COMMISSION DECISION

of 19 May 2004

concerning the aid scheme that Italy plans to implement for poultry farms — AIMA programme for the poultry industry — C 59/2001 (ex N 97/1999)

(notified under document number C(2004) 1802)

(Only the Italian text is authentic)

(2007/52/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,

Whereas:

I. PROCEDURE

(1) By letter dated 17 December 1999, registered as received on 22 December 1999, the Italian Permanent Representation to the European Union notified the Commission, in accordance with Article 88(3) of the Treaty, the above aid scheme relating to assistance from AIMA (*Associazione italiana dei mercati agricoli* — Italian Association for Agricultural Markets) to the Italian poultry market, which was said to have suffered a drastic fall in the consumption and sales of poultry as a result of the 1999 dioxin crisis.

(2) By letters dated 8 August 2000, registered as received on 9 August 2000, 15 November 2000, registered on 21 November 2000, 27 February 2001, registered on 1 March 2001, and 23 May 2001, registered on 28 May 2001, the Italian Permanent Representation to the European Union sent the Commission the additional information sought from the Italian authorities by letters dated 18 February 2000 (ref. AGR 5073), 2 October 2000 (ref. AGR 25123), 10 January 2001 (ref. AGR 000449) and 24 April 2001 (ref. AGR 009825).

(3) By letter dated 30 July 2001, the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of this aid.

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ([1]). The Commission invited interested parties to submit their comments on the measure.

(5) The Italian authorities submitted their comments by letter of 24 October 2001, registered as received on 26 October 2001. The Commission received no comments from other interested parties.

II. DESCRIPTION

Legal basis

(6) National programme of AIMA assistance for 1999. The legal basis for the proposed aid scheme is Article 3(1)(d) of Law No 610/82, which authorises AIMA, 'using the financial resources at its disposal and based on the situation on the market and according to availability (…), to provide food products to developing countries, designated in agreement with the Ministry for Foreign Affairs and after consulting the national food institute'.

Context

(7) The Italian *Unione nazionale dell'avicoltura* (UNA) (National Union of Poultry Farmers) had asked AIMA to intervene on the market in order to offset the serious impact of the dioxin crisis on the consumption of poultrymeat.

(8) Initially (see letter dated 17 December 1999), following the refusal of AIMA to purchase 17 000 tonnes of unsold meat, worth ITL 40 billion (approximately EUR 20 million), UNA had proposed selling some of the meat (11 450 tonnes) at reduced prices on the markets of developing countries; the difference between the actual commercial value of the goods and the selling price (approximately ITL 20 billion i.e. 50 % of the market value) would have been covered by AIMA.

(9) After the Commission had stated in its letter dated 18 February 2000 that the aid appeared to be an export refund covering the difference between the price of poultry in the third world and its price on the Italian market (and, therefore, by its very nature incompatible with the common market, with the Community's obligations under the World Trade Organisation and with the common organisation of the market), the Italian authorities no longer referred, in their letter dated 10 August 2000, to the initial purpose of the aid, but argued that the losses suffered by Italian poultry farmers were the result of exceptional occurrences (rather than normal market risks) and were therefore eligible for the derogation provided for in Article 87(2)(b) of the Treaty.

([1]) OJ C 254, 13.9.2001, p. 2.

Measure

(10) The programme provides for compensation for poultry farmers following the fall in prices and the collapse in sales caused by the dioxin crisis and the ensuing alarm among consumers. The aid corresponds to the difference between average prices in countries not affected by the crisis and prices in Italy in June-July 1999 (the period considered for the purposes of compensation). According to the Italian authorities, average prices in countries not affected by the crisis (excluding Italy) were EUR 137,89/100 kg in June and EUR 132,35/100 kg in July. The price difference was therefore EUR 53,966/100 kg in June and EUR 46,218/100 kg in July ([2]). The maximum aid is ITL 21 150/100 kg (EUR 10,92/100 kg) and ITL 15 400/100 kg (EUR 7,95/100 kg). Aid is granted for meat produced and marketed in June and July 2001 and the total amount of aid is EUR 10 329 138.

