II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 December 2004

concerning the levy on meat purchases (rendering levy) implemented in France

(notified under document number C(2004) 4770)

(Only the French text is authentic)

(2005/474/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, 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) Following a complaint, the Commission asked the French authorities on 15 April 1999 for information concerning a levy on meat purchases (hereinafter the rendering levy) to finance rendering activities on French territory. The French authorities replied by letter dated 12 May 1999.

(2) The Commission had already initiated the infringement proceedings provided for in Article 226 of the Treaty against the rendering levy [2]. A letter of formal notice had been sent to France on 29 July 1998. This was followed by a reasoned opinion on 18 September 2000. The Commission decided to drop the proceedings on 26 June 2002.

(3) The measure was entered in the register of non-notified aid measures under number NN 17/2001. An addendum to the complaint was received in March 2001. In the meantime, the Commission received another complaint raising the same points as the first.

(4) By letter dated 10 July 2002, the Commission notified France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty with respect to the rendering levy.

(5) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission asked the other Member States and interested parties to submit their comments on the aid scheme.

(6) The French authorities sent their comments by letter dated 10 October 2002. The Commission received comments from third parties, which were forwarded to the French authorities by letter dated 11 February 2003 and to which the French authorities replied by letter dated 9 April 2003. The French authorities were asked for additional information by letter dated 14 July 2004, which was sent by letter dated 23 September 2004.

[1] OJ C 226, 21.9.2002, p. 2.
[2] No A/97/4309.
[3] See footnote 1.

(7) This Decision concerns only the financing of the public rendering service (hereinafter referred to as the PRS) between 1 January 1997 and 31 December 2002, the year in which the investigation procedure was initiated. The financing of the PRS from 1 January 2003 is being dealt with under State Aid No NN 8/2004.

(8) The rendering levy was abolished as from 1 January 2004. The PRS is now financed by the proceeds of a 'slaughter levy', against which the Commission did not raise any objections [1]. During examination of that levy, the French authorities sent the Commission information that was relevant to the present case, in particular by letter dated 29 December 2003.

II. **DESCRIPTION**

1. *THE RENDERING LEVY*

(9) The rendering levy was introduced by Article 302*bis* ZD of the French *Code général des impôts* (General Tax Code), itself introduced by Article 1 of French Law No 96-1139 of 26 December 1996 on the collection and destruction of animal carcases and slaughterhouse waste and amending the *Code rural* (Rural Code) [2]. Under that provision, the levy entered into force on 1 January 1997.

(10) Law No 96-1139 amended Article 264 of the French *Code rural*, which now lays down that 'the collection and destruction of animal carcases, meat and offal seized at slaughterhouses and recognised as being unfit for human or animal consumption are tasks that come within the remit of the State'.

(11) On the other hand, under Article 271 of the *Code rural*, also amended by the above Law, 'the destruction of material seized under the veterinary regulations other than that referred to in Article 264 and of animal waste from slaughterhouses or establishments in which animal foodstuffs and foodstuffs of animal origin are handled or prepared is not within the remit of the public rendering service. This is the sole responsibility of the slaughterhouses and establishments concerned. Except where they themselves are approved or registered for that purpose, they must entrust the treatment of such material to establishments approved or registered for that purpose by the authorities.'

(12) The remit of the public service covers the collection of fallen stock on national territory, in particular animals killed in French slaughterhouses and unsuitable for human consumption. Carcases are collected only where the animal, or the lot, weighs a minimum of 40 kg. The legislation explicitly excludes the use of the PRS financed by the rendering levy by persons who own or hold an animal carcass and 'could' hand it over to an approved person, without, however, being obliged to do so (Article 265 II of the *Code Rural*). This therefore excludes all pets owned by private individuals, who pay for the rendering services provided.

(13) The prefects select the private undertakings to carry out rendering by means of a tendering procedure, the rules on which are laid down in the *Code rural*. The specifications stipulate how payment is to be made for the work awarded to the successful tenderer, this payment being exclusive of any payment received from users of the public service. Accordingly, the rendering undertakings providing the PRS must provide their collection and destruction services free of charge to users (mainly livestock farmers and slaughterhouses) and are paid exclusively by the State (Article 264-2 of the *Code rural*).

(14) The rendering levy applies to purchases of meat and other specified products by all retailers of those products.

(15) The levy is in theory due from anyone who carries out retail sales. The taxable base is the value net of VAT of purchases from any source of:

— fresh, cooked, chilled or frozen meats and offal of poultry, rabbit and game, of animals of the bovine, ovine, caprine and porcine species and of horses, asses and their crosses,

— salted meats, cured meat products, lard, preserved meats and processed offal,

— meat- and offal-based animal feed.

Undertakings whose turnover in the previous calendar year is less than FRF 2 500 000 [3] (EUR 381 122) excluding VAT are exempt from payment of the levy. The rate of the levy is 0,5 % on monthly purchases of up to FRF 125 000 (EUR 19 056) excluding VAT and 0,9 % on monthly purchases above that amount. It was subsequently increased to 2,1 % and 3,9 % respectively (see recital 18).

[1] State Aid N 515/2003, letter to the French authorities No C(2004) 936 final of 30 March 2004.

[2] *Journal officiel de la République française* (JORF) 301, 27.12.1996, p. 19184.

[3] On the basis of FRF 1 = EUR 0,15.

(16) Initially, i.e. from 1 January 1997, revenue from the levy was paid into an *ad hoc* fund used to finance the collection and destruction of animal carcases and material seized at slaughterhouses and recognised as being unfit for human or animal consumption, i.e. the activities defined under Article 264 of the *Code rural* as falling within the remit of a public service. The fund was managed by the *Centre national pour l'aménagement des structures des exploitations agricoles* (*CNASEA* - The National Centre for the Development of Farm Structures).

(17) Law No 98-546 of 2 July 1998 laying down various economic and financial provisions ([1]) imposed an additional levy on the same operators during the period from 1 July to 31 December 1998, mainly to finance the destruction of mammal meal not in compliance with Community rules on the deactivation of bovine spongiform encephalopathy (BSE) agents, and in particular expenditure on purchasing, transporting, storing and processing such meal. Undertakings whose turnover in the previous calendar year was less than FRF 3 500 000 (EUR 533 571) excluding VAT were exempted from this additional levy. The rate of the levy was 0,3 % on monthly purchases of up to FRF 125 000 (EUR 19 056) excluding VAT and 0,5 % on monthly purchases above that amount

(18) Article 35 of the *Loi de finances rectificative pour 2000* (Amending Finance Act for 2000) (Law No 2000-1353 of 30 December 2000) ([2]) made a number of amendments to the rendering levy scheme, which entered into force on 1 January 2001. These amendments are claimed to be to offset the effects of the BSE crisis and the resulting extra costs. Consequently, the scope of the levy was also extended to cover 'other meat products'. The levy was increased to 2,1 % on monthly purchases of up to FRF 125 000 (EUR 19 056) and 3,9 % on monthly purchases above that amount. In addition, all undertakings with a turnover in the previous calendar year of less than FRF 5 000 000 (EUR 762 245) excluding VAT were exempt from the levy. Finally, as from 31 December 2000, revenue from the levy was assigned directly to the national budget rather than to the fund referred to in recital 16.

(19) This increase in the rendering levy is claimed, among other things, to be in response to the need to destroy not only animal carcases and material seized at slaughterhouses and recognised as being unfit for human or animal consumption, of which there is probably more than in the past because of the BSE crisis, and the parts of carcases that were previously used for manufacturing animal meal and other products, but also animal meal whose use was temporarily banned by Council Decision 2000/766/EC of 4 December 2000 concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal proteins ([3]).

([1]) JORF 152, 3.7.1998, p. 10127.

([2]) JORF 303, 31.12.2000, p. 21177.

([3]) OJ L 306, 7.12.2000, p. 32. Decision repealed by Commission Regulation (EC) No 1234/2003 (OJ L 173, 11.7.2003, p. 6).

2. *THE ARGUMENTS PUT FORWARD BY THE COMMISSION WHEN OPENING THE INVESTIGATION PROCEDURE*

2.1. REGARDING THE EXISTENCE OF AID

(20) Article 86(2) of the Treaty lays down that undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in that Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.

(21) The French authorities consider that the measures financed are in the public interest. In principle, the Commission has no objection to the decision to make the rendering service a public service, which is justified on the grounds of public health and the protection of the environment. However, the Commission asked the French authorities to detail all the measures financed from the rendering levy so that it could assess its scope. It would appear that activities not provided for in Law No 96-1139, such as the destruction of animal meal banned from sale, are also financed from the levy.

(22) The Court of Justice of the European Communities has ruled ([4]) that Article 86(2) is to be interpreted as meaning that it does not cover a public aid paid to undertakings entrusted with the operation of services of general economic interest in so far as that aid exceeds the additional costs of performing the public service. When the investigation procedure was opened, there were a number of cases before the Court in which the issue was whether a measure must be considered State aid within the meaning of Article 87(1) of the Treaty if the advantage enjoyed by certain undertakings does not exceed the additional costs they bear to fulfil the public service obligations imposed by national legislation. The Commission took the view that it had therefore first of all to be determined whether the public payments made to rendering undertakings could be considered to be the financing of a public service. It had then to be determined whether those payments exceeded the costs to those undertakings of carrying out those activities.

([4]) Judgment of the Court in Case No C-53/2000 Ferring SA v Agence centrale des organismes de sécurité sociale (ACOSS) [2001] ECR I-9067.

(23) When the investigation procedure was opened, however, the Commission did not have all the information required to determine whether all the criteria for the introduction of a public service had been fulfilled. In order to be able to reach a conclusion on the nature of the tendering procedures used to select the rendering undertakings, the Commission asked the French authorities for full details of the procedures so that it could decide whether they complied with the rules, and in particular with Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts ([1]), in the light of judgments handed down by the Court of Justice in this field ([2]).

(24) The Commission also sought details of the impact of the aid on the undertakings concerned and proof that it covered only the additional costs of performing the services carried out in the general interest and that it could not have been diverted to other competitive activities that those undertakings might carry out. The Commission, while accepting that the rendering service might be a service of general economic interest, was of the opinion that there were, when the investigation procedure was opened, a number of doubts regarding the effects of the aid on the direct beneficiaries of the service and the way in which the service was financed.

(25) When the investigation procedure was opened, point 5.6.2 of the Community Guidelines for State aid in the agriculture sector ([3]) (hereafter referred to as the agricultural guidelines) provided for aid in the agricultural sector, such as aid for the collection, recovery and processing of waste of agricultural origin, to be examined on a case-by-case basis. That examination had to be made in the light of the principles set out in the EC Treaty and the Community guidelines on State aid for environmental protection ([4]). According to those guidelines, where such aid is indispensable, it must only compensate for extra production costs by comparison with the market price of the products or services concerned. Such aid must also be temporary and, as a general rule, degressive, so as to provide an incentive for prices to reflect costs reasonably rapidly. The Commission also based its position on point 11.4.5 of the agricultural guidelines regarding the combating of animal diseases.

(26) However, in France, the beneficiary agricultural holdings and slaughterhouses did not appear to make any contribution to the expenditure involved in providing the service. The Commission therefore took the view that the aid might not fulfil the conditions laid down by Community rules and therefore had doubts regarding the compatibility of the aid, which covered the cost to agricultural holdings and slaughterhouses of collecting and destroying animal carcases and meat and offal seized at slaughterhouses.

(27) Under the French scheme, the beneficiary agricultural holdings and slaughterhouses did not appear to make any contribution to the cost of processing the animal carcases. In addition, the service seemed to be free on a permanent and non-degressive basis. In the case of State aid NN 76/2000 ([5]), the Commission took the view that aid for the removal of carcases served to stop the practice of farmers burning, burying or abandoning highly contaminating carcases that were harmful to the environment and to health. The Commission also pointed out that it does not usually authorise operating aid that reduces the financial cost to undertakings of the pollution or harmful effects for which they are responsible. The Commission notes that derogations from that principle have already been granted, in particular for waste management. When the investigation procedure was opened, the Commission had no information indicating that permanent and non-degressive aid to cover the cost of collecting and processing carcases was necessary and consequently justifiable, particularly as part of a comprehensive programme to combat certain diseases and/or to protect human health. The Commission also noted that the French legislation introducing the obligation to remove carcases did not apply to all farmers.

