

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 November 1999

concerning aid which the Region of Tuscany (Italy) intends to grant in the livestock sector in favour of the Chianina cattle breed

(notified under document number C(1999) 3866)

(Only the Italian text is authentic)

(2000/286/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 aforementioned provisions⁽¹⁾, and having regard to those comments,

Whereas:

I. Procedure

- (1) By letter dated 5 December 1997, the Italian Permanent Representation to the European Union notified the Commission under Article 88(3) of the Treaty of an aid scheme in the livestock sector in favour of the Chianina cattle breed.
- (2) By letters dated 4 March 1998, received on 5 March 1998, and 7 July 1998, received on 13 July 1998, Italy furnished the Commission with supplementary information.
- (3) By letter of 28 August 1998, the Commission asked the Italian authorities, in view of the summer break, for a five-working-day extension of the term within which it was due to adopt a decision on the aid concerned.

(4) By letter dated 29 September 1998, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid. The Italian Permanent Representation was informed of the Commission decision to initiate the procedure by letter SG(98) 035729 dated 16 September 1998.

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

(6) By letters dated 23 October and 11 December 1998, the Italian authorities submitted to the Commission their comments with respect to the opening of the procedure.

(7) The Commission also received comments from interested third parties by letters dated 14 and 15 January 1999. It forwarded them to Italy, which was given the opportunity to express its views. Comments were sent by the Italian authorities by letter dated 12 May 1999.

II. Description of the scheme and implementation period

Description

(8) The aid scheme notified provides for a three-year programme (1997 to 1999) to protect and improve the Chianina cattle breed, a local breed which derives its name from the Chiana Valley, in Tuscany, from which it originated.

⁽¹⁾ OJ C 390, 15.12.1998, p. 15.

- (9) The scheme aims at countering the steady decline which has characterised this breed by preserving and possibly improving its genetic base and by helping stockfarmers to bear the additional costs resulting from rearing this breed as opposed to more productive and viable ones.
- (10) According to the data submitted by the Italian authorities, the overall population of this breed has decreased by over 80% in Italy as a whole in the past 40 years, from 510 000 head in 1954 to 100 000 at present⁽²⁾. The following table shows how figures in the herd books have developed over the past 30 years:

Table 1

Number of cows and head of cattle registered in the herd book in Italy

Year	Cows registered	Head of cattle registered
1967	6 981	14 395
1968	7 562	15 592
1974	12 307	25 376
1976	15 335	31 620
1978	14 471	29 838
1980	11 030	22 744
1981	12 362	25 490
1982	13 046	26 899
1983	11 583	23 884
1984	11 093	22 873
1985	12 125	25 002
1986	13 677	28 200
1987	14 511	29 921
1988	15 759	32 246
1989	16 412	34 168
1990	17 134	35 873
1991	16 199	33 528
1992	15 551	31 801
1993	14 228	29 298
1994	13 959	29 767
1995	14 072	30 622
1996	13 635	30 021

⁽²⁾ Source: Chianina Association (Associazione di razza).

These data show that, after more than doubling between 1967 and 1990, the numbers of head and cows registered have decreased at annual average rates of 2,7% and 2,9% respectively since 1990, from 35 873 and 17 134 in 1990 to 30 021 and 13 635 in 1996.

- (11) The original dramatic decrease witnessed by the breed in the 1950s and 1960s was primarily due to the advent of mechanised farming practices and the consequent reduction in the number of Chianinas used as draft animals, a purpose to which they are particularly suited owing to their strength and resistance to difficult working conditions. The current decline is essentially due to the high costs sustained by stockfarmers in rearing Chianinas and the low income from this breed compared to other more profitable types of cattle. Most of the holdings are small and located in difficult hilly or mountain areas, which means that there is no scope for economies of scale or cost reductions. In order to survive, stockfarmers tend to slaughter as many animals as possible before the females reach first calving. This approach results in a reduction of the genetic base and genetic variability of the breed and jeopardises the selection process and the future genetic improvement of the breed. The Italian authorities fear that in the long run this decline might endanger the breed's actual prospects of survival.
- (12) The measures planned to counter this trend are as follows:

Measure 1: Aid for the establishment of an artificial insemination programme with financing for the following pilot projects:

- (a) the production of embryos with high genetic potential (taking oocytes from five-month-old heifers and fertilising them *in vitro* with semen from the best breeding bulls); and
- (b) implanting the fertilised embryos into breeding cows. The resulting females will be used as a source of oocytes and then as breeding cows and the males as breeding bulls (after genetic testing).