(11) In support of their argument, the Italian authorities state that the dioxin crisis caused not only a collapse in production and trade (due to disturbances on the market following the outbreak of the crisis) but also a sharp fall in the consumption of poultry products. According to data provided by the Italian authorities, 34 700 000 kg of meat was sold at reduced prices in June 1999 (compared with 52 000 000 kg of meat sold in June 1998), followed by 30 200 000 kg in July 1999 (compared with 51 000 000 kg of meat sold in July 1998 ([3]). In spite of the preventive measures taken by UNA to avoid a crisis of overproduction of poultrymeat (involving the slaughter, in March, of chicks that would have reached maturity in the next few months), the measures were unsuccessful because of the dioxin crisis.

(12) In their letters dated 21 November 2000 and 28 May 2001, the Italian authorities stress the vital role played by the media during the crisis and claim that the alarm triggered by the media aggravated the sharp fall in the consumption of poultrymeat (29,1 % in June, 10,1 % in July, 16,2 % in August and 5,9 % for the year as a whole compared with a year earlier). The collapse in demand caused a sharp reduction in prices, particularly in June and July (down 30 % and 30,1 % respectively compared with the same months of the previous year). In addition, in order to cope with this situation, Italian producers had to place 4 150 tonnes of chicken in storage in June, 9 271 tonnes in July and 2 595 tonnes in August because they could not dispose of it on the market.

(13) The scheme provides for no compensation for disposing of poultry or poultry products unfit for sale or consumption.

Amount of aid

(14) The maximum aid planned is ITL 20 billion (EUR 10 329 138).

Reasons for initiating the procedure

(15) The Commission initiated the procedure provided for in Article 88(2) of the Treaty because of its doubts as to the compatibility of the scheme with the common market. These doubts concerned whether or not the aid in question could be viewed as an aid to compensate for losses due to an exceptional occurrence. The Italian authorities referred to Article 87(2)(b) of the Treaty, under which aid to make good the losses caused by exceptional occurrences is compatible with the common market. The notification refers to the dioxin crisis as an exceptional occurrence.

(16) The Treaty does not define the concept of exceptional occurrence and the Commission applies this provision on a case-by-case basis after making a detailed assessment of the event concerned. In the case of the dioxin crisis affecting food and feedingstuffs produced in Belgium, the Commission had concluded that this was an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty because of the nature and extent of the restrictions that had to be imposed to protect public health in that Member State ([4]).

(17) There are also other precedents as regards the definition of exceptional occurrence, involving, in particular those relating to aid granted by the United Kingdom ([5]) during the BSE crisis: the Commission had concluded that it was an exceptional occurrence, in view, in particular, of the ban on exporting beef and veal and the fall in the consumption of beef and veal due to the uncertainties and concern caused by the news about BSE. It must however be stressed that the examples quoted involve countries directly affected (the United Kingdom in the case of BSE and Belgium in that of dioxin) and not, as in this case, a country where the market was disturbed because of consumers' concerns (about dioxin).

([2]) Prices in Italy were EUR 83,924/100 kg and EUR 86,132/100 kg respectively.

([3]) These figures include products purchased by both private consumers and organisations.

([4]) See in particular its decisions on state aid Nos NN 87/99, NN 88/99, NN 89/99, N 380/99, N 386/99, NN 95/99 and N 384/99.

([5]) See state aids Nos N 299/96, N 290/96, N 278/96 and N 289/96.

(18) In the cases cited, the Commission approved the compensation paid to producers for losses of income because the losses of market share and the fall in consumption were caused not only by consumer alarm but also by exceptional factors that prevented normal trade in the products concerned (a series of measures taken by the authorities, combined with extraordinary behaviour on the part of consumers and the media). In the above-mentioned decisions, a direct and immediate link could be established between all the facts considered to comprise an exceptional occurrence and the losses suffered by the undertakings concerned.

