STATE AID

Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 44/99 — (ex NN 23/99 (ex N 678/98) — Ewe supplementary measure (1998)) and (ex NN 79/99 (ex N 90/99) — Scheme of Assistance for Winter Fodder Losses (February 1999))

(1999/C 280/05)

By means of the letter dated 30 July 1999 reproduced in the authentic language on the pages following this summary, the Commission notified Ireland of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning the abovementioned aid/measure.

Interested parties may submit their comments within one month of the date of publication of this summary and the following letter to:

European Commission
Directorate-General for Agriculture
Directorate Agro-economic legislation
Rue de la Loi/Wetstraat 200
B-1049 Brussels
Fax (32-2) 296 21 51

The comments will be communicated to Ireland. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

The measures in respect of which the Commission has decided to initiate the procedure form part of a series of measures relating to losses in winter fodder supply due to persistent bad weather in 1998 and 1999. Full details of all the measures concerned, and the reasons for which the Commission has decided not to raise objections to certain measures can be found in the full text of the letter to the Member State which is reproduced immediately after this summary.

NN 23/99 (ex N 678/98) — Ewe Supplementary Measure (December 1998)

The decision to open the procedure concerns only the second submeasure (Ewe Premium) of the Ewe Supplementary Measure which consists in providing slaughter facilities to remove about 100 000 cull mountain ewes from mountain commonage land in six western counties of Ireland which were also affected by the weather conditions and difficult soil types. Total expenditure under the scheme was about IEP 1 million (EUR 1,27 million) and assistance was only provided in respect of the disposal of ewes during November and December 1998. The Department of Agriculture and Food made payments to sheep slaughter plants providing slaughter facilities in the case of two categories of ewes which would not have had a sufficient commercial value to cover the slaughter and handling costs involved.

The payment is IEP 10 (EUR 12,7) in the case of condemned animals which would not have had any commercial value. 66 % of the animals culled were condemned and disposed of through the rendering plant. In the case of animals which were condemned, the factory made no payment to the producer. A payment of IEP 3 (EUR 3,81) was made in the case of ewes suitable for boning ('boner ewes') which would yield a limited value to plants in terms of the meat harvested. According to the Irish authorities' information the aid of IEP 3 per animal enabled the meat plants to dispose of 35 300 'boner ewes'. For these animals the question of payment was for negotiation between producer and plant, and according to the Irish authorities only token sums were paid. Meat from the animals purchased by meat plants, under this arrangement, was sold for human consumption.

The Commission considers that the measure in question clearly constitutes aid to the sheep producers within the meaning of Article 87(1) of the Treaty.

The Commission has doubts that Article 87(2)(b) according to which Member States may grant aid compensating for damages due to exceptional occurrences can be applied to the present case. Indeed the measure appears to counteract problems which are due to an economic downturn in the sector and the measure could therefore not be considered to constitute compensation of damages due to an exceptional occurrence.

As regards Article 87(3)(c) of the Treaty the Commission doubts that the Ewe Premium can be considered to facilitate the development of the sector as it is not likely to bring about structural improvements in the beneficiaries' holdings. Furthermore, by permitting the meat obtained from 'boner ewes' to be sold on for human consumption, and thus compete in the market place with other meat, whose slaughter costs have not been subsidised, it appears that the Irish authorities have failed to take the steps necessary to minimise the effects of the measure on competition.
In regard of the argument that the measure was necessary because of animal welfare reasons, the information so-far provided does not demonstrate the existence of a serious and immediate welfare problem which could justify the slaughter of such a large number of animals within a short time-scale. Indeed, it would appear that the principle problem referred to by the Irish authorities, malnutrition, could easily be remedied by the provision of adequate feed for the animals concerned.

The Irish authorities also refer to environmental considerations in order to justify the aid, and in particular the damage which the animals might cause to already waterlogged grasslands. However, it would also appear that this problem could be resolved by the provision of feed from alternative sources.

The Irish authorities have also referred to the extra costs for processing companies on account of national safety-requirements in requiring the disposal of specified risk materials (SRM). At this stage of the procedure, the Commission does not wish to exclude entirely the possibility that payment of a temporary and degressive aid to enable livestock producers and slaughter houses to offset a loss of international competitiveness by allowing time for them to adapt the additional costs imposed by national rules on the disposal of SRM might be considered to facilitate the development of the sector as a whole, and thus benefit from an exemption under Article 87(3)(c) of the Treaty. However, in the present case, the Commission notes that the aid is being granted selectively, in respect of a limited number of animals and for a limited geographical area, specifically in response to stated adverse market conditions which made it unprofitable for the slaughter houses to process the animals concerned.

Furthermore the Commission expresses doubts as to the compatibility of the aid measure with the common market organisation on sheepmeat. The Irish measure may constitute an alternative intervention mechanism which is liable to interfere with the system provided for in the common market organisation. Should these doubts be confirmed, the Commission would have no alternative but to find that the aid is contrary to the Treaty.

The first submeasure extends aid granted under N 605/98 to new beneficiaries who did not receive aid as they are not situated in these areas of the Less Favoured Areas which had been identified as worst affected.

The payment rates are set for sheep farmers with mountain ewes at EUR 5.08 per ewe or hogget up to 75 head, for suckler cow farmers at EUR 50.79 (IEP 40) per suckler cow up to a ceiling of EUR 380 (IEP 300) equivalent to 7.5 cows and for small scale dairy farmers (< 35 000 gallons milk quota) at EUR 38.01 per 1 000 gallons milk up to 10 000 gallons.

