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**REPORT ON THE RECOVERY OF EXPORT REFUNDS FOR LIVE ANIMALS
IN 2009**

1. INTRODUCTORY PART

1.1 INTRODUCTION

In their joint declaration of 22 November 2001 on the recovery of export refunds for beef and veal, the Parliament and the Council requested the Commission to submit an annual report to the budgetary authority. This report highlighted the implementation of and compliance with EU legislation, on the recovery of refunds in the event of a failure to comply with Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport¹. Parliament and the Council issued another joint declaration along the same lines on 25 November 2002.

Since then the Commission submitted summary annual reports to the Council and the European Parliament which are based on the annual reports submitted by the Member States.

It is recalled that from 1. 1. 2006 export refunds are no longer paid for slaughter animals but only for breeding animals exported from the EU (modification introduced by Commission Regulation (EC) No 2147/2005).

1.2 REINFORCEMENT OF LEGISLATION

Commission Regulation (EC) No 639/2003

The Commission strengthened existing legislation by the adoption of Commission Regulation (EC) No 639/2003 of 9 April 2003 laying down detailed rules pursuant to Council Regulation (EC) No 1254/1999 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport². This regulation provides for mandatory veterinary checks on transport and animals in third countries and introduces norms for penalties and communication of information by the Member States.

1.3 Content of the report

The annual reports are based on the number of export declarations of live bovine animals for which the refunds have been paid (Article 8(a)) during the previous calendar year. It may take 6 months or more to complete the process from lodging the export declaration, transporting the animals to the third country, collecting the returned relevant customs and veterinary documents and deciding on the definitive payment of the refunds. Moreover, another aspect of the time gap is that information on refusal or recovery of refunds may be based on export transports having taken place in preceding years.

It has to be taken in consideration that the data concerns export refund expenditure relative to the financial year 2009 (from 16 October 2008 to 15 October 2009 (see table 1)).

Member States structured their reports based on the requirements of Regulation (EC) No 639/2003 (Article 8); the same structure will be followed in this consolidated report.

¹ OJ L 82, 19.3.1998, p. 19–22.

² OJ L 93, 10.4.2003, p. 10–17

The tables have been established in using the data communicated by the Member States.

2. LEGAL FRAMEWORK

Article 168 of Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)³ subjects the granting and the payment of the refund for exports of live animals to compliance with the provisions established in EU legislation concerning animal welfare and, in particular, the protection of animals during transport. Regulation (EC) No 639/2003 lays down specific detailed rules of application for the export refund arrangements in this sector in order to ensure compliance with legislation concerning animal welfare in the framework of export refunds arrangements. Refunds are paid provided the provisions have been met of Regulation (EC) No 639/2003 and those of Council Regulation (EC) No 1/2005⁴ on the protection of animals during transport and related operations. Regulation (EC) No 639/2003 establishes a system of checks and provides for financial consequences for exporters who fail to comply with the provisions on the transport of animals. The checks and the financial consequences relate to the payment of the refund. They apply without prejudice to the checks provided for by Regulation (EC) No 1/2005.

Amendment of Commission Regulation (EC) No 639/2003 by Commission Regulation (EC) No 498/2009

Regulation (EC) No 639/2003 was modified in 2009 by Regulation (EC) No 498/2009 of 12 June 2009⁵.

Following the judgments of the Court of Justice of 17 January 2008 in Joined Cases C-37/06 and C-58/06 and of 13 March 2008 in Case C-96/06 it was necessary to clarify the link between Regulation (EC) No 639/2003 and Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations. Moreover, it was also necessary to define the animal welfare rules which are addressed to the operators and to specify the provisions of Regulation (EC) No 1/2005 which trigger, in case of violation, the loss of the refund.

Regulation (EC) No 498/2009 also clarified that, without prejudice to cases of force majeure recognised by the case law of the Court of Justice, a violation of the animal welfare provisions does not trigger a reduction but the loss of the export refund, related to the number of animals for which the welfare requirements were not respected, irrespective of the concrete physical conditions of the animals.

For more detailed information about the legal background see the previous reports.

³ OJ L 299, 16.11.2007, p. 1.

⁴ OJ L 3, 5.1.2005, p. 1–44.

⁵ OJ L 150, 13.6.2009, p. 3.