(19) The Italian authorities have so far been unable to offer convincing proof of a link between the losses of income suffered by agricultural producers and an exceptional occurrence, which would allow the Commission to approve the payment of compensation under Article 87(2)(b) of the Treaty. The rapid spread of alarm among consumers, resulting in a serious disturbance of the market on which Italian poultry farmers operate, the loss of market share and, consequently, a reduction in the normal level of turnover, does not appear, on the basis of the information available, to constitute in itself an exceptional occurrence within the meaning of the Treaty. In addition, there is nothing to show that the national or Community authorities adopted measures to prevent sales.

(20) Even were it to be concluded that the media impact in Italy was greater than in other European countries, because of public sensitivity to questions of food safety and the existence of a strand of public opinion that was very critical of livestock-rearing systems, this would still not demonstrate the exceptional nature of the event.

(21) The Commission looked into why Italian producers had not taken advantage of the situation to increase their sales of poultry products abroad (or even in Italy), since Italy, unlike Belgium, was not one of the countries directly affected by the dioxin crisis.

(22) Another aspect to be clarified is the statement by the Italian authorities that poultry farmers were forced to freeze unsold meat (4 150,8 tonnes in June, 9 271,3 tonnes in July and 2 595,9 tonnes in August). This does not serve to rule out the possibility that the poultry products remaining unsold during the crisis could have been sold at a later date, in which case the losses incurred would be less than those declared during examination of this case. In addition, the Commission was not in a position to establish the quantities of meat remaining unsold due to the fall in demand caused by the fear of dioxin or the extent of overproduction based on an incorrect estimate of demand over the summer.

(23) In the light of the above, the Commission could not rule out that the aid was intended simply to improve the financial situation of producers without in any way contributing to the development of the sector and, moreover, that since the aid was granted solely on the basis of price, quantity or unit of production it was to be regarded as constituting operating aid within the meaning of point 3.5 of the Community guidelines for State aid in the agriculture sector [6] (hereafter referred to as the 'guidelines') and, therefore as being incompatible with the common market.

(24) The Commission accordingly expressed doubts about the existence of a link between the loss of income suffered by Italian poultry farmers and an exceptional occurrence and about whether the aid could meet the requirements for approval under Article 87(2)(b) or Article 87(3)(c) of the Treaty (since, as regards the latter subparagraph, the aid did not appear to facilitate the development of a particular economic activity) or those for approval under one of the points of the guidelines.

III. OBSERVATIONS SUBMITTED BY ITALY

(25) In their letter dated 24 October 2001, registered on 26 October 2001, the Italian authorities pointed out, among other things, that the fall in the consumption of poultry products in June, July, August and, to a lesser extent, up until December 1999 had not been questioned in the decision to initiate the procedure.

(26) According to the Italian authorities, since the losses caused by a fall in sales and prices were not questioned by the Commission, they only had to establish a link between those losses and the dioxin crisis. They claim that such a link is proven by the fact that the first news about dioxin in poultry was broadcast at 7 p.m. on 28 May 1999 and the sudden downturn in sales occurred from June 1999 onwards (29 % fall compared with June 1998). They affirm that the consumption trend in Italy closely followed the public alarm triggered by the media, with a sharp drop in sales when the news concerning dioxin was first broadcast, a resumption of sales in July, when media interest declined, and a further reduction in August following news of the European Union decision to double the maximum permissible level of dioxin in certain products. They add that, from September onwards, with the media paying increasingly less attention to the matter, the consumption of poultry products gradually returned to its normal level.

[6] OJ C 232, 12.8.2000.

(27) Consequently, the Italian authorities believe there is an undeniable link between consumer concern following news broadcasts about dioxin in Belgium and the fall in consumption and prices.

(28) It therefore remains to be proven that the dioxin crisis in Italy can be regarded as an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. The Commission is said to have already recognised the exceptional character of the dioxin crisis in Belgium, in view of the nature and extent of the restrictions imposed to safeguard public health. While Italy may not have been directly affected by the dioxin crisis, according to the Italian authorities there is no question that the effects of the crisis went beyond national borders and also affected neighbouring countries, including Italy.