([1]) OJ L 209, 24.7.1992, p. 1. Directive repealed by Directive 2004/18/EC of the European Parliament and of the Council (OJ L 134, 30.4.2004, p. 114).

([2]) In particular, Judgment of the Court in Case C-324/98 Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG [2000] ECR I-10745.

([3]) OJ C 28, 1.2.2000, p. 2.

([4]) OJ C 72, 10.3.1994, p. 3 when the aid scheme was introduced, subsequently replaced by the guidelines published in OJ C 37, 3.2.2001, p. 3.

([5]) Commission Decision of 4 October 2000 in the case of State Aid No NN 76/2000 - Measures to promote the quality and hygiene standards of milk and livestock products (OJ C 334, 25.11.2000, p. 4).

(28) As regards meat and offal seized at slaughterhouses, at the time the investigation procedure was opened, the Commission authorised the national authorities to cover 100 % of certain costs normally borne by producers but only in very specific situations. The Commission took the view that the aid provided by means of the rendering service *vis-à-vis* animal waste recognised as unfit for consumption might fulfil the conditions laid down in point 11.4.5 of the agricultural guidelines and benefit from the derogation provided for in Article 87(3)(c) of the Treaty. However, in order to grant that derogation, the Commission asked the French authorities to show, in the case of each species of animal covered by the service, that all the waste was from sick animals or animals whose destruction was intended to prevent the spread of an animal disease. This also applied to the additional levy imposed from 1 July to 31 December 1998.

(29) As regards marketing undertakings exempted from payment of the levy, at the time the investigation procedure was opened the Commission had reason to believe that aid there was covered by point 3.5 of the agricultural guidelines. This lays down that, in order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary. In the case in point, the exemption appeared to reduce costs without providing any incentive or requiring any counterpart on the part of the beneficiary and its compatibility with the competition rules was not, at the time the investigation procedure was opened, proven.

(30) As regards the destruction of animal meal, at the time the investigation procedure was opened the Commission was not in a position to decide whether or not the financing of the destruction complied with the rules since it did not know for exactly what type of product the aid was paid or whether the aid had been paid for meal produced after the introduction of the Community ban in December 2000. Nor did the Commission know whether the aid paid for destruction was such as to overcompensate either the owners of the meal or the undertakings responsible for destroying it. The Commission asked the French authorities to specify the type of products for which the aid was paid and their date of production and to provide information showing how any overcompensation was avoided.

2.2. THE FINANCING OF THE AID

(31) Before 31 December 2000, the PRS was financed by means of a parafiscal charge imposed on retailers of meat and meat products. Revenue from the levy was paid into a fund via which it was managed. The Commission pointed out that it normally took the view that the financing of State aid by means of compulsory charges could affect the aid in that it may have a protective effect going beyond the actual aid itself and consequently aid may not be financed by means of parafiscal charges that also affect products imported from other Member States. At the time the investigation procedure was opened, the Commission was of the opinion that imposing the levy on products imported from other Member States to finance the rendering service may be incompatible with the competition rules and that the State aid so financed may be incompatible with the Treaty.

(32) From 1 January 2001, revenue from the levy was assigned directly to the national budget. The Commission pointed out that, in accordance with its usual practice, it takes the view that, generally speaking, the payment of the revenue from a levy into the national budget makes it impossible to trace the link between that levy and a particular service provided and financed by the national authorities. It is therefore impossible to say that a levy discriminates against other products since the revenue from the levy becomes merged with other Government revenue and the financing of the aid cannot be directly attributed to the levy.

(33) However, there were serious doubts as to whether the link between the revenue and the use made of it had been broken, since it appeared that, after being paid into the budget, the revenue from the levy was allocated to a specific chapter for the Ministry of Agriculture and subsequently transferred to the budget of the *CNASEA*, the body responsible for the financial management of the rendering service ([1]). Furthermore, the revenue from the levy and the amount of financing provided for the service were almost identical.

(34) The Court of Justice has acknowledged that the possible existence of a link between a system of taxation and an aid scheme represents a serious difficulty in determining whether that scheme is compatible with the provisions of the Treaty and that, under such circumstances, only by initiating the procedure provided for in Article 88(2) of the Treaty can the Commission be in a position to appreciate the issues raised in complaints lodged regarding those provisions ([2]).

([1]) *Rapport Collectif budgétaire pour 2000*, Document No 2775, Volume II.

([2]) Judgment of the Court in Case C-204/97 Portuguese Republic v Commission of the European Communities [2001] ECR I-3175.

(35) At the time the investigation procedure was opened, the Commission was not in a position to decide whether or not the scheme was compatible with the Treaty since it potentially discriminated against products imported from other Member States, on which the levy was also imposed.

(36) The Commission pointed out that, so long as the financing of a State aid was considered to be incompatible with the competition rules, the aid so financed must also be considered to be incompatible. In fact, it is a necessary condition for aid being declared compatible that its method of financing is in compliance with the rules.

2.3. ARTICLE 86(2) OF THE TREATY

(37) The Commission also said that any infringement of the competition rules justifiable under Article 86(2) of the Treaty must be limited to the measures strictly necessary for the operation of a service of general economic interest. However, at the time the investigation procedure was opened the Commission did not see how the smooth operation of the scheme and the service of general economic interest required that the rendering service be provided to farmers and slaughterhouses free of charge. Similarly, the Commission could not see why the smooth operation of the rendering service required the payment of what was possibly operating aid to undertakings not subject to the levy or payments to rendering undertakings that were possibly above what was necessary to cover the net cost of providing the rendering service. Neither did it understand why it was necessary to impose the levy on products from other Member States.

(38) Finally, the Commission could not, at the time the investigation procedure was opened, rule out the possibility that the total effect of the French rendering scheme could affect trade between Member States to an extent contrary to the Community interest, thus making Article 86(2) of the Treaty inapplicable. As stated above, the scheme could affect both trade in meat and slaughterhouse services.

3. *OTHER RELEVANT FACTS*

(39) As stated in the second recital, on 18 September 2000 the Commission issued a reasoned opinion on the rendering levy. In that opinion, the Commission noted that the rendering levy scheme constituted a discriminatory tax measure incompatible with Article 90 of the Treaty because it was applied to meat imported from other Member States whereas only French meat producers had access to the PRS financed by the product of the levy.

(40) In addition, under Article 234 of the Treaty, the Lyon Administrative Court of Appeal referred a question to the Court of Justice for a preliminary ruling concerning the interpretation of Article 87(1) of the Treaty [1] with regard to the rendering levy. The Court gave its judgment in this case on 20 November 2003 (hereafter the GEMO case).

(41) In the GEMO case, the Lyon Administrative Court of Appeal asked the Court of Justice to give a preliminary ruling on whether the levy on purchases of meat provided for in Article 302 ZD of the *Code général des impôts* could be regarded as aid within the meaning of Article 87 of the Treaty.

(42) The Court replied that the State was responsible for the collection and destruction of animal carcases and slaughterhouse waste from French livestock farmers and slaughterhouses. The Court concluded that the correct interpretation of Article 87(1) of the Treaty was that a scheme that provided, for livestock farmers and slaughterhouses, for the collection and destruction free of charge of slaughterhouse waste was State aid.

III. **COMMENTS SUBMITTED BY THIRD PARTIES**

(43) The interested parties submitted the following comments, which were forwarded to the French authorities on 11 February 2003.

1. *COMMENTS SUBMITTED BY INTERESTED UNDERTAKINGS*

(44) The undertakings submitting the following comments requested that their identity remain confidential. The Commission, after examining the reasons given, took the view that their request should be granted.

(45) According to these undertakings, the rendering levy is aid within the meaning of Article 87 of the Treaty in favour, in particular, of livestock farmers and slaughterhouses. Therefore, under Article 87(1) of Treaty, by releasing livestock farmers and slaughterhouse from a financial burden, the rendering levy gives a financial advantage to 'certain undertakings', affecting 'trade between Member States' and 'distort(ing) competition', by reducing the cost of French meat exports and burdening meat imports with the cost of destroying dangerous livestock products, a cost they already bear in their country of origin.

[1] Judgment of the Court of 20 November 2003 in Case C-126/01 Ministry of Economic Affairs, Finance and Industry v S.A. GEMO. Not yet published.

(46) Furthermore, they claim the measure is illegal, since it was not notified to the Commission. A final Commission decision that the aid is compatible would not regularise *ex post* the rules implementing the aid since they were adopted in infringement of the prohibition laid down in Article 88(3) of the Treaty. They assert that this in itself makes the aid incompatible.

(47) Finally, they argue that the rendering service is not covered by Article 86(2) of the Treaty. So, although the rendering service must be financed somehow, it does not have to be financed by means of incompatible aid. Financing could perfectly well be provided by a charge on users of the service that would then be reflected in the price paid for meat by consumers. In addition, the levy discriminates between national products and similar imported products in a way likely to affect the development of trade to such an extent as is contrary to the interests of the Community. They claim that this prevents the application of Article 86(2) of the Treaty.

2. *COMMENTS SUBMITTED BY THE L'ASSOCIATION DES ENTREPRISES DE PRODUITS ALIMENTAIRES ÉLABORÉS (ADEPALE) (ASSOCIATION OF FOOD PROCESSING INDUSTRIES)*

(48) ADEPALE points out that the levy was introduced against the background of serious problems in destroying bovine carcases following the outbreak of BSE. However, most of the carcases that had to be destroyed were from dairy cattle, which produce meat only incidentally. Consequently, ADEPALE considers that imposing the levy specifically on 'meat' and totally exempting milk products is unacceptable. More generally, if a levy had to be imposed on the sectors producing carcases to be destroyed, this should at least have been done in a non-discriminatory way. Therefore egg products should also have been included.

(49) Since the levy is applies to the value of meat products containing at least 10 % by weight of meat, it affects the various and varied ingredients of prepared dishes, such as plant products, packaging and, more generally, the fixed overheads and labour costs of undertakings producing prepared dishes. ADEPALE rejects the threshold of 10 % chosen by the French administration and takes the view that a meat product is a product in which meat accounts for most of the product weight.

(50) ADEPALE also points out that the levy is, in practice, a tax on consumption, imposed in a discriminatory manner on the retail price of certain products. This results in a significant difference in the competitiveness of products containing more than 10 % meat and all other foodstuffs, i.e. milk products, egg products, plant products and all prepared products containing less than 10 % meat.

(51) Finally, if the reason for the levy is to ensure public health, the financing of health monitoring is in theory, according ADEPALE, covered by Council Directive 96/43/EC amending and consolidating Directive 85/73/EEC in order to ensure financing of veterinary inspections and controls on live animals and certain animal products and amending Directives 90/675/EEC and 91/496/EEC [1] and its transposal into French law.

3. *COMMENTS SUBMITTED BY THE FÉDÉRATION DES ENTREPRISES DU COMMERCE ET DE LA DISTRIBUTION (FCD) (FEDERATION OF TRADERS AND DISTRIBUTORS)*

(52) The FCD already took the view that the aid conferred two advantages, reducing the business risks that rendering undertakings normally had to face and eliminating a cost normally borne by livestock farmers and slaughterhouses, as producers of carcases and material seized at slaughterhouses.

(53) The FCD stressed in particular that the French mechanism for financing the PRS was not compatible with Article 86(2) of the Treaty because no satisfactory measures had been introduced to ensure effective competition when public contracts were awarded for the rendering service and because the financing overcompensated for the cost of the service.

(54) The FCD also pointed out that the public financing received by the French rendering undertakings was intended not only to finance the PRS as defined by the legislation, but also to finance other activities not falling within the scope of that legislation, such as the destruction of animal meal produced both before and after the Community ban of December 2000, for which aid of EUR 205 million was paid to rendering undertakings as an emergency measure and without an invitation to tender.

[1] OJ L 162, 1.7.1996, p. 1.

(55) The FCD complained about a new illegal State aid introduced in 2002 and financed by means of the levy on meat purchases, granted to small butchers who themselves destroy the bones of the spinal column in direct contact with the spinal cord of bovine animals of more than 12 months old. They alleged that the aid amounted to EUR 20 million.

4. *COMMENTS SUBMITTED BY SPAIN*

(56) Spain criticises the fact that the scheme discriminates against imports of meat and meat products from other countries, since a levy was imposed on them but nothing was given in return and that the product of the levy solely benefited French livestock farmers and slaughterhouses.

(57) It argues that the situation was aggravated in Spain by the abolition of all national aid with effect from 1 January 2002 and claim that all the costs of destroying meat waste were already included in the price of exported products. With regard to fallen animals on holdings, they state that all aid was abolished from that same date and any expenditure incurred by farmers was covered by an insurance scheme.