On the basis of the information the Irish authorities submitted the Commission cannot exclude that aid is also granted to farmers who pursue intensive production methods possibly buying-in winter fodder from external sources. In such cases, the possibility of overcompensation cannot be excluded.

In recognition of the fact that farmers who have already received support under N 605/98 are located in the worst affected areas, according to the second submeasure a 50 % top-up payment will now be made available to them, bringing the total level of compensation to about 50 %. However the Commission considers that the Irish authorities did not submit evidence which would demonstrate that the average level of winter fodder losses of the producers concerned reaches 50 % or more. Indeed the latest Teagasc report (January 1999) speaks of 20 % to 50 % losses.

Finally a special fodder hardship fund (SFHF) will operate for a small number of farmers who have not qualified for aid in 1998 and who would not qualify for aid under the first sub-measure (see above) of the present scheme. The objective is to grant aid to small farmers almost totally dependent on a relatively small farm enterprise as a source of income. The corresponding budget appropriation amounts to EUR 635 000. There is, however, no indication that grants under the measure would be conditional on or in proportion to losses of winter fodder due to wet weather. Assistance appears rather to be given to any farmer who can prove that his cattle are suffering or are likely to suffer malnutrition due to a shortage of fodder independently of the reason for this. For this reason the Commission considers that this measure may constitute an operating aid which would be incompatible with the common market.

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NN 79/99 (ex N 90/99) — Scheme of Assistance for Winter Fodder Losses (February 1999)

This aid provides for three sub-measures directed at different groups of beneficiaries. The budget for the first and the second measure in total amounts to EUR 25.4 million.
The Commission wishes to inform Ireland that, having examined the information supplied by your authorities on the aid measures referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the ewe premium introduced with the ewe supplementary measure (NN 23/99) and in respect of the scheme of assistance for winter fodder losses (NN 79/99). As regards the measure providing for compensation for the loss of winter fodder to hill sheep farmers (part of the ewe supplementary measure) the Commission does not raise objections as this measure is considered to be compatible with the Treaty.

In taking this decision the Commission has relied on the following considerations:

PROCEDURE

(1) The two aid schemes represent further measures relating to losses in winter fodder supply of Irish livestock producers due to persistent bad weather during 1998 and 1999. The Irish authorities state that further aid became necessary because of continuous wet weather conditions, high stock level on farms, earlier winter feedings because of such ground conditions and poor silage quality.

(2) The Commission has by letter of 8 December 1998 already authorised one aid scheme to compensate Irish livestock producers for fodder losses caused by adverse weather conditions (N 605/98).

(3) This authorised scheme was directed at sheep farmers with mountain grazings, suckler cow producers and small dairy farmers (with milk quotas of less than 35 000 gallons) in 753 district electoral divisions (DEDs) situated in areas which were identified as worst affected by a Teagasc survey of September 1998. These areas also have the status of less-favoured areas within the meaning of Directive 75/268/EEC.

(4) The payment rates were set for Sheep Farmers with Mountain Ewes at EUR 5,08 per ewe or hogget up to 75 head, for Suckler Cow Farmers at EUR 50,79 (IEP 40) per suckler cow up to a ceiling of EUR 380 (IEP 300) equivalent to 7,5 cows and for small scale dairy farmers (< 35 000 gallons milk quota) at EUR 38,00 per 1 000 gallons milk up to 10 000 gallons.

(5) According to the letter from the Irish authorities of 11 February 1999, total expenditure under the authorised scheme amounted to EUR 15,4 million (IEP 12,128 million). This was made up of payments to 43 969 suckler cow and hill sheep farmers amounting to a total of EUR 13,758 million and payments to 6 851 dairy farmers of a total of EUR 1,643 million. However, of these dairy farmers, 1 387 of did not receive any further payment, as they had reached the EUR 380 ceiling for suckler cow payments.

(6) The present decision concerns two further aid measures which are intended to alleviate the difficulties of Irish livestock farmers:

(7) A notification of an aid measure (ewe supplementary measure) according to Article 88(3) of the Treaty was forwarded by Ireland on 2 December 1998 in reply to a letter from the Commission of 26 November 1998 asking for information about a scheme, of which the Commission had learned through information in the public domain. The aid was registered under the State aid number N 678/98.

(8) By letters of 12 February 1999 and 14 April 1999 the Irish authorities submitted additional information. In their letter of 12 February 1999 they confirmed that the measure had been put into effect before the Commission had submitted its comments according to Article 88(3) of the Treaty. The aid was consequently transferred to the register of non-notified aids as NN 23/99.

(9) By letter of 11 February 1999, registered on 18 February 1999 the Irish authorities notified a further aid scheme under the title assistance for winter fodder losses (February 1999) according to Article 88(3) of the Treaty. Additional information was submitted by letter of 29 April 1999, registered on 3 May 1999. In the letter the Irish authorities confirmed that the aid had been put into effect. The aid was consequently transferred to the register of non-notified aids as NN 79/99.

(10) The Commission takes note of the Irish authorities' explanation that "there was an imperative for immediate intervention and the Department of Agriculture and Food recognised that any delay would have led to serious animal welfare problems and health risks should widespread animal deaths from starvation occur, an inevitability in the circumstances."

(11) Nevertheless, the Commission regrets that Ireland by putting the schemes into force without granting sufficient time for the Commission to submit its comments concerning the projects acted in violation of its obligations under Article 88(3) of the Treaty. In this context it has to be recalled that according to the jurisprudence of the European Court of Justice the procedural rules laid down in Article 88(3) of the Treaty have direct effect and the procedurally illegal nature of an aid cannot be redressed after the event.