(29) The Italian authorities argue that an 'exceptional occurrence' within the meaning of Article 87(2)(b) of the Treaty is any unforeseeable event or any event that is difficult to predict, such as a natural disaster. Therefore, it is the event in itself that should be assessed, rather than the measures adopted to cope with the resulting crisis, which are simply a consequence of the event. They state that, in the case of BSE in the United Kingdom, the Commission had accepted the exceptional nature of the event because of the ban on meat exports, but especially because of the fall in the consumption of beef and veal caused by the uncertainty and fear aroused by the news concerning BSE. The Italian authorities claim that the same situation arose in Italy in 1999 following the dioxin scare. The ban on UK exports did not contribute to any major extent to the fall in consumption, since, even without the ban, consumers abroad would in any case have reduced their consumption of beef and veal (just as consumers in the UK did), thus preventing producers from finding other outlets abroad for their products. In the case of dioxin in 1999, it should be added that all non-member countries banned imports of poultrymeat from the EU at the time of the crisis.

(30) The Italian authorities argue that the reason why Italian producers neither turned to foreign markets nor exploited the Italian market is related to the transnational character of the event, which went well beyond the borders of Belgium.

(31) The incomes of certain Italian poultry undertakings over the period June-August 1999 clearly attests, according to the Italian authorities, to this fall in prices and sales.

IV. LEGAL ASSESSMENT

The existence of aid

(32) Under Article 87(1) of the Treaty, any aid granted by a Member State or through state resources in any form whatsoever that 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.

(33) Article 19 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ([7]) lays down that, save as otherwise provided in that Regulation, Articles 87, 88 and 89 of the Treaty apply to the production of and trade in the products covered by that Regulation.

(34) The planned measure provides for the payment of public funds (totalling ITL 20 billion) to certain undertakings and is granted on a selective basis to poultry farmers presumed to have suffered losses resulting from the dioxin crisis. In addition, this measure favours certain products (poultry products) and, in view of Italy's share of total EU poultry production (13,2 %), is likely to affect trade. In 2001, gross Italian poultry production amounted to 1 134 000 tonnes out of an EU-15 total of 9 088 000 tonnes ([8]).

(35) The measure under examination therefore constitutes state aid as defined in Article 87(1) of the Treaty.

Compatibility of the aid

(36) The prohibition on state aid is not absolute. In this case, the Italian authorities invoked the derogations provided for in Article 87(2)(b) of the Treaty, under the terms of which aid to make good the damage caused by natural disasters or exceptional occurrences can be considered to be compatible with the common market.

(37) Since the Treaty gives no definition of 'exceptional occurrence', it must be verified whether the dioxin crisis in Italy can be treated as an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty.

([7]) OJ L 282, 1.11.1975, p. 77.

([8]) Source: Eurostat and the European Commission.

(38) In accordance with the Community guidelines for state aid in the agricultural sector ([9]), in assessing aid to compensate for losses caused by natural disasters or exceptional occurrences, because they constitute exceptions from the general principle of the incompatibility of state aid with the common market enshrined in Article 87(1) of the Treaty, the Commission has consistently held that the concepts of natural disaster and exceptional occurrence found in Article 87(2)(b) must be interpreted restrictively. Hitherto the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters. Exceptional occurrences that have hitherto been accepted by the Commission include war, internal disturbances or strikes and, with certain reservations and depending on their extent, major nuclear or industrial accidents and fires that result in widespread loss. On the other hand, the Commission did not accept that a fire at a single processing plant which was covered by normal commercial insurance could be considered as an exceptional occurrence. As a general rule, the Commission does not accept that outbreaks of animal or plant diseases can be considered to constitute natural disasters or exceptional occurrences. However, in one case the Commission did recognise the very widespread outbreak of a completely new animal disease as an exceptional occurrence. Given the inherent difficulties in foreseeing such events, the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis, having regard to its previous practice in this field. Such a case-by-case analysis is particularly necessary in such a sensitive sector as poultry farming, where any market measure could conflict with measures laid down under the common organisation of the market.

