 1997, the date of the first Commission decision. Six further disputed corrections, relating to the supplementary levy for milk, could not be dealt with in the 1993 clearance, as the discussions were not completed before the second decision.

5.4. Following the experience gained after the first full year of operation of the Conciliation body procedures, the Commission had prepared a 'reflections paper' in October 1996 on the present system. The Commission decided, however, that it was still too early after only one full year of experience to attempt a balanced assessment of the conciliation procedure. Accordingly, the Commission decided on 15 July 1997 to extend the mandates of the members of the Conciliation body for three further years to the year 2000.

5.5. It was originally hoped that the creation of the Conciliation body would lead to a reduction in the number of cases referred to the European Court of

Justice. *Table 4* provides an analysis of cases lodged with the Court of Justice, but it is too early to determine whether the conciliation procedure has effectively reduced the number of cases to be examined by the Court of Justice. Once final judgments are delivered it will also become clear what significance is attached to the reports of the Conciliation body.

5.6. A reliable database should be established concerning cases submitted for conciliation to the Conciliation body, and cases lodged with the European Court of Justice, as well as the amounts of proposed financial corrections. Two databases exist at present at the Conciliation body and at the Commission. As these are not interlinked, at present an important management analysis tool is missing.

#### 6. CASES WHERE NO OR INSUFFICIENT CORRECTIONS WERE APPLIED

6.1. There were cases where, despite evidence of weaknesses in Member States' systems, no or insufficient corrections were made:

(a) *Olive oil production aid in Italy*

6.2. DG VI found important control weaknesses in this area in a series of four missions to Italy between April 1996 and March 1997. Two DG XX missions in 1995 and 1996 confirmed that the weaknesses also affected 1993. It therefore appears that a correction would have been appropriate for 1993 (the value of the budgetary expenditure for the year was approximately 700 Mio ECU).

(b) *Olive oil consumption aid in Greece*

6.3. The Commission had recognised that there was a high risk of irregularity associated with olive oil consumption aid<sup>(26)</sup>. Greece was the third largest beneficiary (accounting for nearly 97 Mio ECU). Despite this, the Commission carried out no control visits to this Member State for the 1993 financial year. The Commission attempts to justify this on the grounds that a number of missions had already been carried out in Greece and that further missions there would not be consistent with the equality of treatment between the Member States. However, the Court considers that the risk analysis justified control missions for 1993. In July 1996, audit work concentrated only on the 1994 and 1995 financial years and significant weaknesses were identified in the management of the scheme. The fact that the control system in Greece did not change radically between 1993–1995 confirms that control visits should have been made for 1993. Therefore, it appears that large corrections were necessary for 1993.

(c) *Ex-post scrutiny carried out under Regulation (EEC) No 4045/89<sup>(27)</sup> in Germany, the United Kingdom, Italy and Greece by the national authorities*

6.4. The Commission's examination found that the depth of the work performed in Germany and the United Kingdom under the terms of the above regulation (involving expenditure totalling 3 163 Mio ECU for 1993) was not made clear in the reports produced. A similar situation was found in Greece (87 Mio ECU for 1993). However, no financial corrections were proposed for these Member States.

6.5. For Italy (involving expenditure totalling 1 011 Mio ECU for 1993), even though work carried out in 1994 in respect of the 1992 financial year indicated poor implementation of the regulation, no such correction was made for 1993 when the same problems would have applied.

(d) *Administration costs for ewe and goat premiums in Greece*

6.6. The Commission found that the Greek authorities were incorrectly retaining 2 % of ewe and goat premiums

<sup>(26)</sup> See part 3.1 of the 31.12.1994 DG VI/G3 'Matières Grasses plan d'activité 1995/97' audit plan.

<sup>(27)</sup> OJ L 388, 30.12.1989.

to cover the administration costs for the measure. In 1993 this amounted to approximately 3,4 Mio ECU. Charging of VAT in some cases raised the total amount to 2,4 %, or more. This practice is contrary to Article 1 (4) of Council Regulation (EEC) No 729/70<sup>(28)</sup>, yet no financial correction was applied.

6.7. Frequently, corrections have been reduced, or even withdrawn entirely if the Member State concerned could demonstrate that remedial action had been taken to correct any identified weakness. This occurred, even where such remedial action had only taken place long after the year under examination. The cases described in paragraphs 6.8–6.11 below were noted where corrections had been withdrawn entirely.

