

S.I. No. 274 of 1994.

**EUROPEAN COMMUNITIES (COMMON AGRICULTURAL POLICY) (SCRUTINY OF
TRANSACTIONS) REGULATIONS, 1994.**

I, JOE WALSH, Minister for Agriculture, Food and Forestry, in exercise of the powers conferred on me by Section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving full effect to Council Regulation (EEC) No. 4045/89 of 21 December 1989(1), hereby make the following Regulations:

(1)O.J. No. L388/18 of 30/12/1989.

1. These Regulations may be cited as the European Communities (Common Agricultural Policy) (Scrutiny of Transactions) Regulations, 1994.

2. (1) In these Regulations—

"authorised officer" means (i) an officer of Customs and Excise or (ii) a person appointed under Regulation 9 of these Regulations to be an authorised officer for the purposes of these Regulations;

"the Council Regulation" means Council Regulation (EEC) No. 4045/89 of 21 December, 1989;

"the Minister" means the Minister for Agriculture, Food and Forestry;

"primary producers" means producers of primary agricultural products in their natural or unprocessed state;

"records" means "commercial documents" within the meaning of Article 1.2 of the Council Regulation, as well as the commercial documents referred to in the first indent of Paragraph 1 of Article 3 of the Council Regulation;

"supervising officer" means (i) an officer of the Revenue Commissioners whose duties include the supervision of authorised officers who are officers of Customs and Excise or (ii) an officer of the Minister or an officer of another Minister of the Government, or such other person, whose duties include the supervision of authorised officers appointed under Regulation 9 of these Regulations;

"transactions to which these Regulations apply" means any transaction referred to in Article 1 of the Council Regulation.

(2) A reference in these Regulations to a Regulation of the European Communities shall be construed as a reference to that Regulation as amended.

(3) A word or expression that is used in these Regulations and is also used in the Council Regulation has, unless the contrary intention appears, the same meaning in these Regulations that it has in the Council Regulation.

(4) The word "person" has the meaning it has in the Interpretation Act, 1937 and includes both the words "person" and "undertakings" as used in the Council Regulation.

3. (1) Every person who, on his own behalf or on behalf of any other person, carries out in whole or in part in the State any transaction to which these Regulations apply shall keep in the State all the records relating to each such transaction for the purpose of enabling an authorised officer to carry out a systematic scrutiny of the particulars of the transaction in order to ensure that the transaction has been carried out and executed correctly.

(2) This Regulation shall not apply to primary producers who are not in direct receipt of payments or who are not liable for charges within the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, provided for by Council Regulation (EEC) No. 729/70.(2)

(2)O.J. No. L94/13, of 28/4/1970.

4. (1) Records kept pursuant to these Regulations shall be retained by the person required to keep them for a period of at least three years, starting from the end of the year in which they were drawn up.

(2) Any person who fails to keep a record required by Regulation 3 of these Regulations or who contravenes paragraph (1) of this Regulation shall be guilty of an offence.

5. (1) For the purpose of carrying out the scrutiny referred to in Regulation 3 (1) of these Regulations or of making any enquiry relating to such a scrutiny, an authorised officer may—

(a) require any person referred to in Regulation 3 (1) to indicate to him the address of the premises or place in the State at which any record is kept in pursuance of these Regulations and to indicate to him the address of the premises of third parties directly or indirectly connected with transactions to which these Regulations apply,

(b) at all reasonable times enter any premises or place where he has reasonable grounds for believing that any record relating to a transaction to which these Regulations apply is kept or where such a transaction is carried out and executed or anything is done in connection with such a transaction either by any person referred to in subparagraph (a) of this paragraph or by third parties directly or indirectly connected with transactions to which these Regulations apply,

(c) require any person referred to in subparagraph (a) of this paragraph or any person who is, or appears to him to be for the time being, in charge of the premises or place to produce any record relating to a transaction to which these Regulations apply and to give to him such information or assistance as he may reasonably require,

(d) examine and take copies of or extracts from any such record,

(e) seize and carry away any such records and retain them for such period as may be reasonable,

(f) verify the accuracy of any entry in any such record by comparison with the actual quantities of agricultural products in stock.

