COMMISSION DECISION

of 9 June 1999

on the aid scheme implemented by the United Kingdom in favour of pig producers in Northern Ireland

(notified under document number C(1999) 1602)

(Only the English version is authentic)

(1999/591/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 13 August 1998, registered on 14 August 1998, the United Kingdom notified the Commission of a new State aid scheme, the pig welfare slaughter scheme. This scheme provided for the payment of aid to pig producers in Northern Ireland of GBP 18 per pig to cover the cost of the slaughter and rendering of surplus pigs for which no normal market outlet can be found. Since it appeared that the United Kingdom had put this aid scheme into effect without awaiting approval by the Commission, this aid scheme was entered in the register of non-notified aid under the number NN 96/98.

(2) By letter of 1 September 1998, registered on 2 September 1998, the United Kingdom informed the Commission that owing to a lack of response from farmers, the pig welfare slaughter scheme would be replaced by a new aid scheme, the pig welfare slaughter compensation scheme. In addition to the aid payments for slaughter and rendering of surplus pigs envisaged under the previous scheme, the new scheme provided for compensation payments for producers of overweight clean pigs (that is to say, pigs of a minimum live weight of 110 kg excluding in-pig gilts and breeding sows and boars) of up to GBP 30 per head. Since it appeared that the United Kingdom had put this aid scheme into effect without awaiting approval by the Commission, this aid scheme was entered in the register of non-notified aid under the number NN 95/98.

(3) Since in their letter of 27 October 1998, the United Kingdom authorities had confirmed that no aid payments had been made under the pig welfare slaughter scheme, and since that scheme had been entirely replaced by the pig welfare slaughter compensation scheme, the Commission decided to close the file on aid NN 96/98, concluding that this measure had been withdrawn by the United Kingdom.

(4) By letter dated 21 January 1999, the Commission informed the United Kingdom of its decision to initiate the procedure under Article 88(2) of the EC Treaty in respect of the payment of compensation of up to GBP 30 per animal slaughtered. In the same letter, the Commission informed the United Kingdom of its decision not to raise objections to the payments for slaughtering and rendering surplus pigs. Comments from the United Kingdom were received by letter dated 23 February 1999.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid.

The Commission has received comments from the Ulster Farmers' Union, the North of Ireland Veterinary Association, Ulster Pork and Bacon Forum and the Northern Ireland Grain Trade Association. It has forwarded them to the United Kingdom, which was given the opportunity to react; by letter of 3 May 1999, the United Kingdom informed the Commission that it did not wish to submit any further comments.

II. DESCRIPTION OF THE MEASURE

(6) Following an accidental fire on 20 June 1998, the major pig slaughtering plant in Ballymoney, Northern Ireland, was destroyed, leading to the loss of an estimated 40 %

[1] OJ C 67, 10.3.1999, p. 6.

[2] See footnote 1.

of the slaughtering and butchering capacity for pigs in the region. This led to severe financial and practical difficulties for pig producers in Northern Ireland. Many producers were left with nowhere to take their animals for slaughter and butchering. By the middle of August 1998 the situation had become critical, with some 20 000 to 30 000 pigs awaiting slaughter, and the position was deteriorating by the day. Consideration was given to the possibility of transporting these animals to slaughterhouses in Great Britain or the Republic of Ireland, but the overall depressed market situation and disease control restrictions militated against this. Thus producers were left with an increasing number of animals which were basically unsaleable. Furthermore, as a result of the increasing backlog of pigs on the farms, serious animal welfare problems had arisen due to overcrowding and feeding difficulties. The animals were faced with overcrowding, heat stress and tail-biting, causing them unnecessary suffering.

(7) Under the pig welfare slaughter compensation scheme producers were given one week, commencing on 1 September 1998, to submit applications to have overweight pigs entered for the scheme. The Northern Ireland authorities arranged for, and met, the costs of the slaughtering and rendering of the animals (about GBP 15 per animal). In addition, the producers were to receive GBP 30 per animal, or 60% of the adjusted Eurospec price for Great Britain/Northern Ireland, whichever was the lesser. In total 15 571 overweight pigs were slaughtered, and attracted compensation of GBP 30 each, leading to a total compensation bill of GBP 467 130. To this were added slaughter and disposal costs of about GBP 232 800, bringing the total cost of the scheme to about GBP 700 000. The scheme was open for one week only, and the animals were slaughtered within 10 days and subsequently destroyed.