DESCRIPTION AND ASSESSMENT

(12) Since both of the measures provide relief in respect of the same winter fodder problem and to a certain extent will apply in respect of the same beneficiaries the Commission has considered it appropriate to examine the measures in one.

(13) Since the measure applies in the sector of livestock production, as a matter of preliminary observation it has to be noted that the applicability of the State aid rules of the Treaty results from the relevant provisions of the common organisations of the market for sheep and the production of sheepmeat respectively, wherein is stipulated that Articles 87, 88 and 89 of the Treaty apply to the products covered by the Regulations.


NN 23/99 — EWE SUPPLEMENTARY MEASURE

(14) The notified aid consists of two distinct measures in the sheepmeat sector, the additional winter fodder aid and the ewe premium, which are assessed separately in the subsequent sections I.(a) and I.(b).

I.(a) Additional winter fodder aid

(15) The measure provides aid for farmers who had to purchase additional animal feed in the winter of 1998/1999 because of exceptionally bad weather conditions which did not allow them to leave their animals outside for grazing. Payments will be granted per ewe for hill sheep farmers depending largely on commonage grazing in the six western counties. There are 5 300 sheep producers belonging to this group.

(16) Sheep producers who depend largely on commonage grazing are among the worst affected by the fodder crisis, as the counties concerned are located in the part of Ireland with the highest rainfall. During the 1998 growing season, severe wet weather and below average sunshine resulted in difficulties in saving adequate winter feed for animals. The situation is acute particularly on peaty or heavy clay soils, and conditions were so poor that a large proportion of winter fodder could not be harvested due to ground conditions. Through October, November and December, weather conditions continued to be very unfavourable, with rainfall between 125 % and 145 % of normal in the West of Ireland. The saturated grazing land in these hill sheep farms was unable to meet feed demand, the need for supplementary fodder increased and at the same time the shortage in fodder supply proved to be acute. Despite the efforts of the Irish authorities to provide help to those most in need, there have been distressing accounts of cattle and sheep deaths from starvation during January and February of this year.

(17) The number of sheep with reference to which the payments are made correspond to not more than 70 % of the 1998 quota number of ewes. The payment per ewe is set at IEP 10 (EUR 12.7). The cost of this additional support will be IEP 5 million (EUR 6,349 million).

Article (87)(1) of the Treaty

(18) The payments in question manifestly fulfil the terms of Article 87(1) of the Treaty which lays down a general prohibition to grant State aids subject to exception provisions in paragraphs 2 and 3.

Article (87)(2)(b) of the Treaty

(19) Under Article 87(2)(b) of the Treaty it is constant Commission practice (see Working Document VI/5934/86 (4)) to allow aids to be granted to compensate for adverse weather conditions such as heavy rain provided that the resulting losses reach a certain minimum intensity, normally 30 %, reduced to 20 % in the case of the less-favoured areas, in comparison with an average year (calculated on the basis of average production in the three years preceding the year in which the damage took place). The aid should not exceed the amount of the loss of the individual producer.

(20) The scheme authorised by Commission letter of 25 November 1998 as N 605/98 was open to various groups of beneficiaries one of which being hill sheep farmers also targeted by the present measure (2). Pursuant to N 605/98 beneficiaries have received winter fodder aid of IEP 4 per ewe on numbers up to 75. This scheme, however, proved to be insufficient since the farmers' fodder situation deteriorated further on account of persistent bad weather. In fact, due to the exceptional weather situation, the Irish authorities in the meantime had to further complement their support by introducing a third scheme (see section II of this letter) which again partly targets the same farmers who have already received aid under the previous schemes.

(21) The Commission accepts that farmers who largely depend on commonage grazing and in normal years either leave their animals outside permanently or only incur little cost for bought-in fodder when sheep are brought in for a short time sustained economic damage on account of the exceptionally bad weather conditions similar to farmers who suffer losses in the winter fodder they save. In terms of Commission policy on compensation for production losses suffered from adverse weather conditions the factual impossibility to provide fodder for the sheep by grazing can therefore be assimilated to a loss of fodder production.

(22) As the Irish authorities have confirmed that during the last winter the feeding available from grazing was virtually nil (which must be considered to constitute a loss of 100 %) the losses for the farmers exceed the relevant mark of 20 %. From this follows the applicability of Article 87(2)(b) of the Treaty.

(23) The Irish authorities have attached to their letter of 14 April 1999 an annex which sets out the feeding requirements for hill sheep in normal winters compared with the winter of 1998/1999. Since weather conditions severely affected grass availability, hill sheep farmers during the last winter had to provide twice the quantity of feeding for twice the period of time which resulted in extra-costs of approximately IEP 23 (EUR 29,20) per ewe (actual feeding costs of IEP 28 in comparison to normal costs of about IEP 4.7 (5)). As the combined premium of the present scheme in combination with the first winter fodder aid (N 605/98) amounts to IEP 14 per ewe there is in principle no risk of over compensation at the level of the individual beneficiary.

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(4) Working Document No VI/5934/86 of 10 November 1986 regarding eligibility of damage for compensation in cases of adverse weather conditions respectively epizootic and plant diseases.

(5) Mountain sheep farmers, suckler cow farmers and small-scale dairy farmers located in Leitrim, Cavan west, Roscommon north, Mayo, along the rivers Shannon and Suck, including Shannon Callows, Clare (all areas), especially north and west Clare; Longford North, all of Donegal except east Donegal, Kerry (south and east of Killarney), Galway (wetland areas and Connemara), Sligo (west and south), Cork (West Duhallow and Skibbereen/Bantry areas) and certain other mountain areas.