IV. **COMMENTS SUBMITTED BY FRANCE**

(58) By letter dated 10 October 2002, the French authorities presented their comments on the Commission's Decision to initiate the procedure provided for in Article 88(2) of the Treaty with regard to the aid in question. In response to a request from the Commission, additional information was sent by letter dated 23 September 2004.

(59) The French authorities deemed it necessary briefly to recall the general financing of the PRS. They explained that the PRS was established by Law No 96-1139 of 26 December 1996 against the background of the BSE crisis. This Law forms part of a health system comprising two basic Decrees:

— a Decree of 28 June 1996 amending a Decree of 30 December 1991 and providing for the incineration of finished products manufactured from high-risk material, defined as farm animals not slaughtered for human consumption, other animal carcases, animals slaughtered as a disease-control measure, animal waste presenting clinical signs of a disease communicable to man or other animals, animals dying during transport and animal waste presenting a risk to human or animal health,

— a Decree of 10 September 1996 suspending the marketing and release for consumption of certain ruminant tissue and of products incorporating such tissue, known as specified risk material (SRM). This Decree suspended the marketing and use of the brain, the spinal cord and the eyes of certain bovine, ovine and caprine animals on the same conditions as high-risk products.

(60) These Decrees, adopted to ensure consumer health, prohibited, as a precautionary measure, the introduction of the listed products into the food chain and made their incineration obligatory. According to the French authorities, these provisions were pointless unless they formed part of a system that guaranteed total effectiveness. This was not the case with the rendering scheme laid down by Law No 75-1336 of 31 December 1975 supplementing and amending the *Code rural* as regards the rendering industry [1], which was based on adding value to the products collected by the rendering undertaking in exchange for a monopoly on collection in a given area.

(61) Under these conditions, the French authorities decided to establish a public rendering service responsible for collecting and destroying all specified high-risk material intended for incineration.

(62) Article 264 of the *Code rural*, as amended by Law No 96-1139 of 26 December 1996, lays down that 'the collection and destruction of animal carcases and meat and offal seized at slaughterhouses recognised as being unfit for human or animal consumption are tasks that come within the remit of the State'.

(63) Since the adoption of Law No 2001-1275 of 28 December 2001, the previsions have explicitly mentioned SRM, which the PRS dealt with in the form of material seized at slaughterhouses.

[1] JORF, 3.1.1976, p. 150.

(64) The French authorities pointed out to the Commission that the PRS only covered products presenting a risk to human or animal health, i.e. approximately 10 % of animal waste in 1996, with other by-products of animal production continuing to be collected under contracts governed by private law. This increased to 30 % as from 2000, because the list of specified risk material was extended. This scheme differs from that established by Decree No 2000-1166 of 1 December 2000 ([1]) instituting a compensation scheme for manufacturers of certain meals and fats prohibited in the manufacture of animal feedingstuffs by the Decree of 14 November 2000. This latter scheme was notified to the Commission on 18 January 2002.

(65) With regard to meal, the French authorities point out that the PRS is only responsible for the incineration of meal manufactured from the products collected by the PRS. It does not finance the incineration of products resulting from the ban on using meal in animal feedingstuffs.

(66) The PRS was financed from 1 January 1997 to 31 December 2000 by a levy, provided for in Article 1 of Law No 96-1139 of 26 December 1996, the product of which was paid into a fund managed by the *CNASEA*. From 1 January 2001, the service was financed from the national budget.

1. *REGARDING THE EXISTENCE OF AID TO RENDERING UNDERTAKINGS*

(67) The French authorities point out that, under points 27 to 48 of the Decision to open the procedure, the Commission admits that the PRS, justified for reasons of public health and environmental protection, could be of general interest within the meaning of Article 86(2) of the Treaty. The Commission questioned, in particular, the remuneration from public funds of the undertakings responsible for the PRS.

(68) The French authorities explained that the total amount paid to rendering undertakings for the period 1997-2002 was EUR 828 552 389 and corresponded to the total expenditure on the public rendering service (PRS). Amounts were paid to the undertakings either following the award of public contracts or following requisition orders. Invitations to tender were usually issued at departmental or regional level, as were requisitions, for which prefectoral decrees were issued.

(69) Given the rules for awarding public contracts and those governing requisitions, the French authorities take the view that the payments made could not have had an impact on any competitive activities of the beneficiary undertakings.

(70) The French authorities state that, under Article 264-2 of the *Code rural*, as amended by Decree No 96-1229 of 27 December 1996 on the public rendering service and amending the *Code rural* ([2]), as amended by Decree No 97-1005 of 30 October 1997 ([3]), the PRS is subject to the procedures for the award of public contracts. Thus, Article 264-2 of the *Code rural* lays down in particular:

'I – The prefect shall, in each department, be responsible for establishing a public rendering service and shall conclude, in accordance with the procedures laid down in the Code des Marches Publics, the necessary contracts, for which he shall be the responsible person within the meaning of Article 44 of that Code. However where the nature of the operations justifies, contracts may be concluded with the same undertaking, for all or part of the service, for several departments […].

II – Notwithstanding paragraph I of this Article, certain contracts necessary for establishing the public rendering service may be concluded at national level where technical or economic considerations justify coordination at that level […]'.

(71) The French authorities explain that, under Article 264-2 of the *Code rural*, these contracts include a set of administrative clauses stipulating the nature of the services covered by the contract, the method of payment for the operations that the successful tender is to provide, that payment being exclusive of all payments received from users of the public service, and information concerning evaluation of the quality of the service, and a set of technical specifications setting out the technical conditions for the collection, transport, processing and, where necessary, destruction of animal carcases and slaughterhouse waste in accordance with health requirements.

([1]) JORF 279, 2.12.2000, p. 19178.

([2]) JORF 204, 31.12.1996, p. 19697.

([3]) JORF 255, 1.11.1997, p. 15908.

(72) On this basis, public contracts were awarded as follows:

— in 1997, departmental tendering procedures included three lots: collection, processing into meal and incineration of the meal. In almost all cases, no contracts were awarded for incineration, which explains why substantial stocks built up of meal from products collected by the public rendering service,

— in 1998, contracts were awarded at departmental level only for collection and processing into meal. A national invitation to tender was issued but was unsuccessful owing to a lack of suitable infrastructures. Cement factories, which appeared to be the most suitable installations in the urgency situation prevailing in which to incinerate the meal as a substitute fuel, had to carry out technical adjustments and were not necessarily located in the regions producing the animal waste concerned,

— in 1999 and 2000, the contracts for collection and processing were renewed at departmental level and contracts for incineration were awarded only in those departments 'producing' meal, either because they had a processing installation or because they had stocks of meal.

(73) The French authorities stressed that the majority of the public contract procedures did not allow services essential to the smooth operation of the PRS to be provided.

(74) The French authorities had, on numerous occasions and in particular for the incineration of meal, to use requisitions because of the emergency situation and for reasons of health and public order. These requisitions were issued under Order No 59-63 of 6 January 1959 on the requisition of goods and services ([1]) and implementing Decree No 62-367 of 26 March 1962 ([2]).

(75) According to these provisions, remuneration for requisitioned services must take the form of compensation covering solely proven, direct, material loss incurred by the service provider as a result of the requisition. The compensation takes account exclusively of the actual, necessary expenditure declared by the service provider in respect of remuneration of work, depreciation and return on capital, assessed on normal bases. No compensation is payable, however, for the loss of potential profit suffered by the service provider as a result of the loss of the free disposal of the facilities requisitioned and of the free pursuit of his occupation.

(76) The French authorities sent a table summarising, by year and by department, the public contracts awarded and the requisitions issued. The table was drawn up following a survey of the departments.

(77) The French authorities explained that public contracts were concluded, preferably at departmental level, for varying periods (from six months to three years). Requisitions were necessary to overcome problems caused by unsuccessful tendering procedures, to ensure the continued operation of the public rendering service while contracts were being prepared or to cope with sudden increases in the quantities and changes in the nature of by-products to be destroyed as new health-protection measures were adopted.

(78) The table referred to in recital 76 shows how requisitions were used from the time the PRS was set up in 1997 to deal with the health emergency. Subsequently, public contracts were awarded on a regular basis for the collection and processing of by-products from 1998 to 2000. As from 2000, it became difficult to renew contracts because of very substantial changes in the range of risk material concerned. In 2001, regional tendering procedures were launched based on a national model in accordance with the new *Code des marchés publics* but were unsuccessful and, in view of the emergency situation, the use of requisitions became the norm as from 2002. Consequently, the French authorities state that they did not want to commit themselves to long-term contracts because of the legal incertitude cast on the French scheme by the initial discussions on the draft Commission Guidelines.

(79) In this legal context, several undertakings provide rendering services. The most important ones, *CAILLAUD, SARIA, FERSO-BIO* and *Équarrissage Moderne du Var*, have thirteen installations processing raw waste from the PRS into animal meal. Other undertakings, such as *VERDANNET* and *SOTRAMO*, only collect waste. Four other undertakings, the cement manufacturers, *LAFARGE, CALCIA, VICAT* and *HOLCIM*, are only involved in incinerating meal.

([1]) JORF, 8.1.1959, p. 548.
([2]) JORF, 4.4.1962, p. 3542.

(80) The French authorities state that, at all stages of collection and processing, PRS waste is treated separately. Processing is carried out in installations specifically authorised by decree as installations approved to treat high-risk material. In view of their specialised nature, the processing of PRS material accounts for almost the entire activity of these installations. The services provided can consequently be precisely identified. Payments for these services can therefore be estimated at an average of 30 % of the turnover of the industrial processors.

(81) In conclusion, given that the PRS was established by means of a legislative act and in view of the rules on the award of public contracts and requisitions, the French authorities consider that the payments made to the undertakings providing the PRS do not exceed the additional cost of fulfilling their obligations.

2. *REGARDING THE EXISTENCE OF AID TO LIVESTOCK FARMERS AND SLAUGHTERHOUSES*

(82) The French authorities point out that the Commission takes the view that totally exempting livestock farmers and slaughterhouses from payment for the collection of carcases and waste could constitute aid in that they should be responsible for the cost of collecting and destroying waste. Even if aid could be justified for the purpose of combating disease, the Commission considers that it could be incompatible with the common market in that it goes beyond the measures authorised under the agricultural guidelines.

(83) Firstly, the French authorities draw the Commission's attention to the special nature of the meat market over the period from 1996 to 2000. Indeed, while carcases and other waste were recognised as unsuitable for consumption in France and had to be incinerated under the Decrees of 28 June and 10 September 1996, the same products continued to be processed in the other Member States.

(84) At Community level, the Decisions requiring the withdrawal from the market and the destruction of the products concerned took effect only on 1 October 2000 for specified risk material, under Commission Decision 2000/418/EC regulating the use of material presenting risks as regards transmissible spongiform encephalopathies and amending Decision 94/474/EC [1], and on 1 March 2001, under Commission Decision 2001/25/EC prohibiting the use of certain animal by-products in animal feed [2].

(85) In the absence of harmonisation, according to the French authorities, for four years the price of beef and veal in the other Member States, which took account of any cost involved in collecting carcases and other waste, could also be regarded as taking account of the value added to those products. In France, exemption from the cost of rendering those same products might have had an impact on the price of beef and veal but, according to the French authorities, this could not have been greater than the impact of the cost, downstream, of the rendering levy.

(86) The French authorities are of the opinion that, if the effect of establishing the PRS had been to reduce the price of meat, this would have conferred a clear advantage on exports of French meat to the other Member States, but claim that this was not the case. They also argue that there was no increase in exports to the United Kingdom, the only Member State in which, because of the extent of the BSE crisis, a large-scale system for processing and incinerating carcases had been set up.

(87) If the Commission were to conclude that there was aid within the meaning of Article 87 of the Treaty, the French authorities take the view that this is justified as a measure forming part of a mechanism to combat animal diseases. Its compatibility could be examined in the light of the working paper of 10 November 1986, applicable when the public rendering service was established or the agricultural guidelines, and in particular points 11.4 *et seq*. The measures adopted in France have only one objective, i.e. to eliminate any risk of contamination.

(88) On whatever basis the Commission chooses, in the opinion of the French authorities the aid can be authorised since Community and national provisions allow an official framework to be established for combating diseases, with a view, in particular, to eradicating them by means of compulsory measures for which compensation is paid. In this case, measures to combat BSE were clearly part of a whole series of measures adopted at the both Community and national level.