(8) In its decision to open the procedure, the Commission considered that the payment of compensation of GBP 30 per pig slaughtered clearly constituted aid within the meaning of Article 87(1) of the Treaty. The payments in question were granted in favour of certain pig producers in Northern Ireland. The withdrawal from a market, which according to the United Kingdom authorities themselves was seriously depressed, of over 15 000 pigs may threaten to distort competition and affect trade between Member States. Furthermore, the Commission noted that the effect, and indeed the objective, of the aid payments was to provide financial support for the worst-affected pig farmers in Northern Ireland. A unilateral decision by a Member State to grant financial support to certain producers in a market which is highly integrated at Community level, and where substantial intra-Community trade takes place must be considered to threaten to distort competition.

(9) Although the United Kingdom referred to Article 87(2)(b) of the Treaty, and suggested that measure should be regarded as aid to make good the damage caused by an exceptional occurrence, the Commission doubted that the aid measure could be considered to fall within the scope of that provision. In particular, the Commission doubted that a fire occurring at a single processing facility could be considered to constitute an exceptional occurrence, and noted that no aid was being paid to the owner of the facility. Furthermore, the fire had not caused any material damage to producers, who were being compensated for economic losses alone.

(10) Nevertheless, the Commission accepted that at the relevant time the Northern Ireland pig market was beset by a very unusual combination of circumstances, and the Commission therefore considered whether the aid might fall within the scope of the derogation provided for by Article 87(3)(c) of the Treaty. In view of the very specific problems caused by the fire, including a build up of animals which had become virtually unsaleable, and the resultant animal welfare problems, the Commission accepted that a one-off measure to remove surplus animals could be considered to contribute to the economic development of the sector. Accordingly, the Commission decided to consider the aid of GBP 15 per animal to cover slaughter and rendering costs to be compatible with the common market in accordance with Article 87(3)(c) of the Treaty.

(11) However, the Commission doubted whether the same considerations applied to the compensatory payment of GBP 30 per animal slaughtered. In particular, the Commission noted that in principle aids in the agricultural sector which are paid per unit of production are regarded as operating aids which are transitory and which, in the absence of a counterpart from the beneficiary, in no way benefit the development of the sector concerned. Furthermore, by paying compensation for production which was otherwise unsaleable, the aid at least threatened to distort the conditions of competition by reinforcing the competitive position of the traders concerned. In this context, the Commission also expressed doubts as to the extent to which the particular situation arising in Northern Ireland was due to the fire, and to what extent it was due to the generally depressed state of the pig market at that time.

(12) The Commission also noted that the aid was notified on 1 September 1998, the same day that the scheme was brought into effect. The Commission therefore considered that the aid had been granted by the United Kingdom in breach of its obligations under Article 88(3) of the Treaty, since the Commission had not been informed of the scheme in sufficient time to enable it to submit its comments.

III. COMMENTS FROM INTERESTED PARTIES

(13) The Commission has received comments from the Ulster Farmers' Union (UFU), the North of Ireland Veterinary Association (NIVA), Ulster Pork and Bacon Forum and

the Northern Ireland Grain Trade Association (NIGTA), all of which express support for the payment of the aid and the arguments advanced by the United Kingdom. The respondents contest the view, expressed by the Commission at the opening of the procedure, that the fire should not be considered an exceptional event. One respondent, whilst accepting that the fire represented a normal entrepreneurial risk from the standpoint of the owner of the facility, argued that it should be looked at from the perspective of the pig producers, who lost 40 % of processing capacity in Northern Ireland overnight. From the producers' perspective, the fire cannot be considered a normal entrepreneurial risk but should be considered an exceptional occurrence.

(14) All four respondents emphasise the gravity of the welfare problem which had developed on pig farms in Northern Ireland as a result of the fire and the necessity of rapid remedial action on the part of the authorities. The lack of market outlets for the pigs led to a build-up of animals on the farms, leading to overcrowding, which resulted in outbreaks of pneumonia, tail-biting, rectal prolapse and other consequent diseases. As the pigs gained weight, they became unsaleable, because pig processing and slaughter lines are not built to accommodate animals exceeding 110 kg liveweight. The NIVA describes the welfare situation as intolerable. The NIVA and the UFU both consider that the payment of compensation was justified, while the NIGTA considers that the government had no option but to pay compensation in order to secure the cooperation of farmers with emergency slaughter arrangements.