(6) In the case of mountain sheep production normally lambing occurs late (April, May, June) and in many cases sheep survive on the hillside or upland pastures without housing. In consequence, in the case of this production system, feed expenditure ranges from none at all to some supplementary expenditure for feeding in February and March prior to lambing amounting to an average expenditure on feed of about IEP 4.7 per ewe (30 kgs forage and 10 kgs concentrate. The Commission accepts that farmers who largely depend on commonage grazing and in normal years either leave their animals outside permanently or only incur little cost for bought-in fodder when sheep are brought in for a short time.
However, the Commission has noted that the means by which the level of compensation is calculated is not directly based on the farmers' fodder losses. Instead, compensation is calculated by reference to the quota for sheep under the common market organisation. According to the Irish authorities, this is done in order to keep the costs of administrating the scheme in proportion to its objective. The possibility of impreciseness in the calculation of compensation seems to be further accentuated by the fact that the second part of the measure (see section I(b) below) implemented in December 1998 provides for the de-stocking of herds by 30%.

The Irish authorities have assured that as the number of sheep with reference to which the payments are made is set at not more than 70% of the 1998 quota number of ewes (see paragraph 17 above) the aid is granted in accordance with, at least, the minimum number of sheep remaining in the flocks. Under European Union Regulations governing the use of individual quota rights, producers must use at least 70% of their quota each year; otherwise the part not used is forfeited to the national reserve. According to the Irish authorities experience has shown that in order to retain sufficient numbers of ewes to fulfill the quota usage requirements, sheep producers in mountain farm areas generally maintain a number of ewes in excess of their full quota to avoid reduction penalties when losses occur. It should also be noted that, in Ireland, the application period for the 1999 ewe premium (see section I(b) below) commenced on 8 December 1998, and that ewes applied for must be maintained by the applicant until the retention period expires on 18 April 1999. The farmers concerned will therefore maintain a number of ewes at least equal to 70% of their individual quota, and possibly more, over this winter period, despite the hardship conditions.

In its decision on the first winter fodder aid (N 605/98) the Commission recognised that in schemes involving the payment of relatively small amounts of aid to large numbers of beneficiaries the individual calculation of actual losses incurred could result in disproportionate administrative expenses. The Commission therefore accepted that compensation could be calculated on the basis of average losses, provided that the risk of significant overcompensation could be excluded. In view of the explanations provided by the Irish authorities, and the fact that compensation is limited to a proportion of actual losses incurred, the Commission considers that the present measure excludes the risk of significant overcompensation at the level of the individual farmer.

Since the aid complies with the criteria used by the Commission to assess aid for compensation for damages due to exceptionally bad weather conditions, the Commission considers the aid to be compatible with the common market pursuant to Article 87(2)(b) of the Treaty.

I(b) Ewe premium

In their notification the Irish authorities explain the economic background underlying their decision to introduce a disposal scheme for ewes which otherwise would not have a sufficient commercial value to be sold to slaughterers.

During autumn 1998, availability of competitively priced pork, chicken and beef has depressed the lamb market, in many of the main European markets. The impact has been especially acute in Ireland because of the extent of dependence on export markets, with as much as 75% of production exported. For 1998 as a whole, the average price of lambs in Ireland was 19% below that of last year.

The situation reached crisis point by mid-autumn when lamb processing plants ceased accepting cull ewes or light mountain lambs even from their traditional local farmer suppliers. In addition, during the 1998 growing season, severe wet weather and below average sunshine resulted in difficulties in saving adequate winter feed for animals. The situation was acute in some areas, particularly on peaty or heavy clay soils, and conditions were so poor that a large proportion of winter fodder could not be harvested due to ground conditions.

Farmers using commonage land, where no single owner takes action to protect the vulnerable grazing, were regarded as being at risk in the event of a fodder shortage. The welfare of sheep on these grazing lands was of particular concern, as producers with cull ewes which could not be slaughtered, had no option but to return these animals to an already fragile environment where supply of grazing was not adequate to meet the need. The scheme was consequently confined to mountain sheep farmers operating in the areas designated, that is mountain commonage in six western countries of Ireland (1). Total expenditure under the scheme was about IEP 1 million (EUR 1.27 million).

The scheme provided slaughter facilities to remove about 100,000 cull mountain ewes from mountain commonage land in six western counties of Ireland. The Department of Agriculture and Food made payments to sheep slaughter plants to provide slaughter facilities in the case of two categories of ewes which would not have a sufficient commercial value to be sold and handling costs involved. Assistance was only provided in respect of the disposal of ewes during November and December 1998. Approximately 12 meat plants participated. The question of participation was a matter of choice for plant management. The payment was:

— IEP 10 (EUR 12.7) in the case of condemned animals which would not have any commercial value,

— IEP 3 (EUR 3.8) in the case of ewes suitable for boning (“boner ewes”) which would yield a limited value to plants in terms of the meat harvested.

In the case of animals which are condemned, the factory made no payment to the producer. According to information in the letter of 12 February 1999, 66% of the animals culled were condemned and disposed of through the rendering plant.

(1) Donegal, Sligo, Leitrim, Mayo, Galway and Kerry.
According to the Irish authorities' letter of 14 April 1999 the aid of IEP 3 per animal enabled the meat plants to enable to dispose of 35 300 “boner ewes”. This amount covered the cost of disposal of soft offal and heads as Specified Risk Material to an approved rendering plant, as well as the cost of disposal of skins. These costs are normally borne by the meat plant and are indeed passed on to the producer in terms of an in-built deduction in the price of the lamb. For these animals the question of payment was for negotiation between producer and plant, and according to the Irish authorities only token sums were paid.