(2) A person who fails to comply with a requirement under paragraph (1) (a) or (1) (c) of this Regulation, or who obstructs or interferes with an authorised officer when he is exercising a power conferred by these Regulations, shall be guilty of an offence.

6. (1) Where a person for the purpose of or in connection with any transaction to which these Regulations apply, produces, makes, furnishes, gives, sends or otherwise makes use of, any incorrect or false record, statement or information, he shall be guilty of an offence.

(2) In a prosecution for an offence under this Regulation, it shall be a defence for the person charged with the offence to show that he was not aware that the record, statement or information was incorrect or false.

7. Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been so committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person being a director, manager, secretary, member of the committee of management or other controlling authority of any such body, or being any other similar officer of any such body, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished accordingly.

8. (1) There shall stand established a body to be known as the Audit Committee which shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or any other property.

(2) The Audit Committee shall be responsible for monitoring the application of the Council Regulation and for the co-ordination and general surveillance of the scrutiny of transactions to which these Regulations apply.

(3) Without prejudice to the generality of paragraph (2), it shall be the responsibility of the Audit Committee:—

(a) to administer the scrutiny reports and any other documents relating to the scrutinies carried out pursuant to these Regulations,

(b) to prepare and communicate the reports referred to in Article 9 (1) and the programmes referred to in Article 10 of the Council Regulation,

(c) to establish such training programmes as may be necessary to enable authorised officers to properly carry out their functions under these Regulations.

(4) (a) The Audit Committee shall from time to time prepare a scrutiny programme in accordance with the requirements of Article 10 of the Council Regulation. In preparing such a programme the Audit Committee may consult with relevant supervising officers.

(b) It shall be the duty of authorised officers to carry out and give effect as far as is practicable to a programme referred in subparagraph (a).

(c) A programme referred to in sub-paragraph (a) shall be carried out by authorised officers acting under the supervision of their relevant supervising officers who may make submissions concerning such programme to the Audit Committee.

(d) In carrying out a programme referred to in sub-paragraph (a) authorised officers shall be subject to the duty to keep the Audit Committee informed of progress as requested by the Committee and to inform the Committee of any difficulties encountered in the completion of such programme and both supervising officers and authorised officers shall in the performance of their functions have regard to the overall functions and responsibilities of the Audit Committee referred to in paragraphs (2) and (3) of this Regulation.

(e) The Audit Committee may review any such programme referred to in subparagraph (a) and make in it any variations whether by way of alteration, addition or deletion which it considers necessary.

(5) The Audit Committee may do any of the following things—

(a) require any person who in its opinion is in possession of information or has a document or thing in his power or control that is relevant to the functions of the Audit Committee to furnish that information, document or thing to the Audit Committee,

(b) do all such other things as arise out of or are consequential on the functions assigned to it under these Regulations or the Council Regulation.

(6) The Audit Committee shall be independent in the performance of its functions, and the Committee and its members shall not be subject to the direction of any other person in the performance of their duties.

(7) The Audit Committee shall consist of a chairman and not less than 4 ordinary members who shall be appointed by the Minister to be members of the Audit Committee by virtue of their experience in fields of expertise relevant to the functions of the Committee.

(8) A member of the Audit Committee shall be appointed for such term (not exceeding three years) as shall be specified by the Minister when appointing him and on such terms and conditions as the Minister determines, and a member whose term of office expires by the effluxion of time shall be eligible for reappointment.

(9) A member of the Audit Committee shall be paid such remuneration, if any, and such allowances for expenses, if any, as the Minister, with the consent of the Minister for Finance, determines.