(15) Furthermore, the respondents argue that the scheme did not distort competition or affect trade between Member States. In this context the UFU submitted detailed information about the movement of pig prices in Northern Ireland before and after the fire, together with evidence to suggest that the difficulties confronting the producers were due to the fire and not to the general depression in the pig industry.

IV. **COMMENTS FROM THE UNITED KINGDOM**

(16) In their comments, the United Kingdom authorities emphasise the importance of animal welfare, and their belief that the actions undertaken were essential to end the severe suffering of animals.

(17) In the first instance, the United Kingdom authorities welcome the Commission's decision not to raise objections to the payment of aid of approximately GBP 15 to cover the slaughter and disposal costs of the animals concerned. They note that the decision is based on the derogation provided for by Article 87(3)(c) of the Treaty and accept and support the Commmission's view that the removal from farms in Northern Ireland of excess numbers of overweight pigs with no normal market outlet, in order to prevent suffering, is a measure that can be considered to facilitate the development of certain economic activities. They agree that there was a common interest in arranging for the humane slaughter of animals for which no normal market outlet could be found and with the description of the steps taken to ensure that the animals were destroyed and not used for human consumption. They therefore support the Commission's view that the payment of the aid did not affect trading interests to an extent contrary to the common tnterest.

(18) Nevertheless, the United Kingdom authorities also maintain as a matter of principle their opinion that the fire at the Ballymoney processing plant did constitute an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. They do not accept that the sudden total inability of a producer to sell a product in his usual market at any price, owing to circumstances unrelated to the market situation, and without any change in levels of consumer demand, coupled with the almost total inability to transport this product for sale at any price in other markets, due to restrictions on animal movements, can be considered to fall within the normal parameters of entrepreneurial risk.

(19) However, the United Kingdom authorities limit their substantive comments to the doubts expressed by the Commission about the compensatory payment of GBP 30 per animal which accompanied the payment of slaughter and disposal costs.

(20) They accept that this measure constitutes an aid within the meaning of Article 87(1) of the Treaty.

(21) In view of the doubts expressed by the Commission that this payment may constitute an operating aid and that the aid measure at least threatens to distort competition, the United Kingdom authorities seek to prove that the measure in question can be considered to facilitate the development of certain economic activities, that it has not adversely affected trading conditions to an extent contrary to the common interest, and that it can therefore qualify for the derogation in Article 87(3)(c) of the Treaty.

(22) The rationale for the intervention of the United Kingdom authorities was the exceptional animal welfare problem developing on farms. Large numbers of animals were suffering to an unacceptable degree. In support of this contention, the United Kingdom authorities provide extracts from the reports of field visits of official veterinarians to pig farms in Northern Ireland which describe instances of animals being housed in

overcrowded, unsuitable and uncomfortable accommodation, animals not being properly fed, piglets being drowned at birth, neck and tail-biting and fighting, traumatisation and cannibalism. The existence of these problems was confirmed by representations received from farmers themselves, from the farm Animal Welfare Council, and from the Association of Veterinary Surgeons for Northern Ireland. A threefold increase in the number of carcasses being rejected for neck lesions, which is indicative of overcrowding, was also noted at slaughterhouses. These problems were widely reported in the news media in Northern Ireland. In view of these concerns, the Department of Agriculture Northern Ireland (DANI) issued a press release to remind farmers of their welfare obligations on 6 August 1998. However action to alleviate the welfare problem was also considered necessary.

(23) The United Kingdom authorities explain that during July and August several options were considered to remove the affected animals from the farms.

(24) The first option considered was the forcible removal of the affected animals from farms using statutory powers under the Welfare of Animals Act (Northern Ireland) 1972 and the Police and Criminal Evidence Order (Northern Ireland) 1989. These give the competent authorities powers of entry onto farms, powers to seize and detain animals which are being treated cruelly, and powers to prosecute offenders. However, no powers are granted to destroy or otherwise dispose of the animals concerned. After careful consideration it was decided that the practical difficulties involved in the seizure and storage of a large number of animals, estimated at the time at about 28 000 animals spread over 2000 farms were insuperable. Visits to each farm by official veterinarians, accompanied by police officers, would have been necessary, and arrangements would have had to be made to transport and store any animal suffering from welfare problems. Furthermore, even if such an operation had been put into effect, it would not have provided a long-term solution to the problem, since the animals would ultimately have had to be returned to the owners.