Meat from the animals purchased by meat plants, under this arrangement, was sold for human consumption, subject to the normal conditions of health, hygiene and safety, which apply to all meat handled by these plants. The predominant commercial outlet for meat from boner ewes is supply to the catering trade. The meat is suitable for use as burgers, kebabs, ethnic dishes etc. It is estimated that the quantity of meat yield in this case would not have exceeded 150 tonnes in total and this meat found sale through the domestics festive food-service industry last December.

The aid paid to factories covers only the costs which arise from killing, processing and handling the animal. Because the animals involved are over one year old there is a considerable cost associated with the disposal of specified risk material. In the case of carcasses which have been completely condemned, to minimise risk to the human food chain, factories have been directed to dispose of the whole carcass as specific risk material. The fee agreed by the Department should cover the full cost associated with condemned ewes but in the case of the second category, boner ewes, the fee paid by the Department will represent only a contribution of the costs involved. The balance will be contributed by the producer in terms of carcass meat value.

Article 87(1) of the Treaty

Article 87(1) of the Treaty provides that any aid granted in return for the service of killing, processing and handling of the animals. The measure is intended to benefit the producers of ewes who have no normal market outlets for their animals and who would incur costs if they had to continue feeding them, or arrange for the slaughter of the animals at their own expense. By virtue of the measure sheep which otherwise did not have a sufficient commercial value can be put to the market at competitive prices.

Therefore the measure concerning the disposal of over 100 000 ewes may threaten to distort the competition on the relevant market as it confers a gratuitous advantage to the beneficiaries. Such an unilateral measure by a Member State in a market which according to the Irish authorities themselves was seriously depressed and which, on the other hand, is highly integrated at Community level, and where substantial intra-Community trade takes place must be considered to affect trading conditions among Member States.

Article 87(2) and (3) of the Treaty

The prohibition in Article 87(1) of the Treaty is followed by exemptions in Article 87(2) and (3).

Damages caused by exceptional occurrences

Sub-paragraph b of Article 87(2) of the Treaty, in its second part provides for aid to make good the damage caused by exceptional occurrences. Ireland did not specifically put forward this provision to justify the present measure but given the Irish authorities' emphasis on the exceptionally bad weather in the growing season 1998 the Commission considers it appropriate to discuss this concept of its own initiative.

Although it is true that in practice the combination of depressed markets and the fodder problem created a particularly difficult situation for the sheep producers, it appears appropriate to examine the measures separately which is also in line with the separate presentation by the Irish authorities in their notification. The ewe premium was at no place described as being linked to losses in winter fodder which might not be covered by the winter fodder aids.

Indeed, from the description of the ewe premium provided by the Irish authorities, the measure appears to constitute a means of alleviating the economic strain on the producers stemming from falling demand and prices. The Irish authorities themselves state in their notification that “the negative market impact has manifested itself in a number of ways — low general prices even for top quality lambs, the disappearance of the traditional market for low grade cull ewes and difficulty in securing sale for the light mountain breed of lamb”. At another place it is stated that the ewe premium was introduced “to re-establish this market at that stage of the year” (see letter of 14 April 1999).

However, an economic downturn in a sector cannot qualify as an exceptional occurrence. Such a development rather constitutes a contingency inherent in the pursuit of economic activities. Article 87(2)(b) which as an exception to a rule has to be interpreted restrictively and which hitherto has been applied to occurrences such as BSE is therefore not applicable to the present situation.

The other exemptions listed in Article 87(2), (3)(a) and (b) of the Treaty are manifestly inapplicable given the nature of the aid measure in question and its objectives. Ireland has not advocated their applicability.
Article 87(3)(c) of the Treaty

(46) Article 87(3)(c) of the Treaty permits the Commission, by way of derogation, to declare to be compatible with the common market "aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest".

(47) In their letter of 12 February 1999 the Irish authorities have contended that the measure must be seen as contributing to the improvement of the structural conditions of the producers concerned because the animals would have been accepted by meat plants for slaughter in normal years. The current legal requirement to dispose of specified risk material and condemned carcasses through an approved rendering plant involves cost to meat plants: this cost could be in excess of any value which the carcass may have and led meat plants to refuse to accept low grade animals. If the animals were not disposed of the pressure of heavier than normal stocking levels would endanger the viability of the whole stock, jeopardise the welfare of the animals as well as causing long-term damage to the land in question.

(48) The Commission cannot accept the argument that the aid is justified because in normal years the ewes would have been accepted by the meat plants. This line of argumentation would imply that in general State aid may be granted to offset adverse market conditions. This would distort the allocation of economic resources as producers would be induced to take higher risks since they would not have to fully accept the consequences when markets take a downward turn.

(49) Stabilisation of agricultural markets is an objective of the common agricultural policy as derives from Article 33(c) of the Treaty. The common market organisation for sheepmeat sets out to cushion negative price movements by means of various support mechanisms. By the same token, the Court has ruled in various instances that these support mechanisms have to be understood to be exhaustive, not leaving leeway for Member States to introduce similar measures (1). The Irish measure appears to interfere with this price support system by providing for payments per head to remove certain animals from the market, thereby artificially increasing the commercial value of the remaining sheep for the producer. The Commission, therefore, considers that the Irish measure may constitute an alternative intervention mechanism which is liable to interfere with the system provided for in the common market organisation. Should these doubts be confirmed, the Commission would have no alternative but to find that the aid is contrary to the Treaty.