The beneficiary of the measure is URATA (Unione Regionale delle Associazioni Toscane Allevatori), the Regional Union of the Associations of Stockfarmers of the Tuscany Region, which will carry out the pilot projects.

Measure 2: Aid for the purchase of breeding bulls of the Chianina breed from holdings listed in the herd book. The aid is in the form of a grant covering 40% of the investment cost.

The aid will be granted to stockfarmers rearing the Chianina breed, registered in herd books and located in the region, who will buy certified breeding bulls.

Measure 3: Aid for the maintenance until first calving of adult female animals of the Chianina breed which:

- (a) were born on a holding listed in the herd book;
- (b) are themselves listed in a herd book;
- (c) calved for the first time on a holding listed in the same herd book.

The aid would take the form of a premium of ITL 350 000 (approximately EUR 175) per head. By means of this premium, the Italian authorities hope to encourage stockfarmers to use females as breeding animals rather than selling them or fattening them for slaughter, operations which so far have proven to be more profitable and less risky. By limiting the aid to animals meeting the abovementioned requirements, the Italian authorities aim at increasing the female genetic base of the breed. The aid could be granted to all stockfarmers with registered animals complying with the requirements.

Implementation period of the aid scheme

- (13) In its decision to initiate proceedings under Article 88(2) of the Treaty the Commission expressed strong doubts about the compatibility of Measure 3 with the common market since, on the basis of the information provided by the Italian authorities, the measure seemed to be merely operating aid, intended to relieve stockfarmers of the costs normally associated with the day-to-day management of their activities, without any proven favourable structural effect on the development of the sector.
- (14) With respect to Measures 1 and 2, on the other hand, the Commission clearly stated that, from the substantive point of view, both measures were in principle eligible for the derogation provided for in Article 87(3)(c) of the Treaty. The Commission decided however to initiate the Article 88(2) procedure with respect to these two measures also, in view of the serious suspicion that the entire aid scheme notified might be applied retrospectively; if this were the case, it would invalidate any positive assessment of the two measures concerned. The entire aid scheme would then in fact lack the element of necessity which guides the Commission in its assessment of State aid cases and it would become nothing more than operating aid and therefore incompatible with the common market.

- (15) According to the information contained in the original notification sent by the Italian authorities, this scheme involved a three-year programme to run from 1997 to 1999.
- (16) The notified proposal for a Decision by the Regional Council presented by the Regional Executive (Giunta) on 10 November 1997 provided for a budget allocation of ITL 500 000 000 for 1997. For the subsequent years, reference was made to the 1998 and 1999 budgets.
- (17) The allocation of ITL 500 000 000 for 1997 to finance measures under the scheme seemed to imply that projects carried out in 1997, prior to presentation to the Regional Council by the Regional Executive of the proposal for a Decision providing for the aid scheme and the relevant funding, could benefit from the measures. In other words, aid could in some cases be paid retrospectively, for expenditure incurred before the potential beneficiary was legally entitled to apply for the aid. Under those circumstances, the aid would have lost its character of necessity⁽³⁾, since the operations assisted would still have been carried out in the absence of aid (or of a legal undertaking by the public authorities to pay aid); consequently, the aid would have constituted operating aid⁽⁴⁾ without any structural effect on the sector as a whole and, as such, incompatible with the common market.
- (18) To clarify this point, the Commission asked the Italian authorities in a letter dated 9 January 1998 to specify whether the measures in the programme had already been implemented in 1997 or whether the implementation period specified in the programme notified on 5 December had been amended in the mean time.
- (19) By letter dated 4 March 1998, the Italian authorities replied that 'the aid measures provided for in the programme were not implemented in 1997 and the implementation period initially laid down has not been amended'.
- (20) The Commission understood this to mean that no aid had yet been paid but that aid could be paid for expenditure incurred before the potential beneficiaries were legally entitled to aid; the Commission therefore

⁽³⁾ See Judgement of the Court of Justice of 17 September 1980 in Case 730/79 (Philip Morris Holland v. Commission [1980] ECR 2671).

⁽⁴⁾ See Judgement of the Court of First Instance of 8 June 1995 in Case T-459/93 (Siemens SA v. Commission [1995] ECR 1675).

decided to initiate the procedure with respect to all three measures in the scheme notified, in view of the possible retrospective nature of the aid.

limit within which, according to the case law of the Court of Justice⁽³⁾, it must make known its position on an aid measure notified under Article 88(3) of the EC Treaty.