(a) *Withdrawals from the market for disposal of peaches, nectarines and citrus fruit in Greece*

6.8. For the withdrawals from the market for disposal of peaches, nectarines and citrus fruit in Greece, the Commission applied no corrections for the 1993 financial year. This was despite evidence of serious shortcomings in control procedures. In correspondence sent to the Greek authorities, the Commission proposed that a 'General Reserve' be applied to 1992 and 1993 expenditure, to which the Greek authorities responded that they would take steps to improve the systems in the future<sup>(29)</sup>. Later on, the Commission informed the Greek authorities that significant progress was still required given continuing doubts about the quality and effectiveness of controls being carried out. Although a 10 % correction for citrus fruit was initially proposed for 1992, 1993 (3 Mio ECU) and 1994, the Commission later informed the Greek authorities that the proposed 'General Reserve' for 1992 and 1993 had been lifted. The reason was that on the spot controls carried out in 1995 showed an improvement in the control systems. However, any improvements to the systems which took place in 1995 could not possibly affect 1993.

(b) *Cotton in Greece*

6.9. In its Special Report on the 1992 clearance of accounts<sup>(30)</sup>, the Court observed that the necessary improvements to the weak system were only introduced from the 1993/94 campaign year onwards. The Commission made no correction for 1993 despite clear evidence that the control systems still needed to be reinforced. Thus it appears that a correction was justified

<sup>(28)</sup> OJ L 94, 28.4.1970 which states that 'Expenditure relating to administrative costs and personnel borne by Member States and by recipients of aid from the Fund shall not be taken over by the Fund'.

<sup>(29)</sup> The Court's Annual Report concerning the financial year 1994 (OJ C 303, 14.11.1995, Chapter 2).

<sup>(30)</sup> Special Report No 1/97 (OJ C 52, 21.2.1997).

(declared expenditure amounted to 543 Mio ECU)<sup>(31)</sup>. No financial correction was made on the grounds that the Greek authorities had introduced improvements to their management and control procedures. However, the first meeting of a joint Commission-Greece working group, specially set up to improve the system did not take place until 21 November 1994. At this meeting, the Commission presented a document that still indicated a poor overall picture of the control situation in place to November 1994.

(c) *Dried fodder in the United Kingdom*

6.10. In the 1992 clearance a 5% correction was applied to the United Kingdom in connection with systems weaknesses relating to aid for the production of dried fodder. No correction was applied for the United Kingdom in respect of 1993 where aid totalling 11,0 Mio ECU was paid. Remedial measures adopted by the United Kingdom authorities entered into force only in 1994.

(d) *Ewe/goat premiums in Spain*

6.11. Following a Commission enquiry relating to the 1993 financial year into ewe/goat premiums in Spain, where serious deficiencies in controls over milk producer declarations were encountered, the Commission envisaged a flat rate correction of 10% amounting to 2,3 Mio ECU. In 1995, the Spanish authorities improved the systems, and so the amount of the 'proposed' correction was limited to 5%. Finally, following the conciliation procedure the Commission decided to apply a flat rate correction for 1993 of 2%.

6.12. The 1993 accounts of 23 of the paying agencies in the Member States were audited by private audit firms, which were engaged by the Commission to reconcile the annual declarations of expenditure to the underlying accounting records and to review the internal organisation of the paying agencies. The audit work performed varied from Member State to Member State, and was more thoroughly carried out in some cases than in others. These reports provided useful system descriptions and revealed rather important weaknesses in controls in paying agencies in The Netherlands, Denmark, Italy and Greece. Most of the important findings were later mentioned in the summary reports for 1993<sup>(32)</sup>, but no financial corrections were made following the Commission's legal advice.

6.13. Certain cases were noted where amounts had not been included and recovered in the 1993 clearance. Examples noted concerned:

<sup>(31)</sup> The Commission's 1992 summary report Doc VI/6355/95 stated that 'the new instructions (for cotton) were not actually applied until the 1993/1994 and subsequent marketing years'.

<sup>(32)</sup> Doc. VI/5210/96 of 15 April 1997 and Doc. VI/5360/97 of 30 June 1997.