3. APPLICATION OF REGULATION (EC) No 639/2003 IN 2009

3.1 AMOUNTS OF EXPORT REFUNDS PAID

The payment of the refund for exports of live animals pursuant to Article 168 of Regulation (EC) No 1234/2007 (formerly Article 33 of Regulation (EC) No 1254/1999 before 1 July 2007) paid in the years 2005 to 2009 is shown in the following figure:

No exports of live animals in 2009 in the framework of Regulation (EC) No 639/2003 were confirmed by Belgium, Bulgaria, Estonia, Ireland, Greece, Spain, Cyprus, Latvia, Lithuania, Luxemburg, Malta, Poland, Portugal, Romania, United Kingdom.

Table 1

AMOUNTS OF EXPORT REFUNDS ON LIVE BOVINE ANIMALS PAID IN 2005*, 2006*, 2007*, 2008* and 2009*, **					
Member State	2005 (EUR)	2006 (EUR)	2007 (EUR)	2008 (EUR)	2009 (EUR)
AT	2 718 100	2 536 243	2 026 468	1 863 287	1 813 781
CY		161 749			
CZ	512 523	250 560	168 170	185 946	242 489
DE	24 833 826	11 643 823	5 929 080	5 631 047	5 455 436
DK	1 068 213	761 109	391 357	55 815	67 648
ES	1 698 962	531 058			
FI				41 179	51 954
FR	13 398 795	4 523 274	1 194 608	436 568	198 394
HU	792 419	971 709	1 247 615	448 141	1 012 927
IE	2 812 259	436 125	-38 439		60 052
IT	10 755	875	5 264	4 012	10 119
LT	103 814				
NL	4 610 814	4 301 892	3 573 617	1 273 624	1 148 104
SE	231 704	220 605	9 257	80 689	74 636
SI	93 380	59 640	24 703	25 882	21 059
Total***	52 885 564	26 398 659	14 531 699	10 046 191	10 156 599

* EAGGF financial year starts on 16 October of one year and ends on 15 October of the following year;

** For the data available since 2002 see the previous reports;

*** Total can differ due to rounding.

3.2. INFORMATION TRANSMITTED BY MEMBER STATES RELATED TO EXPORT REFUNDS FOR LIVE ANIMALS

Since 2000, the Commission has asked Member States to send annual data on the amounts of refund refused or recovered. Table 7 in Annex 1 gives an overview of the figures sent by the Member States for the year 2009. This chapter compares the information of the years 2005 until 2009.

3.2.1. The number of export declarations of live animals exported with refunds (information provided under Article 8 (a) of Regulation (EC) 639/2003)

The number of export declarations decreased by 6,4% from 2 299 in 2008 to 2 152 in 2009 (figures of the EU-27).

Table 2: Number of export declarations*

Member State	Declarations 2005	Declarations 2006	Declarations 2007	Declarations 2008	Declarations 2009
AT	559	418	244	420	300
CY	1	1			
CZ	52	33	34	34	26
DE	2 549	994	992	1 398	1065
DK	155	139	124	12	22
ES	31	3			
FI				9	14
FR	1 141	674	638	54**	77
HU	101	155	180	111	259
IE	13				
IT		1			2
LT	4				
NL	731	823	1 017	228	369
SE	21	7	4	27	1
SI	9	9	5	6	2
SK					15
Total	5 367	3 257	3 238	2 299	2152

* For the data available since 2002 see the previous reports;

** According to France the definitive payment of export refunds has not yet been effected.

3.2.2 The number of live animals exported with refunds

The total number of exported live bovine animals, based on the number of export declarations for which refunds were paid, decreased by 3 635 animals (5,2%) from 70 043 animals in 2008 to 66 408 animals in 2009 (figures for the market of EU of 27). Decrease of exports took place in particular in Germany, Austria and Sweden. The number of exported live bovine animals increased relatively in Hungary and the Netherlands.

Table 3: Number of live animals exported with refunds*

MS	2005	%	2006	%	2007	%	2008	%	2009	%
	animals		animals		animals		animals		animals	
AT	10 628	5,63%	10 183	11,51%	6 851	8,45%	13 058	18,64%	8 707	13,11%
CY	524	0,28%	526	0,59%						
CZ	1 652	0,88%	1 092	1,23%	1 061	1,31%	1 070	1,53%	851	1,28%
DE	88 843	47,07%	32 610	36,87%	30 296	37,37%	41 504	59,26%	32 654	49,17%
DK	4 074	2,16%	3 482	3,94%	2 307	2,85%	278	0,40%	495	0,75%
ES	8 498	4,50%	199	0,23%						
FI							366	0,52%	424	0,64%
FR	30 429	16,12%	7 629	8,63%	1 112	1,37%	1 704**	2,43%	2 205	3,32%
HU	3 832	2,03%	4 840	5,47%	6 194	7,64%	3 508	5,01%	8 363	12,59%
IE	13 812	7,32%								
IT	0	0,00%	4	0,01%					70	0,11%
LT	299	0,16%								
NL	24 743	13,11%	27 389	30,97%	33 009	40,72%	7 462	10,65%	12 086	18,20%
SE	1 113	0,59%	233	0,26%	106	0,13%	936	1,34%	36	0,05%
SI	280	0,15%	257	0,29%	136	0,17%	157	0,22%	48	0,07%
SK									469	0,71%
Total	188 727	100%	88 444	100%	81 072	100%	70 043	100%	66 408	100%