III. Comments from interested parties

- (21) The Commission received comments from two parties: URATA (Unione Regionale Associazioni Toscane Allevatori), which is also a beneficiary of Measure 1, by letter of 14 January 1999; and COPA (Committee of Agricultural Organisations of the European Union) by letter of 15 January 1999.
- (22) The position of the two parties is identical. In their letters, both parties stressed the unique qualities of the Chianina cattle breed, the importance of this breed in the economy of marginal areas where stockfarmers are faced with difficult living and working conditions, and the negligible impact of the aid on competition and trade between Member States. Both parties expressed their full support for the initiative undertaken by Italy to protect the breed and counter its decline. In light of these considerations, they called upon the Commission to revise its position and to authorise the programme in its entirety, so that action is taken before it is too late and the Chianina breed becomes endangered.

Italy maintains that the Commission should have expressed its position by 5 May 1998, i.e. within two months from 4 March 1998, the date of Italy's reply to the Commission's request of 9 January 1998 for additional information. The Italian authorities question the validity of the additional letter sent by the Commission on 23 April 1998 asking for written confirmation of the decision not to withdraw Measure 3 from the notified aid scheme, arguing that the letter is not a request for additional information since it merely reiterates a request already made in the letter of 9 January, to which the Italian authorities had clearly replied by letter of 4 March 1998. The 23 April letter does not have the effect of suspending the two-month time limit (expiring on 5 May 1998), and was sent by the Commission only in order to artificially extend the normal deadline.

- (26) Secondly, the Italian authorities question the Commission's interpretation of the nature of the aid in Measure 3: the premium granted for heifers listed in the herd book and calving for the first time on a holding listed in the same herd book is defined by the Commission as aid for the 'maintenance' of the animal.

IV. Comments from Italy

- (23) By letter of 23 October 1998, the Italian authorities sent the Commission Delibera della Giunta Regionale (Decision of the Regional Executive) No 1205 of 19 October 1998 incorporating some of the comments and information requested under the procedure initiated pursuant to Article 88(2) of the EC Treaty. In the same letter, Italy also asked the Commission for an extension of the one-month period for the submission of comments. Further comments were submitted by letter of 11 December 1998.
- (24) The comments submitted by the Italian authorities in their first letter of 23 October 1998 focus on four points.
- (25) First, Italy raises an objection of procedure, arguing that the Commission has failed to respect the two-month time

According to the Italian authorities the aid is an 'incentive' to extension of the female genetic base of the breed on holdings listed in the herd book, encouraging farmers to rear for 'breeding purposes' those female animals with the necessary features for genetic improvement of the breed.

- (27) Thirdly, the Italian authorities dispute the Commission's view of the period of implementation of the programme and the possibility that aid might be granted retrospectively for expenditure incurred in 1997. They claim that 1997 was chosen as the first year of implementation of the programme because, for the funding necessary for the first year, reference was made to the 1997 regional budget, that is the budget of the

⁽³⁾ Judgements of the Court of Justice in Case 120/73 *Lorenz v. Germany* [1973] ECR 1471 and Case 84/82 *Germany v. Commission* [1984] ECR 1451.

year in which the programme was submitted for approval to the Regional Council.

V. Assessment

Procedure

The Italian authorities maintain that, even though it was evident that the programme could not be implemented in 1997, it was not advisable to amend it at that stage, so as to avoid delaying assessment procedures at the Commission. Their intention was to await completion of the procedure initiated by notification to the Commission and, once the Commission had reached a decision, to implement the programme for the remainder of the initial three-year period (i.e. in 1999) and to extend the duration of the implementation period, by Decision of the Regional Council, for the time necessary to reach the three years initially envisaged. It was planned to notify the Commission of the extension in accordance with Article 88(3) of the Treaty.

(28) Finally, the Italian authorities question the approach followed by the Commission in assessing the measure, arguing that the Commission should assess the aid as a whole in the light of Article 87(3)(c), and not merely compare the measures with the existing legislation and previous cases. They also recall that a similar measure in favour of the Chianina breed was approved by the Commission in the framework of the Integrated Mediterranean Programme for Tuscany⁽⁶⁾. Measure 1.5 of that Programme provided for a premium of ECU 190/200 for each animal born on specific stockfarms upon reaching a certain age. The Chianina was one of the breeds eligible for this aid. The measure was adopted to encourage stockfarmers to take part in genetic improvement projects.