(a) for the additional levy for milk involving disputed payments, it has not been possible to collect certain supplementary deductions in the Member States because of legal disputes between buyers/producers and the competent authorities. The amounts due to be corrected will only be finally determined once all the Member States involved have communicated the necessary additional information to the Commission. Although it would have already been possible to deal with certain Member States in the 1993 clearance, the Commission chose not to do so, wishing to treat all Member States equally. Two large proposed corrections were not made relating to milk supplementary levies in France (17,4 Mio ECU) and The Netherlands (1,4 Mio ECU). As at 30 July 1997 these matters were still being dealt with in discussions with the Member States;

(b) for the milk abandonment programme in Spain a programme — aiming at restructuring production and reducing the number of marginal producers — was started in 1993. In a report following a mission to Spain, the Commission proposed a correction of approximately 0,8 Mio ECU. Subsequently it was decided to wait until the completion of the programme, in order to establish the precise amount due. Meanwhile, the recovery of this amount was delayed and carried forward to the 1994 clearance.

## 7. IRREGULARITIES AND RECOVERIES

7.1. Article 8(2) of Council Regulation (EEC) No 729/70<sup>(33)</sup> specifies that except in the case of irregularities or negligence on the part of the administrative authorities or other bodies of the Member States, the financial consequences of irregularities shall be charged to the Community's budget.

7.2. Since early 1995, the UCLAF<sup>(34)</sup> service has been responsible for monitoring irregularities in the agricultural sector and for proposing whether the non-recovered amounts should be charged to the Community's budget. Previously, the DG VI-G4 service was responsible for this task.

7.3. In the Commission's first summary report of 31 December 1996 dealing with the results of inspections

<sup>(33)</sup> Article 8(2) of Council Regulation (EEC) No 729/70 (OJ L 94, 28.4.1970) specifies that '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 the administrative authorities or other bodies of the Member States'.

<sup>(34)</sup> UCLAF (Directorate F-Coordination of fraud prevention) falls under the Secretariat-General of the Commission.

concerning the clearance of the 1993 accounts<sup>(35)</sup>, reference was made to work carried out by UCLAF. A table setting out 88 cases, totalling 23,5 Mio ECU, was attached indicating amounts due for recovery from the Member States. In a later version, of 15 April 1997<sup>(36)</sup>, it was mentioned that as Member States had complained that bilateral discussions had been inadequate, it had been decided to postpone the final decision and to withdraw the related figures. In a final supplement to the report<sup>(37)</sup>, dated 30 June 1997, this situation remained unchanged and it was proposed that any further action taken would be postponed until the 1994 clearance year. As a result, the 23,5 Mio ECU outstanding was not included in corrections for 1993.

7.4. This is mainly due to difficulties in agreeing upon the allocation of responsibilities between DG VI and UCLAF. Only in June 1996, nearly 18 months after UCLAF was given its present responsibilities, did inter-service discussions first take place regarding the need to clarify procedures. As a result of the lack of clarity as to which service was responsible for the recovery procedures, these procedures were not held in time. Another example of this lack of coordination concerns a case regarding Belgium involving an amount of 0,4 Mio ECU where UCLAF erroneously advised DG VI at the end of February 1997 that it should be reported in the 1993 clearance of accounts. The Court subsequently found that this case had already been treated and recovered in the framework of the 1990 clearance decision. As this was not detected by either DG VI or UCLAF, the Commission should take steps to ensure the accuracy of listings produced.

7.5. UCLAF, in its annual report for 1996<sup>(38)</sup> referred to 1 508 cases totalling 548,5 Mio ECU<sup>(39)</sup>, representing 71 % by value of the irregularities involving EAGGF guarantee funds communicated prior to 1993, still unrecovered at 31 December 1996. These cases were reported under the terms of Council Regulation (EEC) No 595/91<sup>(40)</sup> of 4 March 1991. The other 29 % by value of all the cases initially notified under the terms of the above regulation, had been resolved within the preceding four year period. Of this 29 %, 17 % had already been recovered from final beneficiaries, 4 % charged to the Member States, and the remaining 8 % was due to be borne by the EAGGF fund.

<sup>(35)</sup> Part 6 of Commission Document VI/5210/96-FR of 31.12.1996, (prepared by DG VI/G/3 — Clearance of Accounts).