(50) For this reason alone, the Commission is bound to express doubts as to the compatibility of this aid measure with the common market. In order to dispel these doubts, the Irish authorities are requested to provide full details of the criteria according to which the animals concerned were selected for slaughter, and an explanation of the reasons which led to what appears to be an abnormally high number of animals being condemned.

(51) But even if the measure could be considered compatible with the common market organisation it is still necessary to verify whether it complies with the State aid rules of the Treaty (Article 22 of the common market organisation).

(52) In regard of Article 87(3)(c) of the Treaty it is established Commission policy not to allow for operating aids, that is, aids which relieve economic operators of the whole or part of their normal operating costs. Operating aid only confers a short-term economic advantage to the beneficiary which ceases as soon as the payment of aid stops. Therefore such aids can in principle not be considered to facilitate the development of certain economic activities or of certain economic areas (2).

(53) The Commission doubts that the present measure can be considered to bring about structural improvements in the beneficiaries' holdings thereby facilitating the development of the sector as a whole. In order to justify the measure, the Irish authorities rely on four arguments: that the measure was necessary due to the depressed state of the market, that it was justified on animal welfare grounds, that it was necessary on environmental grounds and that it was necessary to offset the additional costs resulting from the need to dispose of specified risk material. For the reasons given above, the economic arguments concerning the general state of the market cannot be accepted by the Commission. As regards the other arguments, the Irish authorities have not so far dispelled the doubts of the Commission as to the compatibility of these measures with the Treaty, nor have they shown that the measures were implemented in such a way as to avoid adversely affecting trading conditions to an extent contrary to the common interest.

(54) Although at present the Commission does not have a well-defined policy on the payment of State aid to alleviate animal welfare problems, it is of course aware of the increasing importance attached to this matter in Community and national legislation. The Commission will therefore examine proposals to grant aid on a case by case basis. In doing so, the Commission will seek to ensure that welfare arguments are not used as a pretext for the payment of aid which is in reality brought about by market conditions. At the present stage of the procedure, the Commission has serious doubts about the validity of the welfare arguments advanced by the Irish authorities. In particular, the information so far provided does not demonstrate the existence of a serious and immediate welfare problem which could justify the slaughter of such a large number of animals within a short time-scale. Indeed, it would appear that the principle problem referred to by the Irish authorities, malnutrition, could be remedied by the provision of adequate feed for the animals concerned.

(55) The Irish authorities also refer to environmental considerations in order to justify the aid, and in particular the damage which the animals might cause to already waterlogged grasslands. However, it would also appear that this problem could be resolved by the provision of feed from alternative sources.


The Irish authorities have also referred to the extra costs for processing companies on account of national safety requirements in requiring the disposal of specified risk materials (SRM) (64). Accordingly, the premium of IEP 10 covers the full cost of disposing of animals with no commercial value, while the premium of IEP 3 covers the part of the cost of disposal in the case of animals with some residual commercial value. At this stage of the procedure, the Commission cannot see on what legal basis such aid could be considered to be compatible with the common market. So far it has only authorised payments relating to environmental taxes under stringent conditions (point 1.5.3 of the Community guidelines on State aid for environmental protection (65)) which require the aid to be temporary and degressive aid to enable livestock producers and to offset a loss of international competitiveness by allowing time for them to adapt to the additional costs imposed by national rules on the disposal. However, in the present case, the Commission notes that the aid is not related to an environmental tax. Moreover, it is granted selectively, in respect of a limited number of animals and for a limited geographical area, specifically in response to stated adverse market conditions which made it unprofitable for the slaughter houses to process the animals concerned.

In view of the considerations set out above, the Commission doubts that the measure can be considered to facilitate the development of economic activities within the meaning of Article 87(3) of the Treaty. Rather the relief appears to be purely temporary and intended to shield producers from unfavourable market developments.

Furthermore, by permitting the meat obtained from “boner ewes” to be sold on for human consumption, and thus compete in the market place with other meat, whose slaughtering costs have not been subsidised, it appears that the Irish authorities have failed to take the steps necessary to minimise the effects of the measure on competition.

II. NN 79/99 — SCHEME OF ASSISTANCE FOR WINTER FODDER LOSSES

The third winter fodder scheme provides for three sub-measures directed at different groups of beneficiaries (sections II.(a), II.(b) and II.(c) in the following). The budget for II.(a) and II.(b) in total amounts to EUR 25.4 million; for submeasure C EUR 635 000 are foreseen.

II.(a) New beneficiaries

Aid under this title extends the circle of beneficiaries under N 605/98 to farmers who sustained winter fodder losses but did not receive aid under N 605/98 as they are not situated in these areas of the less-favoured areas identified as worst affected by the Teagasc survey of September 1998. In their notification of the N 605/98 scheme the Irish authorities had assumed that while all holdings in less-favoured areas were affected by the wet weather the farmers in the areas which were not considered to be “seriously affected” should be in a better position to cope with losses. However, a further Teagasc report prepared in January 1999 showed that the situation in the Less Favoured Areas had deteriorated significantly and therefore the Irish authorities decided to make aid also available to producers situated in those areas which initially were deemed to be less seriously affected.

Payment rates will be the same as in N 605/98 subject to the same ceiling of EUR 380 per beneficiary (see paragraph 4 above). In excess of 40 000 farmers are in this category.