[1] OJ L 158, 30.6.2000, p. 76. Decision repealed by Regulation (EC) No 1326/2001 (OJ L 177, 30.6.2001, p. 60).

[2] OJ L 6, 11.1.2001, p. 16 Decision repealed by Regulation (EC) No 446/2004 (OJ L 72, 11.3.2004, p. 62).

(89) The BSE crisis demonstrated the risk to health of using carcases and waste designated as 'high-risk' and specified risk material in animal feedingstuffs. Against this background, products considered to be dangerous must be completely destroyed under conditions that prevent any risks to human and animal health.

(90) With regard to carcases, the French authorities affirm that the Commission itself realised the need to prohibit the use of these products by banning the use in feed intended for livestock not only of animals slaughtered on holdings as part of disease control measures by also of all bovine animals, sheep, goats, solipeds and poultry dying on holdings but not slaughtered for human consumption (abovementioned Decision 2001/25/EC).

(91) The French authorities state that, in addition, it appeared that in the other Member States involved the withdrawal of carcases from the animal food chain in 2001 led to the adoption of official provisions giving the authorities full responsibility for the destruction of carcases.

(92) For the French authorities, material seized at slaughterhouses falls into the same category of products posing a risk to human and animal health. It consists of products declared unfit for human consumption, the list of which was laid down in the Decree of 17 March 1992 on the conditions that installations slaughtering animals for the production and marketing of fresh meat must satisfy and laying down the rules for health inspections of those establishments and the Decree of 8 June 1996 laying down rules for *post mortem* health inspections of poultry and transposing various Community health Directives.

(93) During collection and processing, carcases and material seized at slaughterhouses, including SRM, are kept separate from other waste.

(94) Accordingly, the French authorities take the view that the measures financed by the PRS are justified as measures to combat animal diseases.

3. *REGARDING THE EXISTENCE OF AID TO UNDERTAKINGS EXEMPTED FROM PAYMENT OF THE LEVY*

(95) Regarding the possible existence of aid to undertakings exempted from payment of the levy provided for in Article 1 of Law No 96-1139 of 26 December 1996 and codified in Article 302*bis* ZD of the *Code général des impôts*, the French authorities put forward the following arguments.

(96) From 1997 to 2000, the levy was due from all persons making retail sales of meat and other products such as salted meats, cured meat products, lard, preserved meats, processed offal and meat- and offal-based animal feed and whose turnover during the previous calendar year was at least FRF 2,5 million excluding VAT.

(97) Article 35 of the *Loi de finances rectificative pour 2000* extended the levy to all meat products.

(98) As from 1 January 2001, the rate of the levy was increased from 0,6 % to 2,1 % on monthly purchases of up to FRF 125 000 and from 1,0 % to 3,9 % on monthly purchases above that amount. At the same time, the threshold for the levy was increased to FRF 5 million (EUR 763 000) excluding VAT.

(99) According to the French authorities, the threshold is fixed on the basis of an objective and rational criterion. Since it is calculated on the basis of the turnover of those liable to pay the levy, they claim that it does not distort competition between those concerned.

(100) They argue that the criterion is objective because in fixing the threshold no account of is taken of any consideration other than that of revenue. They argue that it is rational because the threshold is the same as that for the payment of VAT. The French authorities point out that the levy on meat purchases is collected and inspected according to the rules applicable to VAT. The same thresholds have been used for a range of different taxes, such as the tax on certain advertising expenditure, for example.

(101) In fact, the undertakings exempted from payment of the levy are primarily small butchers from which collecting the levy would have been too costly.

(102) In addition, the French authorities point out that, even if the Commission's argument that the choice of threshold could affect intra-Community trade is accepted, the consequences would be very limited in that:

— supermarkets obtain most of their supplies on the French market. Imports of meat from other Member States amount to approximately 16 % of all meat consumed in France and are mainly intended for home catering. Supermarkets do not therefore market substantial quantities of meat from other Member States,

— specialised butchers do not sell meat exclusively of regional or national origin. On the contrary, certain butcheries obtain most of their supplies abroad.

4. *REGARDING THE FINANCING OF THE SCHEME*

(103) The French authorities state that the Commission is of the opinion that the PRS might be financed by means of a tax that is incompatible with Article 90 of the Treaty, which prohibits discriminatory internal taxation. They refer, in particular, to the infringement proceedings initiated in 1998.

(104) On this point, the French authorities referred the Commission to the arguments put forward in their letter to the Commission dated 18 September 1998 in response to the letter giving formal notice dated 29 July 1998. In that letter, the French authorities concluded that the rendering levy fulfilled none of the criteria for being classified as a customs duty or a levy having an equivalent effect to a customs duty or even as discriminatory taxation within the meaning of the Treaty. However, they drew the Commission's attention to the fact that, in the interests of conciliation, the levy was assigned to the general national budget as from 1 January 2001 (Article 35 of the *Loi de finances rectificative pour 2000*).

(105) The French authorities consider the allegation that the link between the revenue from the levy and the use made of it was not broken on 1 January 2001 to be unfounded. The levy, in the same way as other comparable resources, is assigned to the general national budget and is not assigned to a specific chapter of expenditure by the Ministry of Agriculture. Since this Ministry is responsible for the operation of the PRS, it is essential that it be allocated appropriations for fulfilling this task. The French authorities give assurances that these appropriations under no circumstances come from the product of the levy.

(106) The French authorities point out that the purpose of Law No 96-1139 of 26 December 1996 was to lay down rules on the collection and destruction of animal carcases and slaughterhouse waste unfit for human consumption. It established the PRS and provided for its financing by means of a new levy. To that end, Law No 96-1139 amends both the *Code rural* and the *Code général des impôts*. The provision inserted in the *Code général des impôts* by Article 1 of Law No 96-1139 could have been inserted quite as legitimately in the 1997 *Loi de finances*. Nevertheless, for reasons of procedure, to ensure parallelism between new Government expenditure and the necessary revenue and because of their similar objectives, revenue from the levy at that time being intended to finance a fund from which the PRS would in turn be financed, Article 302*bis* ZD was inserted in the *Code général des impôts* by Law No 96-1139.

(107) The French authorities point out that the levy introduced by Article 302*bis* ZD of the *Code général des impôts* is a levy on meat purchases. Although commonly known as the 'rendering levy' because of its original objective, it was never officially called that. Article 1(B) of Law No 96-1139 stipulated that revenue from the levy collected under Article 302*bis* ZD of the *Code général des impôts* was assigned to a fund intended to finance the collection and destruction of carcases and slaughterhouse waste unfit for consumption.

(108) The *Loi de finances rectificative pour 2000* stopped the revenue from the levy on meat purchases going to the fund after 31 December 2000. Consequently, the levy on meat purchases, which has appeared as such in the tax revenue in the national budget since 1 January 2001, is no longer assigned to specific expenditure but is paid into the general national budget. The fund established by Law No 96-1139 is no longer financed. The funds were cleared and expenditure relating to the PRS is entered directly in the budget of the Ministry of Agriculture along with any other expenditure for which it is responsible. The *Loi de finances rectificative pour 2000* is an amending financial act, the purpose of which is not to amend the title of Law No 96-1139 of 26 December 1996, whose purpose remains the establishment of the PRS, but to amend the *Code général des impôts* and the method of financing the public service concerned by inserting a specific budget chapter.

(109) As regards changes in the amount of the levy after 2000, the French authorities state that they changed the rates and the base of the levy on meat purchases on 1 January 2001, when the revenue from it was assigned to the national budget. There were no other changes until 1 January 2004. The increases made in the *Loi de finances rectificative pour 2000* were intended, along with other tax and budgetary measures, to adjust Government expenditure and revenue.

(110) The French authorities admit that the financing of the PRS by the Ministry of Agriculture constituted significant new expenditure that had an impact on the rebalancing of Government financial resources carried out at the time. Since that date, the rate of the levy has not been indexed in line with the financing needs of the PRS. In addition, the French authorities explain that, as a result of the changes in the rates and base of the levy, since 2001 the revenue it has generated has been significantly greater than expenditure on the PRS for more general reasons of budgetary equilibrium (see Table 1).

(111) The French authorities specified that the financing assigned to the PRS was not used for ends other than financing the service. From 1997 to 2000, the fund managed by the *CNASEA* was used only for the collection, processing and incineration by the PRS of high-risk products. It could not have been used for any other purpose since, according to the French authorities, during that period, other rendering by-products were put to use.

(112) Furthermore, revenue from the levy was much lower than the cost of the PRS over that period. After 1 January 2001, the financing necessary for the operation of the PRS was allocated by Parliament on an annual basis to the Ministry of Agriculture, responsible for financing and operating the PRS. The amounts concerned were determined exclusively on the basis of forecasts of expenditure on the PRS without any account being taken of revenue from the levy.

(113) Finally, the French authorities point out that the revenue from the levy was assigned to a special fund intended to finance the PRS from 1997 to 2000 only. Over that period, the Ministry of Agriculture did not therefore allocate appropriations to cover expenditure on the PRS. Budget Chapter 44-71 was created in 2001. From 1997 to 2000, the fund to which revenue from the levy on meat purchases was assigned had no surpluses.

(114) According to the French authorities, after 1 January 2001, no correlation can be established between collection of the levy and appropriations assigned by the Ministry of Agriculture, which are allocated from national budgetary resources.

(115) Table 1, sent by the French authorities, shows the revenue from the levy and expenditure on the PRS. The total revenue from the rendering levy between 1997 and 2002 was EUR 1 337 676 215 and total expenditure on the PRS was EUR 828 552 389.

Table 1

(in EUR)

	Revenue from the levy recorded by the Treasury	Expenditure on the PRS	Revenue from the levy recorded by the Treasury	Budget assigned to the *CNASEA*	Expenditure on the PRS
1997	83 702 949	63 577 613			
1998	111 557 213	101 235 325			
1999	98 223 855	104 428 265			
2000	93 868 217	147 839 108			
Subtotal 1	387 352 234	417 080 311			
2001			423 083 271	185 684 975	181 777 656
2002			527 240 710	224 891 780	229 694 422
Subtotal 2			950 323 981	410 576 755	411 472 078

5. *REMARKS ON THE COMMENTS SUBMITTED BY THIRD PARTIES*

(116) By letter dated 9 April 2003, the French authorities responded to the comments submitted by third parties, putting forward the arguments set out below.

(117) Regarding the claim that the PRS does not fall within the scope of Article 86(2) of the Treaty, the French authorities take the view that the undertakings responsible for the PRS should be regarded as undertakings responsible for a service of general economic interest, for reasons in particular of the protection of public health.

(118) With regard to the comments of the FCD, the French authorities stress that the PRS collects and destroys high-risk products, of whatever origin, and that therefore all users of the PRS are treated equally.

(119) With regard to the alleged over-compensation provided by payments for the PRS, the French authorities argue that there cannot be any over-compensation in the payments made to the rendering undertakings, in that payment for the service is made under the procedures for the award of public contracts or under requisition procedures, meaning that compensation is granted for the proven, direct, material loss incurred by service providers in fulfilling the obligations placed on them.

(120) The French authorities explain that, contrary to what the FCD claims, the financing assigned to the PRS is not used to finance other activities not falling within the scope of the legislation concerned. Consequently, the PRS differs from the mechanism established to destroy meal following the ban on its use in animal feed.

(121) The French authorities point out that extending the remit of the PRS to cover all SRM, referred to by the FCD, was simply implementing the provisions of Regulation (EC) No 1774/2002 of the European Parliament and of the Council laying down health rules concerning animal by-products not intended for human consumption ([1]). Before the entry into force of that Regulation, the spinal columns of bovine animals of more than 12 months old were not considered to be SRM. According to the French authorities, all SRM, which was not referred to as such under French legislation, came under material seized at slaughterhouses. The French authorities claim that they specifically identified SRM in the legislation following the introduction of spinal columns in the list of SRM, although these are not removed at the slaughterhouse but rather on the butcher's premises. They argue that the amendment to the Law simply applied the principle of equal treatment, allowing all those holding SRM to benefit from the PRS on the same conditions.

(122) With regard to the comments made by the Spanish Government, the French authorities provided figures showing that Spanish exports of fresh and frozen meat to both non-member countries and other Member States have increased since 1995, unlike French exports, which have fallen. Under these circumstances, the French authorities take the view that the Spanish authorities cannot claim that the provision free of charge of the PRS in France has unfavourably modified the pattern of trade in meat, an argument for which they provide no supporting data.