<sup>(36)</sup> Part 6 of Commission Document VI/5210/96-EN of 15.4.1997, (prepared by DG VI — Clearance of EAGGF Accounts).

<sup>(37)</sup> Part 6 of Commission Document VI/5210/96-FR of 30.6.1997, (prepared by DG VI.A.I.3 — Clearance of EAGGF Accounts).

<sup>(38)</sup> COM Doc. (97) 200 final of 6.5.1997.

<sup>(39)</sup> Table 8 of the 1996 UCLAF report.

<sup>(40)</sup> OJ L 67, 14.3.1991, p. 11.

7.6. 263,6 Mio ECU, representing 48 % of the 548,5 Mio ECU of funds still to be recovered, were subject to ongoing judicial procedures in the Member States. A further 28,2 Mio ECU (5 % of funds still to be recovered) related to cases where the Member States had introduced requests to declare the amounts irrecoverable. The final balance of 'cases still unaccounted for' represented 256,7 Mio ECU or 47 % (by value) of all outstanding cases still to be recovered based on notifications communicated before 31 December 1993. This figure of 256,7 Mio ECU in turn represents 33 % of all cases communicated.

#### 8. EXPENDITURE EXCLUDED (DISJOINED) FROM THE 1993 CLEARANCE

8.1. The Court examined the 1 565,9 Mio ECU that was excluded (disjoined) from the 1993 clearance. Certain observations are described in paragraphs 8.2—8.4 below that relate to 1 459,0 Mio ECU of this above amount:

(a) *1 369,3 Mio ECU of Compensatory payments amount paid by way of advances to producers of oilseeds*

8.2. As final payments for the 1993 oilseed harvest were only made in March/April/May 1994, the Commission took a decision to carry forward all expenditure relating to these advances until the 1994 clearance. This decision is questionable because these advances had been paid from the 1993 EAGGF budget.

(b) *73,3 Mio ECU of suspect olive oil in intervention storage in Italy*

8.3. This amount had already been previously excluded from the 1992 clearance pending on-going legal investigation. This matter was finally resolved on 14 July 1997 but the amount was not included in the final clearance decision of 30 July 1997.

(c) *16,4 Mio ECU for the abandonment of vines in Italy*

8.4. Expenditure totalling 16,4 Mio ECU was excluded from the 1992 clearance. Because the Italian authorities did not respond to two requests sent in 1996<sup>(41)</sup> requiring details of results and findings relating to a special investigation carried out by them into illegal planting in Italy, the Commission was unable to complete its action. This amount was carried forward by one further year, until the 1994 clearance. Because of the

<sup>(41)</sup> Requests transmitted on 14 June 1996 and a reminder sent on 26 November 1996.

delays by the Italian authorities, the Commission should consider the possibility of charging interest on the amount outstanding when it is taken into account in the 1994 clearance decisions.

## 9. CONCLUSION

9.1. This Special Report comes at a time of transition for the entire clearance of accounts process, where there are now simultaneous clearances being governed by the old rules (financial years 1993–1995) and by new legislation (for exercise 1996 onwards).

9.2. Article 5(2)(b) of Council Regulation (EEC) No 729/70 states<sup>(42)</sup> that the accounts of a particular year must be cleared by the end of the following year<sup>(43)</sup>. As in the case of the two preceding clearance exercises, the clearance decisions for 1993 were taken more than two years late. This meant that 647,8 Mio ECU were recovered to the Community's budget later than necessary. The 1993 clearance decision also does not reflect the fact that an amount of approximately 19,6 Mio ECU is still due to be recovered in respect of certain programmes for milk (see paragraph 6.13).

9.3. The problem of inadequate staffing remains current and needs to be tackled urgently (see paragraph 3.1).

9.4. The Commission should consider the possibility of charging interest on amounts outstanding where Member States fail to act within a reasonable time (see paragraph 8.4).

9.5. The Commission has properly sought to ensure coverage of almost all important market areas judged to be at risk (see paragraph 3.4). In particular detailed work

was carried out in the important area of export refunds. Most of the work scheduled was carried out by the Commission as originally planned (see paragraph 3.8), and the different Commission services have improved both inter-service communication and the coordination of their work, except as noted for UCLAF (see paragraph 7.4). However, the approach precluded regular coverage of all other smaller market measures or countries (see paragraph 3.7).