(25) In the circumstances, the United Kingdom authorities decided that a solution to the problem would have to be sought in cooperation with the owners of the animals. They therefore introduced a scheme which would provide for payment by the State of the costs of slaughtering and disposing of pigs which had become overweight since the fire, and whose retention was giving rise to welfare problems. This was the pig welfare scheme, notified to the Commission on 13 August 1998 and entered in the register of non-notified aid under aid number NN 96/98. There was no response to this scheme by producers.

(26) Given the urgency of the situation, the United Kingdom authorities were then forced to consider the possibility of offering token compensation in order to secure the cooperation of the producers for the removal of the affected animals. This offer was made with the sole aim of removing the affected animals, and not with the aim of providing any hidden support for the pig sector. The United Kingdom authorities therefore consider that the compensation payments were analogous to the payment of GBP 15 for the slaughter and disposal of the animals, and should be considered for application of the derogation under Article 87(3)(c) of the Treaty in the same way.

(27) As to the question of whether the compensation payments adversely affected trading conditions to an extent contrary to the common interest, the United Kingdom authorities point out that the level of compensation was fixed in such a way as to avoid the risk of overcompensation. Pig prices were monitored during the week preceding the introduction of the scheme. The level of compensation chosen of GBP 30 per pig was in fact GBP 9,54 less than the average market price in Northern Ireland during the previous week, GBP 16,25 less than the market price in Great Britain, and GBP 20,09 less than the price in the Republic of Ireland during the same period. The United Kingdom authorities consider that this is clear proof that the compensatory payments did not exceed the market price which would have been paid for the animals had the Ballymoney plant still been in operation. This, together with the destruction of the animals, so that they were not used for human consumption, minimised any direct distortion of the market in favour of the beneficiaries.

(28) Whilst recognising that in theory the payment of compensation to producers might be argued to threaten to distort competition by reinforcing the competitive position of the producers concerned, and thereby affect trade between Member States, the United Kingdom authorities consider that such distortion was minimal and in any case did not affect trading conditions to an extent contrary to the common interest. They base this on a detailed comparison of the evolution of pig prices in Northern Ireland, Great Britain and the Republic of Ireland in the weeks following the implementation of the aid. They also cite the continued depressed state of the Northern Ireland pig market which means that there were some 300 fewer pig producers in December 1998 than in June 1998.

(29) In addition, the United Kingdom authorities note that before the fire at the Ballymoney plant, the Northern Ireland pig market had been very substantially self-contained, with only a very limited number of shipments to Great Britain in May and June 1998 (1 214 animals in total) and none at all to the Republic of Ireland. Following the fire, this number increased substantially as producers sought to find new outlets. This increase in shipments out of Northern Ireland meant that the backlog of animals which had built up in July and August 1998 did not recur. However, this solution could not be found immediately, since it took

time to set up the arrangements necessary to ensure that shipments to Great Britain complied, *inter alia*, with the conditions set out in Commission Decision 93/24/EEC [3] in relation to Aujeszky's disease and the certification requirements imposed by the Irish authorities in respect of porcine respiratory and reproductive syndrome.

(30) The United Kingdom authorities conclude by noting that had the effeet of the aid been to place Northern Ireland producers at a competitive advantage, pig producers elsewhere in the United Kingdom would have been disadvantaged most significantly. They consider that this was not the case, and that the aid would not have had a greater impact on producers in other Member States. The United Kingdom authorities therefore conclude that the aid has not affected trading conditions to an extent contrary to the common interest, and that the measure may therefore qualify for derogation under Article 87(3)(c) of the Treaty.

V. **ASSESSEMENT**

Article 87(1)

(31) Article 21 of Council Regulation (EEC) 2759/75 of 29 October 1975 on the common organisation of the market in pigmea [4] provides that Articles 87, 88 and 89 of the Treaty shall apply, save as otherwise provided in the Regulation, to the production of, and trade in the products referred to in Article 1 of the Regulation.