(39) Generally speaking, the Commission cannot accept that the chemical contamination of foodstuffs intended for human consumption constitutes, in itself, an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty. In fact, the risk of contamination is a consequence of a failure to guarantee the highest quality standards throughout the food chain.

(40) In the case of the dioxin crisis in Belgium, numerous elements had to be taken into account before it could finally be established that this crisis constituted an exceptional occurrence. The Commission first of all looked at the scope of the measures adopted to deal with the crisis and protect human health, including a ban on the marketing and retail sale of poultrymeat, a ban on the trade in and the export to third countries of certain animal products intended for human and animal consumption and the imposition of a series of conditions, including the monitoring, the traceability and the control of the products concerned ([10]). The crisis was declared to be an exceptional occurrence on the basis of two facts, namely the announcement made by the Belgian authorities, along with the emergency measures subsequently adopted and the consequent impossibility of marketing production, which created a crisis situation for Belgian producers. This crisis situation, by its nature and its effects on the operators concerned, differed sharply from the usual situation and the conditions under which the market normally operates. The rapid spread of alarm among consumers and the ban on Belgian animals and animal products imposed by various third countries seriously aggravated the crisis and severely disrupted the market on which Belgian producers sold their products, led to a loss of market share and, consequently, a reduction in turnover compared with what would have been expected in a normal market situation.

(41) Neither the chemical contamination of products nor the fall in sales was sufficient in itself to conclude that this was an exceptional occurrence, which was the result of significant measures to restrict the marketing and exportation of these products, combined with the sharp fall in sales and prices. The alarm among consumers and their reaction to the dioxin contamination of poultrymeat were only contributing factors to the exceptional nature of the occurrence.

(42) In the case of Italian producers, it should be noted that no measures were adopted restricting the marketing or exportation of products and no restrictive measures were adopted to protect consumer health, since the country was not directly affected by the crisis. The only unforeseeable factor that created disruption on the market was the spreading of alarm among consumers and their reaction to contamination detected elsewhere.

(43) The situation in Italy cannot be compared with that in the countries directly affected by the crisis. The dioxin crisis was declared to be an exceptional occurrence in Belgium, not an exceptional occurrence in itself. As stressed in

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

([10]) These measures were laid down in three Commission Decisions: Commission Decision 1999/363/EC of 3 June 1999 on protective measures with regards to contamination by dioxins of certain animal products intended for human or animal consumption (OJ L 141, 4.6.1999, p. 24). These measures concerned, in particular, poultrymeat and all poultry products, such as eggs and egg products, fats and animal proteins used as raw materials in food production, etc.; Commission Decision 1999/368/EC of 4 June 1999 and Commission Decision 1999/389/EC of 11 June 1999 on protective measures with regards to contamination by dioxins of products intended for human or animal consumption derived from bovine animals and pigs (OJ L 142, 5.6.1999, p. 46 and OJ L 147, 12.6.1999, p. 26). These measures concerned, in particular, beef and veal, pigmeat and milk and all products manufactured therefrom.

recitals 37 to 40, neither the chemical contamination of foodstuffs intended for human consumption nor the spread of alarm among consumers constitutes an exceptional occurrence within the meaning of Article 87(2)(b).

(44) The Italian authorities also referred to the first BSE crisis in the United Kingdom. In that case, the extraordinary situation in the beef and veal sector was caused by the total ban imposed on the exportation of live animals and of beef and veal from the United Kingdom to other Member States and to non-member countries. The effects of the market measures adopted in response to the problem of BSE in the United Kingdom were unprecedented. The Commission pointed out that, in the context of the measures adopted to deal with the crisis, that there was a total ban on all British meat and meat products that might enter the human and animal food chain and an unprecedented fall in domestic meat consumption. The fall in consumption was related to the stringent restrictions imposed on the market, which had created a situation that could be described as exceptional.