9.6. Nevertheless cases were found concerning a total budget line value of 5 058 Mio ECU (see paragraphs 6.2–6.5) where the Commission failed to apply financial corrections, despite being in full possession of the necessary information. Also 68,3 Mio ECU of corrections have been postponed to 1998 in respect of the 1994 clearance (see paragraph 2.4).

9.7. The Commission needs to coordinate better its efforts to recover amounts which have been subject to irregularities. Such recoveries as should have been included in the 1993 clearance decisions (estimated value approximately 23,5 Mio ECU) were postponed. In addition, other large sums relating to prior years still remain to be recovered (see paragraphs 7.3–7.6).

9.8. The introduction of the Conciliation body has, over the past two years, provided a mechanism in which Member States have carried out in-depth dialogue with the Commission. The Commission considers that no balanced assessment of the conciliation procedure is possible until the end of a three year trial period (see paragraph 5.4).

9.9. The Court reiterates that it is inappropriate to reduce the level of flat rate corrections in recognition of subsequent improvements to systems. The proposed corrections should have been maintained (see paragraphs 4.6, 6.2–6.3, 6.5 and 6.8–6.11).

This report was adopted by the Court of Auditors in Luxembourg at its meeting of 19 February 1998.

*For the Court of Auditors*  
Bernhard FRIEDMANN  
*President*

<sup>(42)</sup> OJ L 94, 28.4.1970.

<sup>(43)</sup> Article 5(2)(b) of Council Regulation (EEC) No 729/70 states that the Commission, after consulting the EAGGF Committee shall, before the end of the following year, on the basis of the annual accounts and supporting documents transmitted by the Member States, clear the accounts.

## COMMISSION'S REPLIES

## 3. METHODOLOGY OF THE COMMISSION

## Staff resources

3.1. The Commission will allocate the majority of the new posts recommended by Parliament to the unit responsible for the clearance of accounts in the course of 1998.

## Risk analysis

3.2. The control missions for 1993 were intended to continue the work begun in 1992 on the basis of the risk analysis for the 1992 programme.

3.7. (a) The milk quota system was indeed regarded as the principal risk in the milk sector, having given rise to major financial corrections in the period from 1989 to 1993.

3.7. (b) A more extensive survey of the producer countries had recently been conducted using the 1992 data. The results led to a reform of the dried fodder market, with tighter controls in this area.

As in the case of all new market organisations, Member States were given some time to adjust.

3.7. (c) Cotton in Spain was the subject of a control starting in the 1995 exercise.

3.7. (d) Following remarks made by the Court in Chapter 3 of its Annual Report for 1994, the Commission conducted a general enquiry into controls in the fisheries sector, with specific reference to the compensatory allowance for tuna. This enquiry was led by DG XIV and covered operations in Spain, France and Portugal. The clearance of accounts Unit was consulted and informed of progress, and a financial correction of ESP 52 391 965 is envisaged in the clearance of accounts procedure for the 1994 financial year.

Given the low expenditure on fisheries in the context of EAGGF guarantee expenditure, and the fact that other Commission services have conducted a general enquiry in this field, it is not deemed necessary to return to it in the near future.

## Execution of the work

3.10. The mission programme based on the risk analysis is altered as little as possible.

## 4. CORRECTIONS MADE BY THE COMMISSION

## Flat rate

4.5. (a) It is correctly stated in the audit report that the final flat-rate corrections in the 1993 clearance for the promotional measures for milk and milk products were as follows: Ireland 10 %, Germany 2 % and United Kingdom 2 %.

With regard to the promotional measures in the United Kingdom, the Commission accepted during the conciliation procedure a reduction of the financial correction from 5 % to 2 %. This reduction was based on a new assessment of the effectiveness of the monitoring of the promotional measures under Regulations (EEC) No 585/93 and (EEC) No 595/93, and in particular of the risk that adjustments to the programmes were not made during the period of the contract in order to ensure that the objectives of the campaigns were achieved.

The same situation prevailed for the milk sector in Germany.

4.5. (b) The corrections for Germany and Italy were justified by a number of serious weaknesses in physical controls of beef at entry into the prefinancing regime and during storage. Inadequate sealing procedures represented only one of these weaknesses. In Ireland, physical controls were found to be much tighter, in particular the physical verification of 10 % of entries into the prefinancing regime.