* For the data available since 2002 see the previous reports;

** According to France the definitive payment of export refunds has not yet been effected.

3.2.3 The number of export declarations and animals for which payment of the refund was partly or totally refused or recovered

According to the requirements of Article 8(b) and (c) of Regulation (EC) No 639/2003 the Member States communicated the following information:

The Member States refused to pay the refund in full or in part for 95 (2008: 91) export declarations, concerning 1 306 (2008: 1 344) animals. For another 32 (2008: 21) export declarations, concerning 597 (2008: 565) animals, the export refunds had to be recovered. In total for 2,79% (2008: 1,92%) of the exported animals irregularities occurred in either the refund provisions (like refund code) or in the welfare conditions as mentioned in Regulation (EC) No 1/2005 or in Articles 5, 6 and 7 of Regulation (EC) No 639/2003. The reasons for such partly or total refusals, or partly or total recoveries reported by the Member States are mentioned under point 3.2.5 of this report. Further details are given in Annex 2.

3.2.4 Amounts of refunds not paid or recovered and recovery still running

According to the information provided under Article 8(e) and (f) of Regulation (EC) No 639/2003 the major amounts of refunds not paid or recovered were dealt with by Germany. In total Germany was involved in 152 131 EUR not paid or recovered refunds, which is 56,59% of the total EU amount of 268 842 EUR composed of 190 065 EUR not paid and 78 777 EUR recovered, and excluding recovery still running.

Table 4: Overview on refunds not paid, recovered or still running

Member State	Refunds not paid (EUR) [1]	Refunds recovered (EUR) [2]	Recovery of refunds still running (EUR) [3]	Total refunds not to be paid (sum [1] to [3] in EUR)	Refunds paid* (EUR)	Total refunds requested [paid* + not paid (EUR)]	refunds not to be paid as % of total refunds requested
AT	10 076			10 076	1 813 781	1 823 857	0,55%
CZ					242 489	242 489	0,00%
DE	150 372	1 759		152 131	5 455 436	5 607 567	2,71%
DK	544			544	67 648	68 192	0,80%
FI					51 954	51 954	0,00%
FR	19 711			19 711	198 394	218 105	9,04%
HU	8 826			8 826	1 012 927	1 021 753	0,86%
IE					60 052	60 052	0,00%
IT					10 119	10 119	0,00%
NL	536	77 018		77 018	1 148 104	1 225 658	6,33%
SE					74 636	74 636	0,00%
SI					21 059	25 882	0,00%
Total	190 065	78 777	0	268 842	10 156 599	10 430 264	2,58%

* EAGGF financial year starts on 16 October of one year and ends on 15 October of the following year.

The Regulation provides for either partly or total non-payment of the refunds (Articles 5 and 6) or recovery of payment if it is established after payment that Regulation (EC) No 1/2005 has not been complied with (Article 7).

A comparison from 2005 to 2009 as regards the amount involved shows the following result:

The amount of unpaid or recovered refunds had been decreasing between 2005 and 2008. Nevertheless, in 2009 the amount of unpaid or recovered refunds increased. The decrease of 2008 is now followed by an increase from 214 278 EUR unpaid and recovered refunds in 2008 to 268 842 in 2009 (excluding recovery still running). In 2008 the amount of refused and recovered (including recovery still running) represented 2,27% of the refunds requested; in 2009 this was 2,58% of the total amount of refunds requested.

Table 5: Comparison of unpaid or recovered declarations, animals and refunds (2005–2009)*, **

	Partly or completely non payment	Payment definitively recovered	Total
Declarations 2009	95	32	127
Animals 2009	1 306	597	1 903
EUR 2009	190 065	78 777	268 842
Declarations 2008	91	21	112

Animals 2008	1344	565	1 909
EUR 2008	110 096	104 182	214 278

Declarations 2007	170	69	239
Animals 2007	2 781	1 138	3 919
EUR 2007	432 484	115 196	547 680

Declarations 2006	189	74	263
Animals 2006	1478	1 148	2 626
EUR 2006	365 063	276 150	641 213

Declarations 2005	521	64	585
Animals 2005	9 758	1 119	10 887
EUR 2005	2 684 996	295 897	2 980 893

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- * Does not include recovery still running;
** For the data available since 2002 see the previous reports.