(45) In addition, concerning more recent cases of BSE in Europe ([11]), the Commission pointed out that a fall in sales or incomes was not regarded as an exceptional event. The collapse in sales is regarded as the consequence of an exceptional occurrence, caused by an unusual combination of factors. As in the cases referred to above, aid intended to deal with an exceptional occurrence within the meaning of Article 87(2)(b) was approved in the countries directly concerned, in which various factors contributed to the exceptional nature of the crisis: the very serious negative repercussions on European agricultural producers, the alarm that spread among consumers, the ban imposed by a large number of non-member countries on animals and meat products from the EU and a series of incidents beyond the control of livestock farmers that aggravated the crisis situation and spread fear among consumers. All this caused serious disruption of the market on which European producers sell their products, a subsequent loss of market share and a reduction in turnover compared with what would have been expected in a normal market situation.

(46) A major factor that the Commission took into account in recognising that crisis as an exceptional occurrence was the stable and balanced situation on the market for beef and veal before the crisis. However, as shown below (see recitals 54 to 57 below) and as declared by the Italian authorities themselves (see letters dated 28 August and 15 November 2000), this was not the case with the market for chicken in Italy, on which there was already overproduction and falling prices.

(47) In all the cases referred to above, and in particular those referred to by the Italian authorities, the exceptional occurrence occurred in the country concerned and led to the adoption of a series of restrictive, market-control and health measures which contributed to a fall in sales and prices of the products concerned.

(48) In addition, an exceptional occurrence must at least, by its nature and its effects on the operators concerned, differ sharply from the usual situation and the conditions under which the market normally operates. The unforeseeable nature of an occurrence and the difficulty in predicting it can contribute to its exceptional nature, but are not in themselves sufficient to declare it 'exceptional' within the meaning of Article 87(2)(b) of the Treaty.

(49) In this case, the alleged fall in sales is no different from other events that determine demand, such as closure of an export market. Such events are just as unforeseeable, but form part of the normal commercial risks to which an undertaking is exposed and are in no way exceptional within the meaning of Article 87(2)(b) of the Treaty.

(50) According to the Italian authorities, Italian producers had no other market outlets, because the crisis had spread well beyond the borders of Belgium and the consumption of poultrymeat had fallen throughout Europe.

(51) However, according to information available to the Commission, intra-Community exports of poultry in June and August 1999 remained at their usual levels and were actually slightly higher than in the previous year. Intra-Community exports in July were higher than the average for 1999 and than in the corresponding month of the previous year. Although this increase was not enough to absorb all the unsold production declared by the Italian authorities, it mitigated the impact of the crisis on producers, allowing them to sell a part of their production on the Community market. The Italian authorities provided no figures to prove the absence of other outlets on the Community market, simply stating that, because of the crisis, the consumption of chicken in all other European countries had also fallen. At the same time, they state that certain countries, such as Denmark, Greece, Spain, Ireland, Austria, Portugal, Finland, Sweden and the United King-

([11]) See, *inter alia*, aids N 113/A/2001 (Decision SG 01 290550 of 27 July 2001), N 437/2001 (Decision SG 01 290526D of 27 July 2001), N 657/2001 (Decision SG 01 292096 of 9 November 2001) and NN 46/2001 (Decision SG 01 290558 of 27 July 2001).

dom, could be taken as reference countries for comparing prices (see recital 7 above) because they were not affected by the crisis. They could therefore have provided an outlet for at least a part of this surplus production.

(52) In addition, in view of the policy of the Commission as regards the application of Article 87(2)(b) of the Treaty in the agricultural sector, any overcompensation of losses must be ruled out.

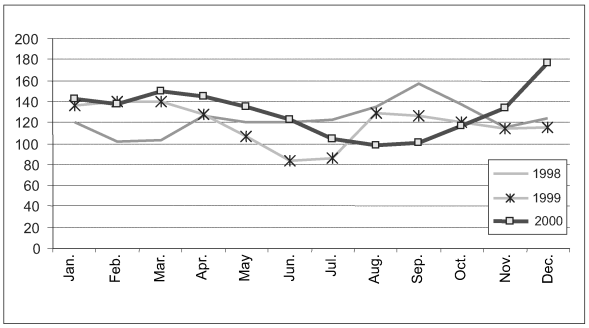
(53) The compensation mechanism planned by the Italian authorities is based on aid for meat produced and marketed during June and July 1999, calculated on the basis of the difference between the average price in countries not affected by the crisis and the average price in Italy. According to the Italian authorities, this difference was EUR 53,966/100 kg in June and EUR 46,218/100 kg in July. The aid is ITL 21 150/100 kg (or EUR 10,92/100 kg) and ITL 15 400/100 kg (or EUR 7,95/100 kg.