Article 87(2)(b) of the Treaty

It has been stated earlier (see point 18) that aids to compensate producers for the damages caused by adverse weather conditions can be authorised provided that the resulting losses reach a certain minimum intensity, normally 30 %, reduced to 20 % in the case of the less favoured areas, in comparison with an average year. Once these thresholds are exceeded the aids granted may provide for the full compensation of the losses while regard must be had that farmers are not overcompensated.

Since the areas listed by the Irish authorities are all less-favoured areas within the meaning of Directive 75/268/EEC the threshold for loss applicable is 20 %. According to the Irish authorities the surveys carried out by Teagasc have shown that the winter fodder difficulties in Less Favoured Areas are widespread with practically all farmers affected. The worst affected areas listed are Cavan, Monaghan, Clare, Donegal, Leitrim, Longford, Mayo, Roscommon and Sligo in the “north region”. In the south region the relevant areas are Kerry, Cork west and east (Duhallow), Limerick west and central, limited areas of Laois and Tipperary. While there are variations within these areas there is a general situation of shortage of fodder varying from a 50 % shortfall to 20 % (Teagasc report, January 1999). The Commission therefore accepts that the relevant threshold of 20 % is reached and that the exemption provision laid down in Article 87(2)(b) of the Treaty in principle applicable.

As regards the level of compensation the Irish authorities have explained in the context of N 605/98 that concerning suckler cow producers the average cost of feed during the winter amounts to approximately EUR 152 (IEP 120). The scheme provides for the payment of EUR 50,79 (IEP 40) per suckler cow up to a maximum of EUR 380 (IEP 300), equivalent to 7,5 suckler cows. The rate of payment per cow is therefore set at 33 % of the cost of feeding the animal. Given that the average size of suckler cow herds in Ireland is 12 cows, and the average loss of fodder production is well over 20 %, the Commission would see no reason to deviate from its assessment under N 605/98 according to which overcompensation is to be largely excluded as there only exists a risk in respect of farmers who would own fewer than 12 cows in the stock and whose losses would not exceed 33 % of their usual winter fodder

(64) The Commission has adopted a decision on 30 July 1997 on the prohibition of material presenting risks as regards transmissible spongiform encephalopathies (OJ L 216, 8.8.1997, p. 95). The coming into force of the decision has, however, been postponed to the end of 1998 and therefore disproportionate national legislation still exists.

(65) OJ C 72, 10.3.1994, p. 3.
supply (similar methods are used to calculate the losses of dairy and sheep farmers). In regard of this residual risk the Commission, in line with its assessment under State aid N 605/98, considers that that it would be disproportionate to expect the Irish authorities to undertake the individual processing of thousands of applications, each involving relatively small sums of money, to identify a relatively limited number of cases of limited possible over-compensation.

(65) There remains, however, an open question concerning the intensity of production of the holdings concerned. In its letter of 31 March 1999 the Commission asked the Irish authorities whether they can confirm that the measure is aimed at traditional livestock farmers using extensive production methods, that is saving their own winter fodder requirements from production during the summer. The Irish authorities have in their letter of 29 April 1999 not exhaustively answered this question and only confirmed that this was the case for farmers benefitting of the special fodder hardship fund.

(66) It is however indispensable for the Commission to know whether also the other beneficiaries produce extensively. In the case of farmers who usually buy in fodder and thereby complement their own fodder reserves providing for an aid corresponding to 33 % of the fodder need of a cow during winter would lead to overcompensation as in normal years a proportion of these 33 % would be at the charge of the producer.

(67) As a consequence, at this point the Commission cannot exclude that by virtue of the present measure producers receive payments which go beyond compensating them for actually sustained losses of winter fodder. The Irish authorities are therefore invited to confirm that also the new beneficiaries pursue extensive production methods and do not normally buy-in fodder.

II.(b) Top up payments to beneficiaries under N 605/99

(68) In recognition of the fact that farmers who have already received support under N 605/98 are located in the worst affected areas, a 50 % top-up payment will now be made available to them. The Agricultural Inspectorate of the Department in association with local Teagasc officials listed the worst affected areas by district electoral division (DED). There are 45 000 farmers in this category.

(69) In the following the top-up premia and the resulting total premia are listed:

— EUR 2,5 per ewe or hogget up to 75 head for sheep farmers with mountain ewes leading to an overall grant of EUR 7,5 per animal,

— EUR 25,4 per suckler cow up to a ceiling of 7,5 cows for suckler cow farmers leading to a total grant of EUR 76,19 per animal,

— EUR 19 per 1 000 gallons up to 10 000 gallons for small scale dairy farmers leading to a total grant of EUR 57 per 1 000 gallons.

Article 87(2)(b) of the Treaty

(70) Suckler cow producers are the main group of beneficiaries with 80 % of the aid being expected to be paid to them. As the costs for food per cow in winter in Ireland are approximately EUR 152 (see paragraph 65 above) an overall grant of EUR 76 corresponds to an aid rate of 50 %. Assuming that suckler cow producers in normal years do not buy-in fodder (the Irish authorities have confirmed this by letter of 29 October 1998 in the context of State aid N 605/98) in order to exclude over-compensation they ought to have consequently sustained losses of winter fodder of 50 % and more.

(71) According to the Irish authorities (point 3 of the letter of 29 April 1999), the actual losses of winter fodder were considerably in excess of those originally estimated by the Teagasc-surveys in September 1998 and January 1999 which found the losses to be between 20 % and 50 % of normal winter fodder production. Furthermore the same safety mechanism already mentioned (see point 64) would apply which consists in paying compensation for up to 7,5 cow units when the average suckler cow herd in Ireland is over 12 cows. The Irish authorities are therefore of the opinion that the question of overcompensation does not arise.