4.6. The conciliation body took the view that the exceptional circumstances invoked did not justify a correction of more than 10 %. The Commission accepted the opinion of the conciliation body on this point, irrespective of the improvements subsequently introduced by Portugal.

*Ad hoc* corrections

4.7. The corrections (1992 to 1994) for Ireland arise from the non-application of legislative sanctions when claimants did not provide satisfactory explanations for absence of sheep at the time of inspection. The situation

in this respect was less clear-cut in Portugal, and no correction was thought justified.

#### 5. CASES INVOLVING THE CONCILIATION BODY

5.6. The Commission will take up the Court's suggestion and bring together in a single table the data on cases submitted to the conciliation body and cases lodged with the European Court of Justice.

#### 6. CASES WHERE NO OR INSUFFICIENT CORRECTIONS WERE APPLIED

6.2. and 6.3. The Commission's investigations were not sufficiently advanced at the time of the decision on the 1993 financial year to enable any conclusions to be drawn about the regularity of expenditure in the sectors in question. The main reason for deferring missions to these two Member States was the limited number of staff available in the relevant department.

The Commission presence in Greece was highly visible during the controls in the oils and fats sector in general, thus influencing the efficiency of the controls carried out by the Greek authorities. The shortcomings of consumption aid in Greece derive mainly from the lack of penalties when controls reveal irregularities. This subject will be dealt with in the clearance of accounts for 1994 and subsequent financial years.

6.4. The Commission cannot conclude from unclear reports that the scrutiny work was not performed as required by Regulation (EEC) No 4045/89, and therefore no corrections could be justified. The effectiveness of the scrutiny work is at present being examined during visits to beneficiaries in the Member States.

6.5. The financial corrections envisaged in 1994 concern the 1993/94 scrutiny programmes in the Member States, which in turn concern expenditure declared in the 1992 financial year, the first for which these programmes were examined by the clearance auditors.

6.6. The Commission's opinion is that corrections for the administrative fees in question may only be applied on the basis of specific provisions forbidding deductions from aids paid, as exist in the case of some other intervention measures, and not on the basis of Article 1(4) of Regulation (EEC) No 729/70. In the absence of specific provisions, there was no scope for corrections to ewe premium expenditure declared by Greece.

6.8. The Greek authorities demonstrated a constructive attitude to making improvements to various aspects of the procedures for recognising and monitoring producers' organisations as well as the system for withdrawing produce from the market. In the light of this it was decided to lift the reserve that had been applied earlier. The corrections finally proposed concern the years actually examined and were therefore sustainable.

6.9. It is true that the positive and constructive attitude of the Greek authorities in the joint monitoring committee led the Commission to adopt a positive position. However, the main reason for not applying a correction was the fact that the controls have largely been carried out in accordance with the rules since the end of 1992 and the *ex post* controls on ginning plants helped to uncover irregularities amounting to around ECU 3 million. It was therefore difficult to justify a flat-rate correction.

6.10. Given that the UK authorities had remedied the shortcomings identified and the amount of expenditure in question was small, no control was carried out for the 1993 financial year.

6.11. The flat-rate correction of 10% initially envisaged was reduced to 5%, mainly because of statistics produced by Spain in the dialogue phase of the clearance procedure, which showed the risk of loss to the fund to be low. The introduction of improvements to the Spanish control system in 1995 carried some weight, but given the low risk of loss, the guidelines on fixing flat-rate corrections gave the Commission's services no scope for a 10% flat-rate correction.

Following the conciliation body's conclusions, which were against correcting at more than 2%, the Commission's services agreed to further reduce its proposal.

6.12. The reform of the clearance of accounts, which came into force in 1996, provides a legal basis for a correction based on shortcomings in the audit work.

6.13. (a) The question of disputed supplementary levies has been discussed repeatedly in correspondence with the Member States concerned and in the course of on-the-spot visits to determine the exact amount of the levies that had been collected too late. The Court's suggestion that certain Member States could have been dealt with in the 1993 clearance was impracticable, given the time needed for this work and for the bilateral and conciliation procedures.

6.13. (b) This milk abandonment programme was funded from an advance charged to the 1989 clearance decision supplemented by Community assistance provided as part of the 1992 clearance. It was introduced pursuant to the joint Commission and Council agreement of 21 October 1994 on the question of milk quotas in Spain and Italy.