(54) This calculation method raises two problems. The first concerns the statement by the Italian authorities that farmers had to freeze unsold meat ([12]). This would have allowed poultry products unsold during the crisis to be sold at a later date and losses would have been less than declared during examination of this case. The Italian authorities made no comment on this point. Consequently, the risk of overcompensation for the losses, with a part of production being sold at a later date, probably at normal prices, cannot be ruled out. In addition, the Italian authorities declared that 43 170,1 tonnes of chickens were slaughtered in June 1999 and 47 485,9 tonnes in July, making a total of 90 656 tonnes (see letter dated 15 November 2000), while the quantities of meat sold were 34 700 000 kg in June 1999 and 30 200 000 kg in July, a total of 64 900 tonnes. The quantities frozen in June and July were 4 150,8 tonnes and 9 271,3 tonnes respectively, making a total of 13 422,1 tonnes. No information was provided regarding what was done with the part of production that was not sold or frozen and could therefore have been put to another commercial use.

(55) Italy refers to average prices in other European countries not affected by the crisis, without taking into account the fact that prices in Italy were already falling before June 1999 and that prices for poultrymeat vary. The table below shows price trends in Italy in 1998, 1999 and 2000 ([13]):

Monthly market price of whole chickens

EUR/100 kg



(56) According to the Italian authorities, the poultrymeat sector was already experiencing overproduction and, consequently, producers decided in March to slaughter a percentage of the chickens they had been intending to slaughter in April and May, the aim being to reduce the supply of meat in June by 4,8 %. According to the Italian authorities, because of the dioxin crisis, 10 % of production in June was not slaughtered and marketed but rather was kept until July and August, increasing supplies during those two months. On the basis of the data available to the Commission, the number of chicks being reared increased in February, March and April, leading to an estimated 5,6 % increase in production in June.

(57) A comparison of the data for the slaughter of chickens between May and August 1999 with those for the same months of the previous year shows an increase in the number of chickens slaughtered in May 1999, and therefore in the supply of chickens, of almost 9 %; in June 1999, the supply was down 10 % on June 1998 and in July 1999 the number of chicken slaughtered was almost 10 % up on the figure for the same month in 1998. This upward trend in supplies continued in August 1999 (+ 6,5 %). Assuming that prices follow the supply trend, it can be deduced that prices would have fallen from their April level, when they were already lower than the European average because of overproduction. Consequently, comparing the prices of chickens in Italy in June and July with the average of prices in those countries not affected by the dioxin crisis would lead to an overestimation of the value of chickens in Italy.

(58) Given the variability of prices of chickens in Italy and the downward trend in prices already seen before the dioxin crisis broke, no useful comparison can be made between selling prices in June 1999 and those in June 1998 and any comparison would, in any case, not reflect the overproduction that was already affecting the market for chicken in Italy and the resulting fall in prices already being felt. The statement by the Italian authorities that producers had already taken measures to correct the situation on the market, slaughtering chicks in March that were due to be slaughtered in April and May in order to reduce supplies in June and July, does not tally with the

([12]) See letter dated 23 May 2001, in which the Italian authorities declare that producers were forced to freeze 4 150,8 tonnes in June, 9 271,3 tonnes in July and 2 595,9 tonnes in August.

([13]) The data refer to intra-Community exports of all poultrymeat (by carcase weight).

numbers of chicks being reared and, therefore, with estimates for production, which indicate an increase in supplies in June and a small reduction (1,6 %) in July. Any attempt to forecast selling prices in June and July 1999 (compared with prices in June 1998 or prices recorded in other European countries not affected by the dioxin crisis) using these figures would be no more than guesswork.