V. **ASSESSMENT**

1. *ARTICLE 87(1) OF THE TREATY*

(123) In accordance with Article 87(1) of the Treaty, save as otherwise provided in the Treaty itself, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(124) Articles 87, 88 and 89 of the Treaty are applicable to the pigmeat sector pursuant to Article 21 of Council Regulation (EEC) No 2759/75 on the common organisation of the market in pigmeat ([2]). They are applicable to the beef and veal sector pursuant to Article 40 of Council Regulation (EC) No 1254/1999 on the common organisation of the market in beef and veal ([3]). Before the latter was adopted, they were applicable to that sector pursuant to Article 24 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ([4]). They are applicable to the poultrymeat sector pursuant to Article 19 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ([5]).

1.1. EXISTENCE OF A SELECTIVE ADVANTAGE FINANCED BY STATE RESOURCES

(125) The Court of Justice has already had occasion to express its views on the French public rendering service (PRS) in connection with the *GEMO* case. As the Court said in that case, pursuant to Article 87(1) of the Treaty it must be determined whether, under a given legal system, a State measure is likely to favour 'certain undertakings or the production of certain goods' over others. If that is so, the measure meets the condition of selectivity that is inherent in the concept of State aid in those provisions.

(126) Furthermore, according to the Court, assistance of any form whatsoever which is likely to favour certain undertakings directly or indirectly or which must be regarded as an economic advantage which the beneficiary undertaking would not have obtained under normal market conditions must be regarded as aid ([6]).

(127) In addition, according to the Court's case law, in particular measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are similar in character and have the same effect, are considered to constitute aid ([7]).

([1]) OJ L 273, 10.10.2002, p. 1. Regulation as last amended by Commission Regulation (EC) No 668/2004 (OJ L 112, 19.4.2004, p. 1).

([2]) OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1365/2000 (OJ L 156, 29.6.2000, p. 5).

([3]) OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Commission Regulation (EC) No 1899/2004 (OJ L 328, 30.10.2004, p. 67).

([4]) OJ L 148, 28.6.1968, p. 24. Regulation repealed by Regulation (EC) No 1254/1999.

([5]) OJ L 282, 1.11.1975, p. 77. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

([6]) Case C-280/00 Altmark [2003] ECR I-07747 and judgment of 22 November 2003 in joined Cases C-34/01 and C-38/01 Enirisorse (not yet published).

([7]) Case C-355/00 Freskot [2003] ECR I-5263.

(128) In the case in point, the system is financed by a parafiscal charge introduced by the authorities and the State is accordingly responsible for it, as the Court made clear, moreover, in its judgment in the GEMO case.

(129) The existence and indeed the nature of the aid must be established at the level of the potential beneficiaries of the PRS and the way it is financed. When it initiated the investigation, the Commission identified the following main categories of potential beneficiaries of the PRS:

— rendering undertakings,

— livestock farmers and slaughterhouses,

— holders of meat and bone meal,

— enterprises retailing meat with an annual turnover of less than FRF 2,5 million (FRF 5 million from 2001).

In the course of the investigation and on the basis of the information supplied to the Commission, a further category of beneficiaries was identified:

— butchers and cutting plants holding SRM.

1.1.1. ***Aid to rendering plants***

(130) When opening the investigation, the Commission took the view that it first had to decide whether the public money paid to rendering undertakings could be regarded as remuneration of an activity that could be considered a public service. Subsequently, it needed to decide whether such payments had exceeded the costs borne by those undertaking in the performance of those activities.

(131) According to the French legislation, rendering undertakings perform a public-service mission enshrined in law involving the collection and disposal of animal carcases and meat and offal seized at slaughterhouses and recognised as unfit for human or animal consumption.

(132) The Court of Justice pointed out in the GEMO case that according to Article 264-1 of the Rural Code, the PRS is assigned to undertakings awarded public procurement contracts concluded with the Prefects of each department.

(133) The fact that SRM is financed by the proceeds of a parafiscal charge levied on vendors of meat implies that the undertakings performing this service receive public funds to cover the costs of that service.

(134) Rendering is also an economic activity. In France, the sector is dominated by two major undertakings, which between them account for between 80 % and 90 % of the market and have a turnover, at least in one case, of over EUR 152 million [1].

(135) The Court of Justice's judgment of 24 July 2003 in the Altmark case [2] shows that public subsidies intended to allow public services to operate do not fall within the scope of Article 87 of the Treaty in so far as such subsidies should be regarded as compensation for the services performed by the recipient undertakings in discharge of public service obligations. Nonetheless, the Court requires the following conditions to be met:

(a) first, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined;

(b) second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner;

(c) third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;

(d) fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.

[1] Figures from French Senate Report No 131 (1996-97 session) by Roger Rigaudière.

[2] Case C-280/00, already mentioned.

(136) Recitals 137 to 153 below set out the Commission's remarks regarding the conditions laid down in the Altmark judgment.

(137) As regards the first condition, the PRS was laid down by French Act No 96-1139 of 26 December 1996, consolidated in Articles L 226-1 to L 226-10 of the Rural Code. Article L 226-1 of the Rural Code provides that:

'the collection and disposal of animal carcases, meat, offal and animal by-products seized at slaughterhouses and recognised as unfit for human or animal consumption, and of materials presenting a specific risk with respect to transmissible subacute spongiform encephalopathies, known as specified risk materials, the list of which has been laid down by the Minister responsible for agriculture, is a public-service function falling under State responsibility.'

(138) On the basis of the information available to it, the Commission considers that the first condition in the Altmark judgment is fulfilled.

(139) As regards the second condition, the Commission considers that the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner. Implementing Decree No 96-1229 of 27 December 1996 provides that the PRS is to be put out to tender for public procurement contracts under specific conditions.

(140) According to the French authorities, Article R 226-7 of the Rural Code provides in particular that the Prefect of each department is to be charged with the performance of the PRS and is to award the requisite contracts in accordance with the procedures laid down in the Public Procurement Code. By way of derogation, where this is justified on technical or economic grounds, the contracts are to be awarded at national level. Pursuant to Article R 226-10 of the Rural Code, such contracts are in particular to include administrative terms and conditions defining the nature of the services to be provided under the contract, the remuneration arrangements for the operations to be performed by the contractor, the information on which to base an assessment of the quality/cost of the service, the arrangements concerning public information on the organisation and operation of the service and technical specifications for the collection, transport, processing and, where applicable, destruction of animal carcases and slaughterhouse waste in compliance with the required health standards.

(141) The procedure for awarding public contracts, which fall within the scope of Annex IA of Directive 92/50/EEC, is therefore capable, according to the French authorities, of affording total transparency regarding the determination of the needs and nature of the services to be provided. Over 300 invitations to tender have been published in the *Official Journal of the European Communities*.

(142) Only where invitations to tender have been unsuccessful, i.e. where no bids or no suitable bids have been received, have requisition orders been made on the basis of the *Code général des collectivités territoriales* and in accordance with Order No 59-63 of 6 January 1959 and implementing Decree No 62-367 of 26 March 1962, which provide for remuneration in the form of compensation only covering necessary expenses actually incurred by the service provider, with no compensation for the loss of potential profit suffered by the latter through not being able to continue operating freely.

(143) The French authorities have forwarded a table to the Commission, with a breakdown by year and department, showing that rendering services have always been put out to tender or have involved requisition orders.

(144) On the basis of the information available to it, the Commission considers that the second condition in the Altmark judgment is fulfilled.

(145) As regards the third condition, the French authorities claim that the level of the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations. Putting the contracts out to tender has meant that those bidding have been forced to compete with each other and this has encouraged the emergence of the bid most advantageous to the authorities. Where invitations to tender have proved unsuccessful, as was pointed out above, requisition orders have been applied. Because the French regulations on requisition have been applied, the compensation has also been kept as low as possible.

(146) The regulations in force in France provide that remuneration for requisitioned services is to be paid in the form of compensation solely covering proven direct material loss incurred by the service provider as a result of the requisition. The compensation only covers all necessary expenditure actually incurred by the service provider in terms of remuneration of work, depreciation and return on capital, assessed on normal bases. No compensation is payable, however, for the loss of potential profit suffered by the service provider as a result of loss of the free disposal of the facilities requisitioned and of the freedom to continue operating.

(147) The third condition in the Altmark judgment calls for the following remarks. When the investigation into this case was initiated, the Commission asked the French authorities to supply it with all details relating in particular to aid paid to the undertakings concerned and evidence that it covered only the additional costs of performing a service of general economic interest within the meaning of Article 86(2) of the Treaty. The French authorities were also asked to show that resources could not have been diverted to other competitive activities that those undertakings might carry out (cross-subsidies).

(148) The Commission notes that the French authorities simply explained that the total sums paid to rendering undertakings for the period 1997 to 2002 amounted to EUR 828 552 389 and that this corresponds to the total cost of the PRS. The Commission can therefore state a position only on the basis of that information.

(149) In the case in point, the lack of more detailed information and figures covering payments made to rendering undertakings during the period 1997 to 2002 and proving that such payments have in no case exceeded the additional costs of providing the PRS means the Commission cannot be certain that the third condition in the Altmark judgment has actually been respected. In addition, lacking more precise information, the Commission has not been able to inquire into the existence of any cross-subsidies within those undertakings.

(150) These doubts are also confirmed by a report drafted in 1997 by the *Comité Permanent de Coordination des Inspections* (COPERCI Report) at the request of the French Agriculture Minister; according to the Report, 'the rendering undertakings may have benefited from generous hand-outs when the proceeds of the levy used to pay for their services was collected'; the Report goes on say that 'there is a potential risk of double payment for incineration operations since payments were made without the operations actually being performed' and that 'rendering, which was structurally in deficit before the BSE crisis, is now profitable again'.

(151) As a consequence, the Commission considers that it cannot be stated, as the Court requires, that the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations.

(152) It is, however, true that the complainants' claims were not backed up by precise figures on payments made to rendering undertakings and on the costs of operations arising from performance of the PRS showing that those undertakings received overcompensation. Furthermore, the fact that the proceeds of the levy and the cost of the PRS do not tally is not sufficient to demonstrate an imbalance between the payments made and the cost of rendering.

(153) In the light of the foregoing and the information provided by the French authorities, the Commission cannot therefore conclude that all the conditions set out in the Altmark judgment have been met and payments made to rendering undertakings are therefore not caught by the definition of State aid within the meaning of Article 87(1) of the Treaty.

(154) Even if the main beneficiaries of the measures financed by the charge were farmers and slaughterhouses (see point 1.1.2), the Commission cannot rule out an element of aid within the meaning of Article 87 of the Treaty in payments made to rendering undertakings.

1.1.2. *Aid for livestock farmers and slaughterhouses*

(155) In the GEMO case, the Court of Justice ruled that the fact that the collection and disposal of animal carcases and slaughterhouse waste which the farmers and slaughterhouses benefited from was performed by private undertakings could not affect their possible classification as State aid since the arrangements governing those activities were put in place by the authorities. They are therefore the responsibility of the State.

(156) The Court concluded that Article 87(1) of the Treaty must be interpreted to mean that a scheme that provides for the collection and removal of slaughterhouse waste free of charge for livestock farmers and slaughterhouses must be classified as State aid benefiting those farmers and slaughterhouses.

(157) In the case in point, there is no doubt about the fact that the measures for livestock farmers and slaughterhouses are financed by public resources, and in particular budget appropriations and/or the proceeds of a compulsory charge levied by the authorities.

1.1.3. ***Holders of meat and bone meal***

(158) Since the meat and bone meal concerned by the PRS comes from the processing of waste from the PRS and does not involve meal affected by the marketing ban in force since 2000, it must be concluded that the destruction of the meal is a necessary stage in the PRS and that the destruction of this material, which is of no commercial value, is an operation covered by the PRS. As a result, the disposal of this material must be examined in the same way as the 'aid to livestock farmers and slaughterhouses', since it simply represents an advanced stage in the destruction of the waste they produce. The cost of destroying the waste is part of the total cost that the producer of the waste is responsible for, and by bearing this cost on behalf of the producer, the State is simply offering the latter extra aid.