(32) Article 87(1) of the Treaty provides that any aid granted by a Member State or through State resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(33) In its decision to initiate the procedure, the Commission took the view that the measure in question clearly constitutes aid within the meaning of that provision. The payments in question were granted by the authorities of the United Kingdom in favour of certain pig producers in Northern Ireland. Those payments provided financial compensation for the destruction of animals which according to all the parties concerned were unsaleable under market conditions. A unilateral decision by a Member State to grant financial support to certain producers in a market which is highly integrated at Community level and is subject to a common market organisation, and where substantial intra-Community trade takes place, must be considered to threaten to distort competition and thereby affect trade between Member States.

(34) In their letter of 23 February 1999, the United Kingdom authorities have expressly recognised that the measure constitutes an aid within the meaning of Article 87(1) of the Treaty. There is therefore no need to examine this aspect.

(35) The prohibition on State aid contained in Article 87(1) of the Treaty is not unconditional; Articles 87(2) and (3) contain a series of derogations. The derogations contained in points (a) and (c) of Article 87(2) are manifestly inapplicable as are the derogations contained in points (a), (b) and (d) of Article 87(3). Neither the United Kingdom, nor any of the parties submitting comments have suggested that any of these derogations could apply to the measure in question. In order to justify the aid, the United Kingdom has referred to Article 87(2)(b) of the Treaty, and has suggested that measure should be considered aid to make good the damage caused by an exceptional occurrence. Alternatively, the United Kingdom has suggested that the aid may be considered to facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest, and may therefore qualify for derogation under Article 87(3)(c). It is therefore necessary to examine each of these provisions.

Article 87(2)(b)

(36) Article 87(2)(b) of the Treaty provides that aid to make good the damage caused by an exceptional occurrence is to be considered compatible with the common market.

(37) In its decision to initiate the procedure, the Commission expressed serious doubts as to whether the conditions for the application of this provision were fulfilled in this case. In general the Commission considered that the possibility of the closure of processing capacity as a result of an accidental event should be considered a normal entrepreneurial risk rather than an exceptional occurrence. In this context, the Commission, noted that the fire, although extensive, was limited to a single facility. In no case had the Commission hitherto accepted that a fire at a single processing plant could be considered an exceptional occurrence. Furthermore, no aid was being paid to the owner of the facility itself, who in fact appeared to be covered by normal commercial fire insurance.

(38) So far as the effects of the fire on the Northern Ireland pig producers were concerned, the Commission noted that the fire did not cause any material damage to their production facilities. The losses they incurred were as a result of an inability to find alternative market outlets to sell pigs which would otherwise have been sold for

[3] OJ L 16, 25.1.1993, p. 18.
[4] OJ L 282, 1.11.1975, p.1.

processing at the Ballymoney plant. Furthermore, the Commission was unsure to what extent the losses sustained by the producers were caused by the fire at the Ballymoney plant and to what extent they were the result of the generally depressed state of the pig market at the relevant time.

(39) In their written observations, the United Kingdom authorities maintain, as a matter of principle, their point of view was that the fire should be considered an exceptional occurrence, but do not introduce any new arguments in this respect. The respondents also maintain that the fire should be considered as an exceptional occurrence, with the exception of the Ulster Farmers' Union, which maintains that the fire was a normal risk for the owners of the processing plant, but not for the producers who depended on that plant to accept their pigs and who were severely disadvantaged by an event entirely outside their control.

(40) In the light of the information provided by the United Kingdom authorities and the respondents, which is discussed below, the Commission accepts that the fire at the Ballymoney plant would have caused substantial difficulties for pig producers in Northern Ireland, whatever the general state of the pig market at the time when the fire occurred.

(41) Nevertheless, the Commission remains of the opinion that the fire at the Ballymoney facility cannot be considered to constitute an exceptional occurrence within the meaning of Article 87(2) of the Treaty.

(42) In the first instance, it is necessary to point out that, being derogations from the general principle of incompatibility of State aid contained in Article 87(1), the provisions of Articles 87(2) and (3) are to be interpreted restrictively.

(43) Secondly, the Commission notes that as regards material loss, the main victims of the fire, the owners of the Ballymoney facility, are not receiving aid. Furthermore, none of the respondents has contradicted the statement in the opening of the procedure that it appears that the owners were covered by normal commercial fire insurance. The Commission therefore concludes that as regards the owners of the facility, the fire must be considered to constitute a normal commercial risk, and cannot therefore be considered an exceptional occurrence.