Following the Court of Auditors' criticisms, the Council supplied a legal basis for this programme by adopting Regulation (EC) No 1288/95. EAGGF controls revealed that the quantity that will in fact be bought back and paid for will be slightly less than the total eligible, but given that some applications still to be settled and that some payments have proved to be unjustified, it is necessary to wait until the final annual instalment is paid (1998) before establishing the exact amount to be recovered.

During their mission of 23–27 June 1997, the EAGGF auditors monitored the course of this programme by checking the payment of the instalments for 1995, 1996 and 1997. It transpired from this that the amount to be recovered has fallen from ESP 134,1 million to ESP 83,2 million, because more applications are being settled as a result of appeals decided in favour of producers. As there are still appeals pending it is possible that other applications will also have to be settled, so for this reason alone, i.e. the impossibility of determining the exact amount to be recovered before the final instalment is paid (1998), no correction was made in 1993. If the Commission had followed the Court's suggestion in the 1994 clearance procedure, it would have had to refund the difference of ESP 50,9 million to Spain.

## 7. IRREGULARITIES AND RECOVERIES

7.1 to 7.5. No decision on the clearance of accounts may be proposed without offering the Member State in question the opportunity for a bilateral procedure and, possibly, conciliation. A decision to charge sums to the Community budget pursuant to Article 8 of Regulation (EEC) No 729/70, as referred to by the Court, is taken after completion of these procedures, carried out as quickly as possible by DG VI, and on the basis of a reasoned proposal by UCLAF. If possible, the cases referred to will be decided in the course of the clearance procedure for the 1994 accounts.

## 8. EXPENDITURE EXCLUDED FROM THE 1993 CLEARANCE

8.2. The advances paid before September 1993 pursuant to Article 7a of Regulation (EEC) No 2294/92 were excluded from the clearance decision to enable the

Commission to include the amounts concerned in a correction if the controls carried out on the entire expenditure for that marketing year warranted it.

This procedure will not, however, be used if the advances themselves do not comply with the rules. In this case any financial consequences will be determined in respect of the financial year in which the advance was paid.

8.3. As the Court explains, the decision on this point was taken on 14 July 1997, whereas the Commission's decision dates from 30 July 1997. It was therefore objectively impossible for the conclusions about the case in question to be incorporated into the clearance of the 1993 accounts, given that allowance has to be made for the bilateral procedures and possibly also conciliation.

8.4. The financial correction relating to the expenditure of ECU 16,4 million, excluded from the 1992 and 1993 clearances, will be included in the 1994 clearance procedure. The Commission has no legal basis for charging interest on outstanding amounts.

## 9. CONCLUSIONS

9.2. As the Court of Auditors remarks in points 3.8 to 3.12 of its report, numerous procedures have to be complied with in the clearance of accounts, particularly as regards collecting all the information from the Member States and enabling them to refer matters to the conciliation body. The large number of procedures to be followed does not make it any easier to clear the accounts by the end of the year following the financial year in question. This applies to the clearance of accounts up until the 1995 financial year. One of the aims of the reform introduced in 1996 is to reduce decision-making time.

9.3. This problem will be largely solved in the course of 1998.

9.4. The Commission has no legal basis for charging interest on outstanding amounts.

9.6 to 9.8. Because all the stages of the process take so long, the clearance procedure has to take into consideration all the new elements that are added to the case as the work proceeds. Some Member States wait for the conciliation process to start before supplying additional information. The result is that the Commission's original proposals for correction may be revised downwards or dropped altogether.

Interdepartmental relations and coordination within the Commission are improving all the time. The departments are extremely diligent in their efforts to recover all the amounts that remain outstanding for various reasons from earlier clearance exercises.

9.9. The Commission's guidelines on flat-rate corrections were amended on 8 December 1997 to include the principle formulated by the Court to the

effect that the level of flat-rate corrections should not be reduced in recognition of subsequent improvements to systems. It is important to remember, however, that a financial correction may only be imposed if there has been a failure to comply with Community rules, and that the correction must be in proportion to the financial loss suffered by the fund, or the risk of loss. If the Member State can demonstrate that these two conditions are not met, any proposed correction must be withdrawn.

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