(159) The French authorities have provided assurances that the PRS defrays only the cost of incinerating meal produced by processing products collected in the performance of the service. It does not finance the incineration of products resulting from the ban on using the meal in animal feed. This issue is, moreover, being looked at by the Commission in relation to another measure currently under examination (NN 44/2002). For that reason, it is not covered by this Decision.

1.1.4. ***Aid to butcheries and cutting plants holding SRM***

(160) This measure has been in force since 1 January 2002 and is also financed by the rendering levy and benefits butchers, who in particular remove the bones of the spinal column in direct contact with the spinal cord in bovine animals over 12 months.

(161) The French authorities have explained that, prior to 2002, the spinal columns of bovine animals over 12 months were not listed as SRM. Including these spinal columns, which are not removed at the slaughterhouse but at the butchery, on the list of SRM, has meant that the French authorities identified SRM explicitly in the legislation as waste qualifying for the PRS. The French authorities are of the opinion that all SRM not specified as such in the French legislation fall into the category of material seized at slaughterhouses.

(162) In so far as such waste qualifies for the PRS and does not pass through the slaughterhouses, it must be concluded that its destruction is a charge that falls first on the butchers responsible for dealing with the spinal column of bovine animals over 12 months.

(163) The remarks made regarding the 'aid for livestock farmers and slaughterhouses' are applicable *mutatis mutandis* to butchers holding SRM concerned by this aspect of the PRS. As a consequence, the removal free of charge of the spinal columns from butchers' premises and cutting plants from 1 January 2002 constitutes State aid to these undertakings.

1.1.5. ***Aid for trade exempt from payment of the levy***

(164) The concept of aid is interpreted by the Court as not covering measures that distinguish between enterprises in terms of charges where that distinction stems from the nature or general scheme of the system of charges concerned. It is for the Member State which has made such a distinction between enterprises in terms of charges to show that it is actually justified by the nature and the general scheme of the tax system [1].

(165) French Act No 96-1139 provides for exemption for enterprises retailing meat whose annual turnover is less that FRF 2,5 million (this ceiling was subsequently raised to FRF 5 million: see recital 18). Such an exemption implies a loss of resources for the State [2] and does not appear to be justified by the nature and the general scheme of the tax system, which is designed to provide the State with revenue.

(166) The exemption refers to the overall turnover, not just the turnover on meat sales. For instance, an enterprise selling meat alone and realising a turnover of FRF 2,4 million on meat sales would therefore not be subject to the levy. But a general food enterprise realising an overall turnover of FRF 10 million, of which FRF 1 million is on meat sales, would be subject to the levy. As the levy is calculated on the value of meat products, enterprises with a higher turnover on meat sales should hardly be exempt from the levy when their competitors with a lower turnover on meat products have to pay it.

(167) As a consequence, that exemption is a selective advantage for trade exempted from payment [3]. It is therefore aid in favour of the exempted vendors, whose tax burden is lighter as a result. On the basis of the figures for trade in meat set out in recital 171, the Commission concludes that exempting traders with a turnover of less than FRF 2,5 million (and subsequently FRF 5 million) from the levy is an advantage constituting State aid within the meaning of Article 87(1) of the Treaty.

---

[1] Judgment of 29 April 2004 in Case C-159/01 Netherlands v Commission (not yet published).

[2] On exemptions, see judgment in Case C-387/92 Banco Exterior de España SA v Ayuntamiento de Valencia [1994] ECR I-877, point 13.

[3] On the nature and general scheme of the system, see the judgment in Case C-75/97 Belgium v Commission [1999] ECR I-3671, point 33, which refers to the judgment in Case 173/73 Italy v Commission [1974] ECR 709, point 33.

1.2. EFFECT ON TRADE

(168) To establish whether the aid in question falls within the scope of Article 87(1) of the Treaty, it must lastly be determined whether it is likely to affect trade between Member States.

(169) The Court noted that where an advantage granted by a Member State strengthens the position of one category of enterprises over other enterprises competing in intra-Community trade, the latter must be regarded as affected by that advantage ([1]).

(170) Rendering is a service that can be supplied across borders. This is shown, moreover, by the fact that several major multinational enterprises operating in this sector offer their services in several Member States, including France. The Commission therefore notes that the payments granted to the French rendering undertakings affect trade between Member States within the meaning of Article 87(1) of the Treaty.

(171) As far as rendering undertakings, livestock farmers and slaughterhouses, cutting plants and butchers holding SRM are concerned, the fact that there is trade in meat products between Member States is plain from the existence of various market organisations in the sector, which are listed in recital 124. Table 2 shows the level of trade between France and the other Member States in the most significant products in the first year of application of the rendering levy.

Table 2

France/EU-14	Beef	Pigmeat	Poultrymeat
1997 imports			
Tonnes	286 000	465 000	140 000
ECU million	831	1 003	258
1997 exports			
Tonnes	779 000	453 000	468 000
ECU million	1 967	954	1 069

([1]) Judgment in Case 730/79 *Philip Morris* [1980] ECR 2671, point 11.

(172) It is also worth pointing out that, according to figures provided to the Commission, live animals imported into France in 1999 were worth FRF 2 297 million, while French imports of meat and edible offal amounted to nearly FRF 17 000 million. Rendering was therefore carried out in the country of origin on the bulk of meat products imported into France.

(173) Accordingly, as the Commission stated when the investigation was initiated, the complainants also cite a circular published by the French Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes, to the effect that the levy on purchases of meat 'may affect foreign producers' profit margins or reduce their sales' and accordingly 'it carries the risk of adversely affecting trading conditions.'

(174) The Commission therefore concludes that the measure in favour of livestock farmers and slaughterhouses has at least potential impact on trade.

(175) As regards trade exempted from the levy, the Commission is of the opinion that the exemption from the levy has at least potential impact, in particular in border areas, and therefore on cross-border trade.

(176) By way of a conclusion, all these aid measures taken together appear likely to affect trade between Member States. The sectors concerned are wide open to competition at Community level and are accordingly sensitive to any measure favouring enterprises in any particular Member State.

1.3. DISTORTION OF COMPETITION

(177) In its judgment on the GEMO case, the Court of Justice also took the view that assistance by the public authorities to free farmers and slaughterhouses from financial charges in connection with the PRS appears to be an economic advantage that is likely to distort competition. The Commission considers that this conclusion also applies in the case of rendering undertakings, butcheries and cutting plants holding SRM and trade exempted from payment. All these economic sectors operate on a market that is open to competition and where the volume of trade, as described in recital 171, is very large, since some agri-food enterprises affected by the aid are very large.

1.4. CONCLUSIONS ON THE MEASURE'S STATUS AS AID WITHIN THE MEANING OF ARTICLE 87(1) OF THE TREATY

(178) In the light of the foregoing, the Commission considers that the measures in favour of rendering undertakings, livestock farmers and slaughterhouses, cutting plants and butchers holding SRM and traders exempted from the levy grant them an advantage from which other operators cannot benefit. That advantage distorts or threatens to distort competition by favouring certain enterprises and the production of certain goods in so far as it is likely to affect trade between Member States. As a consequence, the Commission concludes that those measures fall within the scope of Article 87(1) of the Treaty.

2. *COMPATIBILITY OF THE AID MEASURES*

(179) Article 87 of the Treaty makes provision, however, for exceptions from the general principle that State aid is incompatible with the Treaty, although some of those exceptions clearly do not apply, and in particular those laid down in paragraph 2 of that Article. The French authorities have not invoked those exceptions.

(180) The exceptions laid down in Article 87(3) of the Treaty must be interpreted strictly when any regional or sectoral aid programme or any individual case of application of general aid schemes is being examined. In particular, they can only be allowed where the Commission can establish that the aid is necessary to achieve one of the objectives in question. Granting the benefit of those exceptions to aid measures where this is not the case would be tantamount to permitting trade between Member States to be affected and distortion of competition that has no justification in the Community interest to occur and, by the same token, to allowing operators in some Member States to enjoy undue advantages.

(181) The Commission considers that the aid in question is not intended to favour the economic development of a region where the standard of living is abnormally low or there is serious unemployment in accordance with Article 87(3)(a) of the Treaty. It is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State in accordance with Article 87(3)(b) of the Treaty. And it is not intended to promote culture and heritage conservation in accordance with Article 87(3)(d) of the Treaty.

(182) Article 87(3)(c) of the Treaty provides, however, that aid to facilitate the development of certain economic activities or of certain economic areas can be considered compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. To qualify under the exception referred to in that point, the aid must contribute to the development of the sector in question.

2.1. UNLAWFULNESS OF THE AID

(183) The Commission must point out, first, that France did not inform it, pursuant to Article 88(3) of the Treaty, of the provisions introducing the rendering levy and the measures financed by it. Article 1(f) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty [1] defines unlawful aid as new aid put into effect in contravention of Article 88(3) of the Treaty. The obligation to notify State aid is set down in Article 1(c) of that Regulation [2].

(184) The measures implemented by France contain elements of State aid; they involve new aid that has not been notified to the Commission, which means they are unlawful under the Treaty.

2.2. GUIDELINES APPLICABLE TO MEASURES NOT NOTIFIED

(185) Since State aid financed by a parafiscal charge is involved, the Commission must examine both the measures financed, i.e. the aid, and the way they are financed. According to the Court, where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must take that method of financing into account when examining the aid [3].

(186) In accordance with point 23.3 of the Community Guidelines for State aid in the agriculture sector and the Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid [4], any unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 must be assessed in accordance with the rules and guidelines in force at the time the aid was granted.

---

[1] OJ L 83, 27.3.99, p. 1. Regulation as last amended by the 2003 Act of Accession.

[2] 'New aid' is defined as all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.

[3] Judgment of 21 October 2003 in joined Cases C-261/01 and C-262/01 Van Calster et al (not yet published).

[4] OJ C 119, 22.5.2002, p. 22.

(187) In 2002, the Commission adopted Community Guidelines for State aid concerning TSE tests, fallen stock and slaughterhouse waste [1] (hereinafter referred to as the TSE Guidelines). Those Guidelines have been applicable since 1 January 2003. Point 44 of the TSE Guidelines provides that, leaving aside cases relating to fallen stock and slaughterhouse waste, unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999(5) is to be assessed in accordance with the rules and guidelines applicable at the time when the aid was granted. In the case of these two types of aid, therefore, the TSE Guidelines lay down the rules relevant to the case in point.

(188) Points 46 and 47 of the TSE Guidelines lay down a set of provisions concerning fallen stock and slaughterhouse waste that are applicable in the case in point.

(189) According to point 46 of the TSE Guidelines, to date the Commission has not clearly defined its policy on State aid towards fallen stock, in particular as regards the link between, on the one hand, the rules for combating diseases as set out in point 11.4. of the agriculture Guidelines, which allow State aid of up to 100 %, and, on the other hand, the application of the 'polluter pays' principle and the rules on aid for dealing with waste. As a consequence, as far as unlawful State aid to cover the costs of removing and destroying fallen stock, granted at the production, processing and marketing stages before the date of application of the TSE Guidelines, is concerned and without prejudice to compliance with other provisions of Community law, the Commission will authorise State aid of up to 100 % of such costs.

(190) In accordance with point 47 of the TSE Guidelines, as far as State aid for slaughterhouse waste is concerned, a series of individual decisions have been taken by the Commission since January 2001 authorising State aid of up to 100 % of the costs of disposing of SRM, meat and bone meal, and animal feed containing such products, which must be disposed of under the new Community legislation on TSEs (transmissible spongiform encephalopathies). Those decisions were based in particular on point 11.4 of the agriculture Guidelines, bearing in mind the short-term character of the aid and of the need for long-term observance of the 'polluter pays' principle. By way of an exception, the Commission has allowed such State aid to be granted in addition to operators other than those active in the production of live animals, e.g. slaughterhouses. The Commission will apply the same principles to unlawful State aid granted before the end of 2002 for comparable costs in relation to new Community legislation on TSEs, and without prejudice to compliance with other provisions of Community law.

[1] OJ C 324, 24.12.2002, p. 2.

(191) Any operating aid in favour of other operators must be considered in the light of the agriculture Guidelines.

2.3. ANALYSIS IN THE LIGHT OF THE APPLICABLE PROVISIONS

2.3.1. ***Aid***

2.3.1.1. **Aid to rendering undertakings**

(192) As regards unlawful State aid to cover the costs of removing and destroying fallen stock, granted at the production, processing and marketing stages before the date of implementation of those Guidelines and without prejudice to other provisions of Community legislation, point 46 of the TSE Guidelines provides that the Commission will authorise State aid of up to 100 % of those costs.