(44) The Commission cannot accept the argument that the fire should nevertheless be considered to constitute an exceptional occurrence because the Northern Ireland pig producers were suddenly deprived of the main outlet for their production due to circumstances entirely beyond their control. In economic terms the effects of the fire are the same as if the plant had closed for other reasons, for example because it was not profitable, or as a result of the insolvency of the owners. The Commission considers that in normal commercial transactions there is always a degree of risk, albeit small, that one of the parties may cease trading for reasons which are beyond the control of the other parties. Such events do not constitute exceptional occurrences within the meaning of Article 87(2)(b) of the Treaty, although they may justify the payment of aid under other provisions of Article 87, provided that the conditions laid down therein are met.

Article 87(3)(c)

(45) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(46) In its decision to initiate the procedure under Article 88(2) of the Treaty, the Commission accepted that the payment of GBP 15 to cover the slaughter and disposal costs of surplus pigs qualified for the derogation under Article 87(3)(c) of the Treaty. However, it expressed doubts whether the same considerations could apply to the payment of compensation of GBP 30 per pig slaughtered on the grounds that this appeared to constitute an operating aid. The United Kingdom and all the other respondents contest this assessment.

(47) Before the fire on 26 June 1998, the total number of pigs slaughtered in Northern Ireland was about 41 500 per week, of which about 16 500 were slaughtered and processed at the Ballymoney plant. The fire resulted in the total loss of this capacity.

(48) In their observations, the United Kingdom authorities have shown that the available alternative outlets for this production were extremely limited. Even if the remaining slaughtering and processing facilities in Northern Ireland had been able to increase their slaughter capacity, for example by working longer hours, their overall slaughter and processing capacity was limited by the absence of the necessary processing facilities, in particular cold storage facilities.

(49) As regards the possibility of arranging for the pigs concerned to be transported for slaughtering and processing outside Northern Ireland, the only two export markets of economic significance for live pigs for Northern Ireland are the Republic of Ireland and Great Britain. However the option of shipping pigs from Northern Ireland to Great Britain is limited, *inter alia*, by the conditions set out in Decision 93/24/EEC in relation to Aujeszky's disease, while the possibility of moving animals from Northern Ireland to the Irish Republic is limited by the conditions imposed by the Irish

authorities certification requirements for porcine respiratory and reproductive syndrome. The figures provided by the United Kingdom authorities show that in the period immediately before the fire the Northern Ireland pig market was almost entirely self-contained. No pigs at all were transported to the Irish Republic in May and June of 1998 and just 1 214 pigs (less than 0,5 % of total production) were shipped to Great Britain. After the fire, strenuous attempts were made by the sector to find alternative outlets, but it was not until October 1998 that the volume of animals transported from Northern Ireland exceeded the volume being processed at Ballymoney immediately before the fire.

(50) In the meantime a substantial backlog of animals was building up on farms in Northern Ireland. This backlog was accelerating rapidly because of the relatively short production cycle for pigs (in practice about five months), leading to overcrowding. Furthermore, it is necessary to note that a large number of animals were becoming practically unsaleable because once pigs reach a certain weight (about 110 kg) they become too heavy to be handled by the equipment in pig slaughter houses. The aid scheme implemented by the United Kingdom was solely intended to provide for the removal from farms and humane slaughter of these overweight pigs.

(51) It is clear that as a result of the overall situation, severe animal welfare problems were developing on farms. This is documented by the reports of on-the-spot inspections carried out by official veterinarians, by representations made by independent veterinarians to the competent authorities at the time and in the comments of the North of Ireland Veterinary Association submitted to the Commission in the context of this procedure. Indeed such was the level of concern that on 6 August 1998 the Department of Agriculture for Northern Ireland issued a press release to remind pig farmers of their welfare obligations.

(52) Against this background, the United Kingdom authorities first considered the possibility of invoking their legal powers to remove the affected animals from farms. However, they concluded that this was impracticable for operational and logistic reasons, and would not in any case resolve the problem (see recital 23). The Commission accepts these explanations.

(53) The United Kingdom authorities then introduced a limited aid scheme under which aid would be paid solely to cover the cost of slaughter and disposal of the animals concerned. However not a single producer participated in this scheme (recital 24).