(29) In their additional letter of 11 December 1998, the Italian authorities again drew the attention of the Commission to the specific qualities of Chianina cattle, the economic disadvantages connected to the rearing of this breed, its genetic decline, the limited amount of the aid and the negligible extent of trade in this breed at Community level.

(30) The comments sent by the Italian authorities in reaction to the observations from third parties do not add anything new to the observations already sent to the Commission.

(31) The comments made by the Italian authorities concerning the Commission's failure to comply with the two-month time limit appear unfounded.

The letter of 4 March 1998, in which the Italian authorities stated categorically that they were not prepared to withdraw Measure 3 from the notified aid scheme, was in fact followed by a series of telephone contacts between Commission and Italian officials. During the telephone conversations, which took place in the normal spirit of cooperation characterising Commission relationships with Member States, the possibility of amending the programme along the lines suggested by the Commission was discussed, and the possibility of withdrawal of Measure 3 left open by the Italian authorities. Reference to these conversations is made both in the letter sent by the Commission to the Italian authorities on 23 April 1998⁽⁷⁾ and in the reply sent by the Italian authorities on 7 July 1998⁽⁸⁾.

(32) As pointed out in the Commission's letter of 23 April 1998, only in the course of the last telephone conversation did the Italian authorities clearly exclude withdrawal of the measure concerned. In the light of this development, it was perfectly legitimate for the Commission to ask for written confirmation of Italy's final position, which had remained ambivalent till that moment. If the Italian authorities were really convinced that the letter sent by the Commission on 23 April 1998 had no suspensive effect, they should have informed the Commission upon expiry of the time limit for a Commission decision (i.e., in their view, 5 May 1999) of their decision to put the measure into effect as provided for by the case law of the Court of Justice⁽⁹⁾ and then

⁽⁷⁾ It is explicitly stated in this letter that the Italian authorities were asked by telex of 9 January 1998 to provide further information, which they did in a letter from the Italian Permanent Representation dated 4 March 1998, and that after this exchange of correspondence, telephone conversations took place between Commission departments and the competent national departments, in the course of which the possibility of amending the programme notified on 5 December 1997 was mentioned.

⁽⁸⁾ The position was confirmed in conversations between Commission and Italian officials.

⁽⁹⁾ Judgements of the Court of Justice in Case 120/73 *Lorenz v. Germany* [1973] ECR 1471 and Case 84/82 *Germany v. Commission* [1984] ECR 1451.

⁽⁶⁾ Decision No 336 of 26 July 1988 'Procedures and provisions implementing Regulation (EEC) No 2088/85 IMP for Tuscany'.

waited for the Commission's final decision on the aid⁽¹⁰⁾. In fact, the Italian authorities preferred to wait till 7 July 1998 before replying to the Commission's letter of 23 April 1998, i.e. they waited two months to provide an answer which, according to them, had already been made clear in their letter of 4 March 1998.

The Commission never authorised the aid, nor did it give grounds for legitimate expectation that it would do so, nor was this ever an existing system within the meaning of Article 88(1) of the Treaty. The Italian Permanent Representation was therefore informed of the Commission's decision to initiate the Article 88(3) procedure by letter SG(98) D 035729 dated 16 September 1998, as stated in point 4 above.

Substance

- (33) Article 87(1) of the EC Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
- (34) Article 24 of Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹¹⁾ lays down that, save as otherwise provided in the Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production and trade of the products listed in Article 1, which includes the products covered by the measure at issue.
- (35) The notified programme provides for the granting of aid, through public resources, to specific agricultural undertakings which will undeniably be granted an undue economic and financial advantage to the detriment of other agricultural undertakings not receiving the same contribution. According to the case law of the Court of Justice, improvement in the competitive position of an undertaking as a result of State financial aid leads to possible distortion of competition compared with other competing undertakings not receiving such assistance⁽¹²⁾. The Italian authorities claim that the amount of the aid is very low and therefore not likely to distort competition. It should be borne in mind, however, that neither the relatively low level of the aid nor the relatively modest size of the beneficiary undertakings rules out the possibility of trade between Member States being distorted⁽¹³⁾. In the agricultural sector, this is reflected in the Commission communication on *de minimis* aids⁽¹⁴⁾ which excludes agriculture from the application of the *de minimis* rule.
- (36) The measures do affect trade between Member States: there is in fact substantial intra-Community trade in beef. In 1998, Italy's imports of beef⁽¹⁵⁾ from all EU Member States totalled 2 372 245 tonnes, while its exports to all other EU states totalled 180 757 tonnes. In the same year, Italy produced cattle⁽¹⁶⁾ to a value of ECU 3 226 000, while the value of output for the EU as a whole was ECU 21 465 000⁽¹⁷⁾.
- (37) No specific data are available at Community level on trade in the breed concerned by the aid. In order to demonstrate that the aid would have no influence at all on trade between Member States, the Italian authorities refer to Chianina beef production of around 3 312 tonnes, but without mentioning the year to which this figure relates.
- (38) The relevant market which has to be taken into account in the specific case at issue is however the EU beef market as a whole, including all types of beef with which Chianina beef competes or may compete as well as the market in substitute products that could replace Chianina beef in consumers' buying patterns. Moreover, the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the