(193) As regards State aid for slaughterhouse waste, point 47 of the TSE Guidelines states that a series of individual decisions have been taken by the Commission since January 2001, authorising State aid covering up to 100 % of the cost of disposing of SRM, meat and bone meal, and animal feed containing such products, which must be disposed of under the new Community legislation on TSEs.

(194) In addition, the Commission notes that, in line with points 33 and 34 of the TSE Guidelines, the undertakings were chosen and remunerated according to market principles, in a non-discriminatory manner, where necessary by issuing an invitation to tender in accordance with Community law, and in any event using advertising on a scale sufficient to ensure the services market was open to free competition and the impartiality of the procurement rules could be reviewed. The Commission agrees that requisitioning was also a suitable method under the circumstances, given the urgency of the measures to be taken and the lack of response to the invitations to tender.

(195) Point 47 of the TSE Guidelines points out that, by way of an exception, the Commission has agreed that such State aid should also be granted to operators other than those active in the production of live animals, such as slaughterhouses. The Commission is of the opinion that this exception must also cover other enterprises performing tasks closely linked to the production of live animals, such as rendering undertakings.

(196) On the basis of the facts outlined, the Commission is in a position to conclude that the aid for rendering undertakings in the case in point, granted in France during the period 1 January 1997 to 31 December 2002 and covering 100 % of the costs incurred, meets the conditions in the TSE Guidelines.

2.3.1.2. **Aid to livestock farmers – Fallen stock**

(197) As regards unlawful State aid to cover the costs of removing and destroying fallen stock granted at the production, processing and marketing stages before the date of application of the TSE Guidelines and without prejudice to compliance with other provisions of Community law, point 46 of the TSE Guidelines provides that the Commission will authorise State aid of up to 100 % of such costs.

(198) On the basis of the facts outlined, the Commission is therefore in a position to conclude that the aid for farmers granted in France during the period 1 January 1997 to 31 December 2002 and covering 100 % of the costs incurred meets the conditions laid down in the TSE Guidelines.

2.3.1.3. **Aid to slaughterhouses – Meat and offal seized at slaughterhouses**

(199) Point 47 of the TSE Guidelines provides that as regards State aid for slaughterhouse waste, the Commission authorises unlawful State aid granted before the end of 2002 and covering up to 100 % of the cost of disposing of SRM, meat and bone meal, and animal feed containing such products, which must be disposed of under the new Community legislation on TSEs.

(200) On the basis of the facts outlined, the Commission is therefore in a position to conclude that the aid for slaughterhouses in the case in point, granted in France during the period 1 January 1997 to 31 December 2002 and covering 100 % of the costs incurred, meets the conditions laid down in the TSE Guidelines.

2.3.1.4. **Aid to butchers – SRM seized at butcheries**

(201) Point 47 of the TSE Guidelines is applicable *mutatis mutandis* to SRM – in the case in point, spinal columns of bovine animals over 12 months – seized at butcheries and cutting plants.

(202) On the basis of the facts outlined, the Commission is thus in a position to conclude that the aid for butchers holding SRM that may have been granted in France during the period 1 January 1997 to 31 December 2002, covering 100 % of the costs incurred, meets the conditions laid down in the TSE Guidelines.

2.3.1.5. **Enterprises exempted from the levy**

(203) The Commission has noted that the exemption of undertakings with an annual turnover of less than FRF 2,5 million entails a loss of resources for the State and does not appear to be justified by the nature and the general scheme of the tax system. While the latter can of course provide for the measures necessary for it to function rationally and effectively, such as flat-rate levies on small enterprises in order to ease their accounting requirements in particular ([1]), it is highly unlikely that such measures can go as far as outright exemptions. Furthermore, even if such exemptions were acceptable, the Commission is of the opinion that they should be limited to very marginal cases ([2]) where accounting requirements and management by the tax authorities both prove to be more costly than the anticipated revenue.

(204) In the case in point, it is by no means clear that setting the ceiling at FRF 2,5 million, which is a substantial sum, is justified and this does not appear to have been the case in the preparatory work for law No 96-1139 ([3]). The selective scope of the exemption in question is plain when it is borne in mind that, according to the Commission's information, 80 % of meat and meat products is sold in superstores whose average overall turnover and even their specific turnover on meat is, according to the Commission's information, well above that ceiling ([4]), while small shops (butcheries), whose average turnover is below the ceiling (FRF 1.6 million), are in competition with the large stores.

([1]) See Commission Notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3).

([2]) From this viewpoint, see the other exemption provided for in point V of Article 302*bis* ZD of the *Code Général des Impôts*: 'the levy is not payable where monthly purchases are less than F20 000 excluding VAT', which appears to concern smaller vendors.

([3]) Note that the problem is made even more serious by Article 35 of the *loi de finances rectificative pour 2000*, which raises the limit to FRF 5 million.

([4]) The average turnover of a supermarket is around FRF 40 million, half of which comes from fresh products; poultrymeat accounts for only 22 % of the latter figure, which gives a turnover on meat of around FRF 4 million.

(205) The effect of the ceiling therefore appears to be to exempt butchers and other stores, while the large majority of distributors, which is made up of large stores, have to pay the levy. Furthermore, in so far as the ceiling relates to overall turnover (and not just to turnover on meat), a butchery with a turnover of FRF 2,4 million, for example, is exempt from the tax while a large store that sells less meat but has an overall turnover in excess of the ceiling must pay the levy. The exemption in question thus seems to result in discrimination in the way different meat retailers are treated on the basis of a criterion that does not appear to correspond to any inherent logic in the parafiscal system.

(206) The Commission does not consider that it has been proved that such an exemption is justified by the overall scheme of the tax system, no evidence to that effect having been provided by the French authorities.

(207) Since enterprises marketing agricultural products are concerned (as well as products not listed in Annex I to the Treaty, seeing that the levy is also payable on products containing meat), and since the Commission considers that intra-Community trade is affected, it is of the view that the aid falls within the scope of point 3.5 of the agriculture Guidelines. The latter provides that, for any aid measure to be regarded as compatible with the common market, it must contain some incentive element or require some compensation on the part of the beneficiary. Thus, leaving aside exceptions explicitly provided for in Community legislation or in the agriculture Guidelines, State aid granted unilaterally simply to improve producers' financial situation but making no contribution to the development of the sector, and in particular aid granted solely on the basis of the price, quantity, production unit or unit of means of production should be treated in the same way as operating aid, which is incompatible with the common market.

(208) The exemption in question involves a reduction in charges that does not entail any incentive element or any compensation on the part of the beneficiaries, and its compatibility with the competition rules has not been established.

(209) As regards aid granted prior to 1 January 2000, the Commission's practice at the time involved the concept of operating aid referred to in point 3.5 of the agriculture Guidelines. As a result, the exception laid down in Article 87(3)(c) of the Treaty is not applicable.

(210) In the light of the foregoing, the Commission concludes that the tax exemption in the case in point is aid that is incompatible with the competition rules applicable.

2.3.2. ***Financing of the aid***

2.3.2.1. **Prior to 31 December 2000**

(211) Until 31 December 2000, the French authorities chose to finance the PRS by means of a parafiscal charge levied on retailers of meat and meat products and paid into a fund for managing it.

(212) In the course of the infringement procedure referred to in recital 2, the Commission noted that the method of financing the rendering service excluded any fees levied on those using the service. The fact that the State defrays the costs of rendering operations means that the cost price of French production is reduced. The levy thus appears as compensation for the advantage afforded by full public financing of the collection and destruction of animal carcases and products seized at slaughterhouses.

(213) However, with the exception of live animals imported into France and slaughtered there, the levy was paid under the same conditions and without distinction on products from other Member States marketed in France, but these did not benefit from any of the advantages stemming from the way the funds were financed. It therefore represented a clear monetary levy on such products. In other words, while the levy was paid on products of national origin and on products from other Member States on exactly the same conditions in terms of the rules on the tax base, settlement and chargeability, this equality of conditions no longer applied as regards the way the product of the levy is used.

(214) Under that infringement procedure, the Commission considered the compatibility of the rendering levy having regard to Articles 25 and 90 of the Treaty.

(215) The Commission took the view that the rendering levy did not infringe Article 25 of the Treaty and that it could not, therefore, be regarded as a charge equivalent in effect to a customs duty, since the French authorities had shown that it is not exclusively used for activities that benefit national products, i.e. French meat.

(216) As regards Article 90 of the Treaty, the Commission concluded that France had failed to meet its obligations under Article 90 of the Treaty by applying the so-called 'rendering levy' to purchases of meat and other products specified by any person retailing such products, and that the levy was offset, at least in part, in the case of French products, by full public financing of rendering and the collection of animal carcases and products seized at slaughterhouses, whereas the levy was paid on products from other Member States under the same conditions but they did not benefit from the advantages of the fund into which the levy is paid.

(217) The Commission therefore considered that the rendering levy contravened Article 90 of the Treaty because it discriminated fiscally against products from other Member States. This concerned all meat imports as well as live animals in so far as they did not benefit from the rendering service. On this point it is worth pointing out that meat is imported into France from other Member States in much larger quantities than live animals.

(218) In accordance with the case law of the Court of Justice [1], the Commission normally takes the view that the financing of State aid by means of compulsory charges can have an impact on the aid by having a protective effect that goes beyond the aid itself. The levy in question was a compulsory charge. In line with the case law, the Commission considers that an aid measure cannot be financed by parafiscal charges that are levied on products imported from other Member States too.

(219) In the light of the case law and the fact that the levy was used to finance State aid within the meaning of Article 87 of the Treaty and was discriminatory in contravention of Article 90 of the Treaty in so far as it was charged on products from other Member States that cannot benefit from the advantages of the fund into which it was paid, the Commission considered that the proceeds of the levy realised on products imported from other Member States were against the rules on competition.

2.3.2.2. **After 31 December 2000**

(220) Since 1 January 2001, the proceeds of the rendering levy are paid directly into the general budget of the State and no longer into the fund set up for that purpose. The Commission considers that, in general, paying the product of a levy into the national budget system means it becomes impossible to link the levy and the financing of a given service provided and financed by the State. It accordingly becomes impossible to say whether a levy discriminates against other products because the proceeds of the levy are merged with the rest of the State's revenue and the financing of the aid can no longer be attributed directly to it.

(221) The Commission closed the infringement procedure on 26 June 2002. Nonetheless, the complaint presented to the Commission put forward arguments that deserve to be considered under this procedure. Those arguments raised doubts as to whether the resource and the way it is used were truly separate and distinct.

(222) Thus, while the new system designed by the French authorities did involve paying the proceeds of the levy into the general budget of the State, once they were paid into the budget, the proceeds appear to have been allocated to a particular chapter of the Ministry of Agriculture, from where they could then be transferred to the budget of CNASEA, the body responsible for the financial management of the rendering service. The figures in the Commission's possession also appeared to raise doubts about that separation.

(223) After considering the French legislative documents, the Commission looked at the claimed separation between the resource and the way it is used. Such a separation could in practice amount to the tax system that was called into question by the Commission under Article 90 of the Treaty, under the infringement procedure referred to in recital 2.

(224) The French authorities admit that, when the new provisions on the levy were presented, the emphasis was laid on the need to continue financing the PRS. This was all the more logical as the levy had been earmarked for that precise purpose since 1 January 1997.

(225) From the legal viewpoint, no binding text has been adopted to date on the financing of the PRS using the proceeds of the rendering levy, as was the case in 1997. At that time, Article 1 of Law No 96-1139 of 26 December 1996 provided that the proceeds of the levy were to be paid into a fund with the aim of financing the collection and destruction of animal carcases and products seized at slaughterhouses and recognised as unfit for human and animal consumption.

[1] Judgment in Case 47/69 France v Commission [1970] ECR 487.

(226) The French authorities explain that since 1 January 2001, the fund to finance the PRS has ceased to exist and the appropriations allocated to the PRS are entered in the budget of the Ministry of Agriculture in the same way as other expenditure. In addition, the proceeds of the levy and the cost of the PRS are not equivalent. The proceeds of the levy amounted to EUR 550 million in 2003 whereas the total appropriations allocated to the PRS by the Ministry of Agriculture for that year amounted to EUR 280 million.

(227) As a consequence, the French authorities consider that the amounts are no longer earmarked for the PRS although the original heading stands.