(10) A member of the Audit Committee may resign from office by letter addressed to the Minister.

(11) The Minister may at any time remove from office a member of the Audit Committee if he has committed stated misbehaviour or if his removal appears necessary for the effective performance by the Audit Committee of its functions.

(12) The quorum for a meeting of the Audit Committee shall be 3.

(13) At a meeting of the Audit Committee—

(a) the chairman of the Committee shall, if present, be the Chairman of the meeting, and
(b) if and so long as the chairman of the Committee is not present or if the office of chairman is vacant, the members of the Committee who are present shall choose one of their number to be chairman of the meeting.

(14) The chairman of the Audit Committee and each ordinary member of the Committee present at a meeting thereof shall have a vote.

(15) In the event of a vote being required on a question arising at a meeting of the Audit Committee such question shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.

(16) The Audit Committee may act notwithstanding one or more than one vacancy among its members, provided there is a quorum.

(17) The Audit Committee shall, subject to these Regulations, regulate its own procedure and business.

(18) The Audit Committee shall, as soon as may be after its establishment, provide itself with a seal.

(19) The seal of the Audit Committee shall be authenticated by the signature of the chairman of the Committee or of some other member thereof authorised by the Committee to act in that behalf and the signature of an officer of the Committee authorised by the Committee to act in that behalf.

(20) Judicial notice shall be taken of the seal of the Audit Committee and every document purporting to be an instrument made by the Committee and to be sealed with the seal (purporting to be authenticated in accordance with paragraph 19) of the Committee shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

(21) Where a member of the Audit Committee is—

(a) nominated as a member of Seanad Éireann, or
(b) elected as a member of either House of the Oireachtas or of the European Parliament, or
(c) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act 1977, as having been elected to such Parliament to fill a vacancy, he shall thereupon cease to be a member of the Committee.

(22) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a member of the European Parliament shall, while he is so entitled or is such a member, be disqualified from becoming a member of the Audit Committee.

(23) A person responsible for payments, financed by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, to undertakings and or for the scrutiny carried out prior to payment, may not be a member of the Audit Committee.

(24) The Minister may, from time to time, with the consent of the Minister for Finance, advance to the Audit Committee out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of expenditure by the Audit Committee in the performances of its functions.

(25) A person who obstructs or interferes with the Audit Committee or any of its members when they are exercising a power conferred by this Regulation shall be guilty of an offence.

9. (1) The Minister may appoint such and so many of his officers or officers of another Minister of the Government, or such other persons as he thinks fit, to be authorised officers for the purposes of these Regulations.

(2) When exercising any powers conferred by these Regulations, an authorised officer (other than an officer of Customs and Excise) shall, if so requested by any person affected, produce to that person a certificate of his authorisation and, in the case of an officer of Customs and Excise shall on request produce the commission of the Revenue Commissioners appointing him to be such officer.

10. Officials of the Commission of the European Communities shall be entitled to inspect all documents prepared either with a view to or following a scrutiny conducted pursuant to these Regulations. For the purposes of this Regulation documents shall include data stored in data processing systems.

11. (1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months, or to both the fine and the imprisonment.

(2) An offence under these Regulations may be prosecuted by the Minister or by the Audit Committee.

12. Nothing in Section 17 of the Industrial and Provident Societies Act, 1893, shall prevent an authorised officer from exercising any powers conferred on him by these Regulations.

13. The European Communities (Common Agricultural Policy) (Scrutiny of Transactions) Regulations, 1980 (S.I. No. 301 of 1980) are hereby revoked.

GIVEN under my Official Seal, this 6th day of September, 1994.

JOE WALSH,

Minister for Agriculture, Food

and Forestry.

EXPLANATORY NOTE.

These Regulations deal with the scrutiny of transactions forming part of the system of financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund as required by Council Regulation (EEC) No. 4045/89 and provide for the establishment of an Audit Committee to monitor the application of this Regulation.