(72) However, the Irish authorities did not submit appropriate evidence which would demonstrate that the average level of winter fodder losses of the producers concerned reaches 50 % or more. Indeed, the latest Teagasc report (January 1999) they refer to speaks of losses of 20 % to 30 %. Since the correspondence of damages and compensation has so far not been demonstrated in a satisfactory manner the Commission is at this stage bound to emit doubts as to measure's compatibility with the common market pursuant to Article 87(2)(b) of the Treaty. The Irish authorities are invited to explain why notwithstanding the figures comprised in the Teagasc reports they are persuaded that overcompensation can be excluded.

(73) In the same context the Commission would also invite the Irish authorities to further explain the argument presented in point 3 of their letter of 29 April 1999 to the effect that farmers with suckler cows would have experienced grazing and fodder losses not only for their cows but also for the progeny of these cows and that compensation had therefore also to be available for these weanlings. Prima facie this approach seems incongruous with the concept of compensation of losses in fodder production as compensation would not be established in accordance with fodder production in normal years but in relation to the current number of animals in the stock and their fodder requirements. Such an approach allows for aid relieving the producer of day-to-day expenses and would be incompatible with the concept underlying Article 87(2)(b) of the Treaty.

(74) Hill sheep farmers depending on commonage grazing who have received grants under State aid schemes N 605/98 and NN 23/99 are also eligible for the top-up of 50 % by virtue of the present scheme. Their resulting total premium therefore amounts to EUR 20,32 (IEP 4 + IEP 10 + IEP 2).
In addition, a special fodder hardship fund (SFHF) will operate for a small number of farmers who have not qualified for aid in 1998 and who would not qualify for aid under the first sub-measure (see section II.(a) above) of the present scheme. The objective is to grant aid to small farmers almost totally dependent on a relatively small farm enterprise as a source of income. Severe fodder shortage would have to be demonstrated by each applicant and certified by a Teagasc advisor.

II.(c) The special fodder hardship fund

In their letter of 29 April 1999 the Irish authorities have further described the conditions under which aid will be granted under the special fodder hardship fund scheme (SFHF). Having examined the terms of reference of the SFHF the Commission at this stage doubts whether the measure can be considered to be compatible with the common market.

Article 87(2)(b) of the Treaty

Pursuant to the measure the amount of fodder (roughage) available on the farm must be certified by a Teagasc advisor as being less than 50% of that necessary to adequately maintain livestock until turn out to grass (taken as 15 April). There is, however, no indication that grants under the measure would be conditional on or in proportion to losses of winter fodder due to wet weather. Assistance appears rather to be possible in respect of any farmer who can prove that his cattle are suffering or are likely to suffer malnutrition due to a shortage of fodder independently of the reason for this. From this follows that Article 87(2)(b) of the Treaty does not seem to be applicable.

Article 87(3)(c) of the Treaty

The Irish authorities have stated that the potential of the situation was such to develop into a serious animal welfare problem and that therefore the measure was justified. The Commission has therefore considered whether the SFHF can be justified under Article 87(3)(c) of the Treaty as a measure which facilitates the development of the sector while not affecting trading conditions to an extent contrary to the common interest.

It has already been stated in the above (see point 54) that the Commission will examine proposals to grant aid in connection with animal welfare issues on a case by case basis. In doing so, the Commission will seek to ensure that welfare arguments are not used as a pretext for the payment of aid which is in reality brought about by market conditions.

At the present stage of the procedure, the Commission has doubts about the validity of the welfare argument advanced by the Irish authorities. In particular, the information so far provided does not demonstrate that aid under the SFHF did not simply have the effect of supporting farmers in respect of circumstances and risks which must be deemed to be inherent in activities of an entrepreneurial character. At this stage there is no indication that the measure was justifiable on grounds which could be considered to be external to the producers' sphere and their responsibility as economic agents. Also the Irish authorities' argument to the effect that the situation had the potential to evolve into a serious animal welfare problem has not further been substantiated by recourse to relevant data. If the Irish authorities wish to sustain this argument they are invited to submit further information allowing for a verification of this assertion.

Presently the Commission cannot exclude that the measure constitutes an operating aid as it is not likely to bring about structural improvements in the beneficiaries' holdings thereby facilitating the development of the sector as a whole. It has to be noted that in regard of Article 87(3)(c) of the Treaty it is established Commission policy not to allow for operating aids, that is aids which relieve economic operators of the whole or part of their normal operating costs. Operating aid only confers a short-term economic advantage to the beneficiary which ceases as soon as the payment of aid stops. Therefore such aids can in principle not be considered to facilitate the development of certain economic activities or of certain economic areas (12).

In the light of its doubts about the compatibility of this measure both with the common organisation of the market and with Articles 87 and 88 of the Treaty, the Commission has decided to open the procedure provided for in Article 88(2).

In the light of the foregoing considerations, the Commission invites Ireland to submit its comments within one month following receipt of this letter. It further requests your authorities to forward a copy of this letter to the recipients of the aid immediately.

The Commission wishes to remind the Irish authorities that Article 88(3) of the Treaty has suspensory effect and that according to Article 14 of the Procedural Regulation (13) the Commission shall decide that all aids granted unlawfully and found to be incompatible with the common market must be recovered from the recipient. Depending on the relevant provisions of national law the amounts thus recovered will include interest calculated on the basis of the reference rates used to calculate the grant-equivalent for the purposes of regional aids, running from the date on which the aid was payable to the recipient until the date of actual recovery. (14)

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(12) See footnote 9.