(228) In a case currently before the Court of Justice [1], the Commission notes that the Advocate-General remarked that the following criteria point to the existence of a direct and indissoluble link between a tax and a State aid measure: (a) the degree to which the aid concerned is funded by the proceeds of the tax; (b) the degree to which the proceeds of the tax are earmarked for the aid; (c) the degree, as shown by the regulations concerned, to which the link between the proceeds of the tax and their earmarking as aid is binding; (d) the degree to which and the way in which the combination between the tax and the aid affects competitive relationships in the (sub-)sector or category of enterprises concerned.

(229) Considering those criteria relevant, the Commission notes that, since 1 January 2001, French legislation no longer refers to the earmarking of the rendering levy for a specific objective; the levy does not appear, therefore, to have been earmarked for the financing of the PRS since that date. It also does not seem possible to establish any link between the proceeds of the rendering levy and their utilisation for a specific purpose.

(230) The Commission notes the remarks of the French authorities to the effect that the funds allocated to the PRS have not been used for purposes other than to finance that service. Furthermore, Table 1 shows that the proceeds of the levy for the 2001 and 2002 tax years (EUR 950 323 981) and the total amount paid for the PRS (EUR 411 472 078) are far from equivalent, that this is also true for each of those years, and that only part of the proceeds of the levy was intended to finance the PRS, which is a strong argument that the rendering levy is quite separate from the way the PRS has been financed since 1 January 2001.

(231) In addition, the Commission notes that, following the opening of the investigation, it has not received other information from the complainants providing clear, definitive backing for their arguments on the subject. The arguments put forward by the complainant have not enabled the Commission to establish a link between the parafiscal charge and the aid scheme.

(232) The Commission therefore reaffirms its conclusions under the closed infringement procedure and concludes that there is a separation between the rendering levy and the way the PRS has been financed since 1 January 2001.

2.3.2.3. **Conclusions on the two periods**

(233) Where the financing of a State aid measure is considered incompatible with the applicable competition rules, the Commission must also regard the aid financed as incompatible for the whole period during which financing has failed to comply with the rules. The financing of a State aid measure in compliance with the rules is an indispensable condition for it to be found compatible with those rules.

VI. **CONCLUSION**

(234) The State aid scheme in favour of rendering undertakings, livestock farmers and slaughterhouses implemented by France between 1 January 1997 and 31 December 2000 to fund the public rendering service, financed by a levy on meat purchases and on products coming from other Member States satisfied the Community provisions applicable to those beneficiaries. The Commission has also established, however, that there was a breach of Article 90 of the Treaty as regards the financing of the scheme. For that reason the Commission cannot state that the scheme was compatible, since it discriminated between imported products and national ones.

(235) The Commission considers it appropriate in this case to adopt a conditional decision by making use of the possibility afforded by Article 7(4) of Regulation (EC) No 659/1999, which allows it to attach to its positive decision conditions making it possible for it to recognise the compatibility with the common market and obligations enabling it to monitor compliance with that decision.

(236) In order to make good the breach of Article 90 and eliminate the discrimination retroactively, France must reimburse the part of the levy imposed on products coming from other Member States within a period and under conditions set by the Commission. Making good the breach would make the aid in question compatible with Article 87 of the Treaty.

[1] Conclusions of Advocate-General Geelhoed on 4 March 2004 in Case C-174/02 Streekgewest Westelijk Noord-Brabant (not yet published).

(237) The Commission is laying down the conditions that must be met for that reimbursement. France therefore must reimburse the persons liable for payment of the levy the part levied on meat coming from other Member States between 1 January 1997 and 31 December 2000 in compliance with the following conditions:

— France will notify the parties responsible for payment of the levy individually within a period of not more than six months from the date of notification of this decision of their individual right to reimbursement,

— in order to submit a request for reimbursement the persons liable for payment of the levy must be given a period that complies with national law, and in any case not less than six months,

— reimbursement must be made within a maximum period of six months from the date of submission of the request,

— the amounts reimbursed must be updated to take account of interest from the date on which they were levied up to the date of actual reimbursement. The interest will be calculated on the basis of the Commission reference rate laid down by the method used for setting the reference and discount rates ([1]),

— the French authorities will accept any reasonable evidence from the parties liable for payment showing the part of the levy paid on meat coming from other Member States,

— the right to reimbursement may not be made subject to other conditions, in particular that of not having passed on the levy,

— where a levy payer has not yet paid the levy, the French authorities will formally waive their right to payment of it, including any interest on arrears,

— the French authorities will send the Commission, within a period of not more than 20 months from the date of notification of this decision, a full report showing that the reimbursement measure has been properly executed.

(238) By letter of 9 December 2004, France gave an undertaking to comply with these conditions.

(239) If France failed to fulfil its undertaking regarding those conditions, the Commission could re-open the formal investigation procedure, as provided for in Article 16 of Regulation (EC) No 659/1999, or refer the matter to the Court of Justice, as provided for in Article 23 of the Regulation. The Commission considers that the first possibility would be the more appropriate one in this case. Such a possibility could, as provided for in Article 14 of the Regulation, result in the adoption of a final negative decision with recovery of all the aid granted during the period concerned, which is estimated to amount to EUR 417 080 311.

(240) The State aid scheme which France implemented between 1 January 2001 and 31 December 2002 in favour of rendering undertakings, livestock farmers and slaughterhouses to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

(241) The State aid scheme which France implemented in 2002 in favour of butchers and cutting plants holding specified risk material (SRM) to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

(242) The measure in the form of exemption from payment of the levy on meat purchases in favour of certain undertakings marketing meat, in force from 1 January 1997 to 31 December 2002, constitutes State aid which is incompatible with the common market.

(243) The measures covered by this decision have not been notified to the Commission in accordance with Article 88(3) of the Treaty and therefore constitute unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999.

(244) The Commission regrets that France implemented the measures in breach of Article 88(3) of the Treaty.

(245) Since the aid in question was implemented without awaiting a final decision of the Commission, it should be borne that, in view of the mandatory nature of the rules of procedure laid down in Article 88(3) of the Treaty, whose direct effect the Court of Justice recognised in its judgments in Carmine Capolongo v Azienda Agricola Maya ([2]), Gebrueder Lorenz GmbH v Germany ([3]) and Steinicke and Weinlig v Germany ([4]), the unlawfulness of the aid concerned cannot be remedied *a posteriori* (judgment in Fédération nationale du commerce extérieur des produits alimentaires et al v France ([5])).

([1]) Commission communication on the method used for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

([2]) Case 77/72 Carmine Capolongo v Azienda Agricola Maya [1973] ECR 611.

([3]) Case 120/73 Gebrueder Lorenz GmbH v Germany [1973] ECR 1471.

([4]) Case 78/76 Steinicke and Weinlig v Germany [1977] ECR 595.

([5]) Case C-354/90 Fédération nationale du commerce extérieur des produits alimentaires et al v France [1991] ECR I-5505.

(246) The Court of Justice has held that where an aid measure, of which the method of financing is an integral part, has been implemented in breach of the obligation to notify, the national courts must in principle order reimbursement of charges or contributions levied specifically for the purpose of financing that aid. The Court has also held that it is the responsibility of the national courts to safeguard the rights of individuals faced with any breach, by the national authorities, of the prohibition on the implementation of aid which is referred to in the last sentence of Article 88(3) of the Treaty and has direct effect. Such a breach, relied on by the individuals who may contest its legality and established by the national courts, must induce them to draw the necessary consequences, in accordance with their national law, concerning both the validity of the acts involving the implementation of the aid measures concerned and the recovery of the financial support granted [1].

(247) The Commission has no details of the way in which reimbursements of the levy made or to be made on that basis will actually lead to full reimbursement, in particular of any levy on meat from other Member States.

(248) Where unlawful aid is incompatible with the common market, Article 14(1) of Regulation (EC) No 659/1999 provides that the Commission will decide that the Member State concerned should take all necessary measures to recover the aid from the beneficiary. This reimbursement is necessary for re-establishing the *ex ante* situation by abolishing all the economic advantages from which the beneficiary of the unlawfully granted aid was able to benefit improperly since the date the aid was granted.

(249) France must recover the incompatible aid in the case under consideration, in particular that in favour of undertakings which are exempt from payment of the levy on meat purchases. The total amount of aid to be recovered comprises amounts paid in the form of exemption from payment of a levy on meat purchases in favour of certain undertakings marketing meat during the period concerned.

(250) Article 14(2) of Regulation (EC) No 659/1999 provides for the aid to be recovered to include interest at an appropriate rate fixed by the Commission. This interest will be payable from the date on which the unlawful aid was available to the beneficiary.

(251) The aid must be reimbursed in accordance with the procedure laid down by French law. The amount will include interest from the date on which the aid was paid up to the date on which it is actually recovered. It will be based on the Commission reference rate calculated by the method used for setting the reference and discount rates [2].

(252) This Decision is without prejudice to the consequences the Commission will draw, where appropriate, regarding the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid scheme in favour of rendering undertakings, livestock farmers and slaughterhouses which France implemented between 1 January 1997 and 31 December 2000 to fund the public rendering service, financed by a levy on meat purchases and on products coming from other Member States, is compatible with the common market under Article 87(3)(c) of the Treaty, on condition that France fulfils the undertakings set out in paragraph 4 of this Article.

2. The State aid scheme in favour of livestock farmers implemented by France between 1 January 1997 and 31 December 2000 to fund the public rendering service, financed by a levy on meat purchases and on products coming from other Member States, is compatible with the common market under Article 87(3)(c) of the Treaty, on condition that France fulfils the undertakings set out in paragraph 4 of this Article.

3. The State aid scheme in favour of slaughterhouses implemented by France between 1 January 1997 and 31 December 2000 to fund the public rendering service, financed by a levy on meat purchases and on products coming from other Member States, is compatible with the common market under Article 87(3)(c) of the Treaty, on condition that France fulfils the undertakings set out in paragraph 4 of this Article.

4. France shall reimburse the persons liable for payment of the levy on meat purchases the part levied on meat coming from other Member States between 1 January 1997 and 31 December 2000. This shall be done in full compliance with the following conditions:

— France shall notify the persons liable for payment of the levy individually, within a maximum of six months from the date of notification of this decision, of their individual right to reimbursement,

[1] Judgment of the Court in Van Calster et al referred to above.

[2] Commission communication on the method used for setting the reference and discount rates.

— in order to submit a request for reimbursement the persons liable for payment of the levy shall be given a period that complies with national law, and in any case not less than six months,

— reimbursement shall be made within a maximum period of six months from the date of submission of the request,

— the amounts reimbursed shall be updated to take account of interest from the date on which they were levied up to the date of actual reimbursement. The interest shall be based on the Commission reference rate calculated by the method used for setting the reference and discount rates,

— the French authorities shall accept any reasonable evidence from the parties liable for payment showing the part of the levy paid on meat coming from other Member States,

— the right to reimbursement may not be made subject to other conditions, in particular that of not having passed on the levy,

— where a levy payer has not yet paid the levy, the French authorities shall formally waive their right to payment of it, including any interest on arrears,

— the French authorities shall send the Commission, within a maximum period of 20 months from the date of notification of this decision, a full report showing that this Article has been properly implemented.

5. This Article shall be without prejudice to rights of reimbursement of the levy on meat purchases which payers of the levy may have under other provisions of Community law.

Article 2

1. The State aid scheme which France implemented between 1 January 2001 and 31 December 2002 in favour of rendering undertakings to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

2. The State aid scheme which France implemented between 1 January 2001 and 31 December 2002 in favour of livestock farmers to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

3. The State aid scheme which France implemented between 1 January 2001 and 31 December 2002 in favour of slaughterhouses to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

4. The State aid scheme which France implemented in 2002 in favour of butchers and cutting plants holding SRM to finance the public rendering service, financed by a levy on meat purchases, is compatible with the common market under Article 87(3)(c) of the Treaty.

Article 3

The measure in the form of exemption from payment of the levy on meat purchases in favour of certain undertakings marketing meat, in force from 1 January 1997 to 31 December 2002, constitutes State aid which is incompatible with the common market.

France shall take the necessary steps to recover the aid paid to beneficiaries under this scheme. The total amount of aid to be recovered shall be updated to take account of interest from the date on which the aid was paid up to the date on which it is actually recovered. The interest shall be based on the Commission reference rate calculated by the method used for setting the reference and discount rates.

Article 4

France shall inform the Commission within two months of notification of this decision of the measures taken to comply with it.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 14 December 2004.

For the Commission
Mariann FISCHER BOEL
Member of the Commission