(59) Consequently, the Commission can conclude that, since consumer alarm does not in itself constitute an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty and that the method of calculating losses proposed by the Italian authorities could lead to an overestimate of the losses suffered by Italian poultrymeat producers, the measure cannot be considered to be compatible with the common market under Article 87(2)(b).

(60) Even if the aid is examined in the light of Article 87(3) of the Treaty, the only conclusion that can be reached is that it is incompatible with the common market. Article 87(3)(a) does not apply, because the aid is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

(61) As regards Article 87(3)(b), the aid 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.

(62) As regards Article 87(3)(d) of the Treaty, the aid is not intended to achieve the objectives laid down in that subparagraph.

(63) As regards Article 87(3)(c) of the Treaty, since the Italian authorities correctly notified the law for evaluation within the meaning of Article 88(3), the rules laid down in the Community guidelines for state aid in the agricultural sector ([14]) (hereinafter the guidelines) apply. In accordance with point 23.3 of the guidelines, the guidelines apply to new state aid, including that already notified by the Member States, but on which the Commission has not yet ruled, with effect from 1 January 2000.

(64) Aid to compensate for losses of income related to animal diseases is governed by point 11.4. It may include reasonable compensation for loss of profit, taking into account the difficulties involved in restocking the herd or replanting and any quarantine or waiting period imposed or recommended by the competent authorities to allow the elimination of the disease before the holding is restocked or replanted. The compulsory slaughter of animals by order of the health/veterinary authorities, under a plan for preventing and eradicating the animal disease is therefore a necessary condition for granting this aid.

(65) From the notification, it is clear that the health/veterinary authorities issued no order to slaughter animals under a plan for preventing and eradicating an animal disease, since the chemical contamination did not affect Italian undertakings. Consequently, the measure under consideration does not meet the conditions laid down in point 11.4 of the guidelines.

(66) In the light of the above, the aid for undertakings in the poultrymeat sector cannot be regarded as aid intended to compensate for losses caused by an exceptional occurrence within the meaning of Article 87(2)(b) or as aid eligible for one of the exemptions provided for in Article 87(3). Consequently, the aid in question appears to be operating aid incompatible with the common market in accordance with point 3.5 of the guidelines ([15]).

(67) The aid also infringes the rules laid down in Regulation (EEC) No 2777/75, under which only the following measures may be taken in respect of the products specified in Article 1 thereof: measures to promote better organisation of production, processing and marketing; measures to improve quality; measures to permit the establishment of short- and long-term forecasts on the basis of the means of production used; and measures to facilitate the recording of market price trends. In addition, in order to take account of any restrictions on free circulation imposed in consequence of measures to prevent the spread of animal disease, exceptional measures may be taken under the procedure provided for in Article 17 to support any market affected by such restrictions. Such measures may be taken only to the extent that and for such period as is strictly necessary for the support of that market. In this case, none of these measures was adopted in Italy. It therefore follows that any other type of state aid may be granted only under Articles 87 to 89 of the Treaty. As indicated in the previous recital, the aid in question does not comply with the rules governing state aid and, consequently, is incompatible with the common market.

([14]) JO C 28, 1.2.2000, p. 2.

([15]) Judgment of the Court of First Instance in Case T 459/1993 (*Siemens SA v Commission of the European Communities*) ECR [1995] 1675.

V. **CONCLUSIONS**

(68) In the light of the above, the Commission is in a position to conclude that the aid provided for under the AIMA programme for poultry farmers constitutes state aid within the meaning of Article 87(1) of the Treaty and that it is ineligible for any of the derogations provided for in Article 87(2) and (3).

(69) Since the programme was notified in accordance with Article 88(3) of the Treaty, which lays down that the Member State may implement the aid only after approval by the European Commission, it is not necessary to provide for the recovery of the aid,

HAS ADOPTED THIS DECISION:

Article 1

The aid Italy intends to grant under the national programme of AIMA assistance for 1999 is incompatible with the common market.

Italy may not implement the aid in question.

Article 2

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 19 May 2004.

For the Commission

Franz FISCHLER

Member of the Commission