3.2.5 The reasons for non-payment and recovery of refunds for live animals in 2009

According to the requirements of Article 8(d) of Regulation (EC) No 639/2003 Member States communicated the information shown in table 6 and explanations below that table to the Commission on the reasons for the non-payment and the recovery of the refund for the animals referred to in Articles 8(b) and 8(c) of the same Regulation. Following the amendment introduced in the reporting obligations by Regulation (EC) No 354/2006 according to Article 8(d) of Regulation (EC) 639/2003 Member States have to report the number of those animals recorded under category B (animals that gave birth or aborted during transport), C (other animals not in conformity) or D (dead animals). Detailed information can be found in the following table and the summary per Member State.

Table 6:

Member State	Live animals exported with refunds	B (animals that gave birth or aborted during transport)		C (other animals not in conformity)		D (dead)		Total (B + C + D)	
		animals	% of live animals exported with refunds	animals	% of live animals exported with refunds	animals	% of live animals exported with refunds	animals	% of live animals exported with refunds
AT	8 707			70	0,804%			70	0,804%
DE	32 654	21	0,064%	867	2,655%	17	0,052%	905	2,772%
FR	2 205			147	6,667%	1	0,045%	148	6,712%
HU	8 363	5	0,060%	88	1,052%	3	0,036%	96	1,148%
NL	12 086	12	0,099%	573	4,741%	10	0,083%	595	4,923%
Total EU	66 408	38	0,057%	1 745	2,628%	31	0,047%	1814*	2,732%

* The total number of 1 814 animals covers only the specific welfare aspects under B, C and D of annex I, II and III of Regulation (EC) No 639/2003. The total of 1 903 animals in table 5 covers all irregularities including administrative aspects.

Explanations provided by Member States on the reasons for the non-payment and the recovery of the refund

Denmark

- Four animals were over the age of 30 months;

Germany

- Failure to comply with transport and rest periods;
- Death / calving during transport;
- Remarks of the veterinarian in the control report according to Annexes I to III of Regulation (EC) No 639/2003;
- Check reports not submitted or not submitted in time;
- Check reports not formally recognised;

France

- For 61 animals the incomplete veterinary report from the exit point of the EU;
- For 75 animals the veterinary report not received yet from the exit point of the EU;
- For 11 animals means of transport not consistent;
- 1 animal died during transport;
- 1 heifer aborted during the quarantine at the destination;
- 1 heifer aborted after the quarantine at the destination;
- 6 heifers died in quarantine at the destination;

Hungary

- 2 animals calved during transport as shown in Section B of the check report drawn up in accordance with Annex III of Regulation (EC) No 639/2003;
- 3 animals aborted during transport as shown in Section B of the check report drawn up in accordance with Annex III of Regulation (EC) No 639/2003;
- 3 animals died during transport as shown in Section D of the check report drawn up in accordance with Annex III of Regulation (EC) No 639/2003;
- The veterinarian responsible for the control informed that 1 heifer suffered from a cardiac insufficiency, therefore the heifer was not fit for transportation. Few days later the heifer was slaughtered;
- The veterinarian has ascertained that 1 heifer was not fit for further transport;
- The veterinarian of the final destination in Russia stated in the report that 1 heifer had a hematoma on its back, contusion on its tail and backside;
- For 85 animals the veterinarian at the exit point remarked that the means of transport did not correspond to the point 3.3 Chapter VI of Annex I of Regulation (EC) No 1/2005 because the means of transport was not fitted with a temperature monitoring system as well as with a means of recording such data;

The Netherlands

Non-payment of the refund:

- In the case of 2 declarations, it turned out that 2 animals had calved before being unloaded in the third country of final destination;
- In the case of 1 declaration, it turned out that 1 animal was not released into free circulation in the country of destination;
- In the case of 1 declaration, it turned out that 1 animal stayed behind within the EU customs territory because it had a broken leg and could not be transported further;

Recovery of the refund:

- In the case of 1 declaration, it turned out that as a result of an accident involving the lorry in the country of destination 2 animals aborted, 9 animals were not released into free circulation in the country of destination and in respect of 14 animals Regulation (EC) No 1/2005 was not complied with because of various injuries;
- In the case of 6 declarations for 6 animals, it turned out that they had calved before being unloaded in the third country of final destination;
- In the case of 2 declarations, it turned out that 2 animals had aborted during transport;
- In the case of 5 declarations for 169 animals in total, the VWA (Voedsel- en Waren Autoriteit – Food and foodstuff authority) established that the journey time as laid down in Regulation (EC) No 1/2005 had been exceeded;
- In the case of 12 declarations for 388 animals in total, it turned out that the transporter was not able to prove that the welfare requirements had been fully complied with as regards journey, rest and feeding times;
- In the case of 1 declaration, it turned out that during unloading 1 animal was lame, thereby not complying with Regulation (EC) No 1/2005.

3.2.6 PENALTIES (Article 8 (da) of Regulation (EC) No 639/2003)

Germany, Hungary and the Netherlands communicated that they applied penalties.

Germany:

3 sanctions for 6 animals and 1 208,54 EUR of penalties imposed according to Article 6(1) of Regulation (EC) No 639/2003;

2 sanctions for 70 animals and 16 807,36 EUR of penalties imposed according to Article 6(2) of Regulation (EC) No 639/2003;

Hungary:

1 sanction for 2 animals and 276,00 EUR of penalties imposed according to Article 6 of Regulation (EC) No 639/2003;

The Netherlands:

1 sanction for 8 animals and 1 071,16 EUR of penalties imposed according to Article 6(2) of Regulation (EC) No 639/2003.

3.3 CLEARANCE OF ACCOUNTS BY THE COMMISSION

The system of checks on exports of live cattle for breeding - according to Regulation (EC) No 639/2003 and with reference to Regulations (EC) Nos 882/2004, 1/2005 and Regulation (EEC) No 3821/85⁶ on recording equipment in road transport - was examined during one audit enquiry in 2009. The enquiry took account of findings made by DG SANCO (FVO) and gave cause for serious remarks from DG AGRI.

Ongoing enquiries, performed in co-operation with the FVO, have reached the final stage and in one case a financial correction for non-compliance with provisions concerning welfare of live bovine animals exported with refunds will be proposed.

3.4. COMMUNICATION OF IRREGULARITIES BY MEMBER STATES

The Commission reminds Member States that irregularities with a financial impact greater than €10 000 (recovered or not yet recovered amounts) have to be communicated to the Commission (OLAF), pursuant to Commission Regulation (EC) No 1848/2006.

⁶ OJ L 370, 31.12.1985, p. 8.

ANNEX 1

Table 7

Annual report 2009, Regulation (EC) No 639/2003 - overview in terms of refunds in EUR												
Member State	Article 8(a) total number		Article 8 (b) refund not paid		Article 8 (b) refund partially not paid		Article 8 (c) refund recovered		Article 8 (e) refund not paid		Article 8 (f) recovery still running	
	declarations	animals	declarations	animals	declarations	animals	declarations	animals	€ not paid	€ recovered	declarations	€ amounts
AT	300	8 707	4	70					10 076			
CZ	26	851										
DE	1 065	32 654	30	933	32	43	5	6	150 372	1 759		
DK	22	495	2	4					544			
FI	14	424										
FR	77	2 205	11	156					19 711			
HU	259	8 363	12	96					8 826			
IT	2	70										
NL	369	12 086	4	4			27	591	536	77 018		
SE	1	36										
SI	2	48										
SK	15	469										
Total	2 152	66 408	63	1 263	32	43	32	597	190 065	78 777	0	0

ANNEX 2

Table 8

Annual report 2009, Regulation (EC) No 639/2003 - overview in terms of animals										
Member State	Article 8 (b) refund not paid		Article 8 (b) refund partially not paid		Article 8 (c) refund recovered		Total animals 8(b)+ 8(c)	Total animals exported (see table 3)	Total animals paid, recovered + not paid	% animals, refund not paid or recovered
	declarations	animals	declarations	animals	declarations	animals				
AT	4	70					70	8 707	8 777	0,80%
CZ								851	851	0,00%
DE	30	933	32	43	5	6	982	32 654	33 636	2,92%
DK	2	4					4	495	499	0,80%
FI								424	424	0,00%
FR	11	156					156	2 205	2 361	6,61%
HU	12	96					96	8 363	8 459	1,13%
IT								70	70	0,00%
NL	4	4			27	591	595	12 086	12 681	4,69%
SE								36	36	0,00%
SI								48	48	0,00%
SK								469	469	0,00%
Total	63	1 263	32	43	32	597	1 903	66 408	68 311	2,79%