(54) In its decision to initiate the procedure under Article 88(2), the Commission noted that at present the Commission does not have a well-defined policy on the payment of State aid to alleviate animal welfare problems. Nevertheless it noted that Community legislation has been concerned with this question, laying down certain minimum welfare standards. Furthermore, the Commission noted that the United Kingdom authorities had taken measures to minimise the effects of the scheme, in particular by ensuring that the slaughtered animals were destroyed and not used for human consumption. The Commission therefore considered that the removal from farms in Northern Ireland of excess numbers of overweight pigs which have no normal market outlet, and their slaughter under humane conditions, was a measure which could be considered to facilitate the development of certain economic activities. In the light of the explanations provided by the United Kingdom authorities, the Commission now accepts that the decision to pay token compensation to producers was taken only after exhaustive consideration of the alternatives, and was necessary in order to secure cooperation from the producers.

(55) The Commission therefore concludes that the measure can be regarded as analogous to the decision to pay GBP 15 to cover the slaughter and disposal costs of the animals concerned.

(56) Since the measure can in principle be accepted as aid to facilitate the development of certain economic activities, it is necessary to consider whether the aid has in fact affected trading conditions to an extent contrary to the common market.

(57) As the United Kingdom authorities point out in their observations, the aid of GBP 30 per pig was in fact substantially below the average Northern Ireland pig price during the week preceding the week in which the scheme applied. The table below summarises average pig prices in Great Britain, Northern Ireland and the Republic of Ireland, expressed in pounds sterling, in the week before the Ballymoney fire, the week immediately before the scheme was introduced, and the four weeks after the scheme, when the effects of the withdrawal of the slaughtered pigs would be at their greatest.

	Producer prices per pig in GBP, week ending					
	14.6.1998	30.8.1998	6.9.1998	13.9.1998	20.9.1998	27.9.1998
Great Britain	64,33	46,25	44,86	43,03	43,41	42,92
Northern Ireland	59,55	39,54	37,45	35,90	35,15	34,17
Republic of Ireland	57,51	50,09	50,00	50,39	51,26	50,70

(58) These figures show that while prices in all three markets had fallen between the date of the Ballymoney fire and the introduction of the scheme, as a result of the generally depressed state of the sector, the fall in prices in Northern Ireland had been somewhat greater. Moreover, even after the introduction of the scheme, prices continued to fall in Northern Ireland at a faster rate than in Great Britain, while prices in the Republic of Ireland remained broadly stable. Furthermore, throughout the relevant period, the amount of aid remained substantially below the market price for pigs in Northern Ireland.

(59) In addition, the amount of aid paid, which represented the only return for the producers, was substantially below the cost of production of the animals concerned. Since they had to carry a large proportion of the loss, it appears extremely unlikely that the aid might have strengthened the competitive position of the beneficiaries at the expense of other producers to an extent beyond that which was strictly necessary to attain the objectives of the scheme.

(60) For the reasons given above, the Commission considers that the aid of GBP 30 paid to certain pig producers in Northern Ireland in order to secure their cooperation in the humane removal from farms and destruction of overweight surplus pigs which had no normal market outlet can be considered to facilitate the development of the Northern Ireland pig sector without adversely affecting trading conditions to an extent contrary to the common interest.

(61) Furthermore, given that the aid was granted for animal welfare reasons only in respect of overweight pigs, which were otherwise unsaleable, in order to reduce overcrowding on farms, and given that the United Kingdom authorities ensured that the meat obtained from such animals was destroyed and not used for human consumption and, lastly, given the limited amount of compensation paid, the Commission also considers that it can rule out the possibility that the aid measure interfered with the mechanisms of the common organisation of the market in pigmeat in a manner contrary to Regulation (EEC) 2759/75.

VI. **CONCLUSIONS**

(62) The Commission finds that the United Kingdom has unlawfully implemented the pig welfare slaughter compensation scheme contrary to Article 88(3) of the Treaty. However, for the reasons given above, the Commission considers that the aid scheme meets the conditions for the application of the derogation provided for by Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of GBP 30 per pig slaughtered under the pig welfare slaughter compensation scheme implemented in the United Kingdom (Northern Ireland) in September 1998 is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 9 June 1999.

For the Commission
Franz FISCHLER
Member of the Commission