⁽¹⁰⁾ Under Article 4(6) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1), the Commission has 15 working days following receipt of the notice in which to take a decision.

⁽¹¹⁾ OJ L 148, 28.6.1968, p. 24. This Regulation was repealed and replaced by Council Regulation (EC) No 1254/1999 of 17 May 1999 (OJ L 160, 26.6.1999, p. 21).

⁽¹²⁾ See footnote 3.

⁽¹³⁾ Court of Justice Judgements of 21 March 1990, Case C-142/87, *Belgium v. Commission*; ECR [1990] I-959, and of 14 September 1994, *Joined Cases C-272/92, C-279/92 and C-280/92, Spain v. Commission*, ECR [1994] I-4103.

⁽¹⁴⁾ OJ C 68, 6.3.1996, p. 9.

⁽¹⁵⁾ Including live cattle.

⁽¹⁶⁾ Includes calves.

⁽¹⁷⁾ Source: Eurostat.

market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition⁽¹⁸⁾.

framework of that Article and of the specific provisions applicable to the case at issue.

(39) The Commission therefore concludes that the measures are caught by the prohibition in Article 87(1) of the EC Treaty.

Measures 1 and 2 — Aid for the implementation of projects for the genetic improvement of the breed and for the purchase of pure-bred male breeding stock

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

(41) The exemptions listed in Article 87(2) are manifestly inapplicable given the nature of the aid measure in question and its objectives. Indeed, Italy has not submitted that Article 87(2) is applicable.

(47) In its decision to initiate the procedure in Article 88(3) of the EC Treaty, the Commission stressed that in principle it could have adopted a favourable approach with respect to these two measures since, judged on their merits, they both seemed compatible with the common market and could therefore benefit from the derogation provided for by Article 87(3)(c).

(42) Article 87(3) specifies the circumstances under which State aid may be considered to be compatible with the common market. Compatibility with the common market must be assessed from the point of view of the Community and not that of an individual Member State. In the interest of the functioning of the common market, the exemptions from the ban on State aid must be interpreted restrictively.

(48) It is in fact consistent Commission practice, as set out in its letter to the Member States S 75/29416 dated 19 September 1975⁽¹⁹⁾, to authorise aid of up to 100% of eligible expenditure for the implementation of artificial insemination programmes of a maximum duration of six years and aid of up to 40% of the cost of the animal for the purchase of pure-bred male breeding animals listed in herd books. The two measures do not exceed the duration and the aid rate set in that letter and could therefore be considered in principle compatible with the common market.

(43) Article 87(3)(a) is manifestly inapplicable since the aid is not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(49) The Commission decided however to initiate the Article 88(3) procedure with respect to these two measures since it had strong doubts as to the possible retrospective nature of the entire aid scheme. If confirmed, the retrospective aspect of the aid would have invalidated any positive assessment of the two measures concerned and the aid would have become nothing more than operating aid, that is aid which produces no lasting structural effect on the development of the sector and which, as such, cannot be considered compatible with the common market.

(44) With regard to Article 87(3)(b), the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.

(45) This aid is not intended to achieve or be suitable for achieving the objectives referred to in Article 87(3)(d).

(50) The information provided by the Italian authorities in their letter of 23 October 1998⁽²⁰⁾ has dispelled the Commission's doubts on the possible retrospective nature of the notified aid scheme, by excluding the possibility that aid will be paid for expenditure incurred before prospective beneficiaries became eligible for aid; moreover, the authorities have undertaken to notify to the Commission the decision amending the implementation period.

(46) Under Article 87(3)(c) of the Treaty aid designed to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest. The notified aid scheme needs therefore to be assessed within the

⁽¹⁸⁾ Judgement of the Court of Justice of 13 July 1988 in Case 102/87 French Republic v. Commission of the European Communities ECR [1988] 4067.

⁽¹⁹⁾ Proposals for appropriate measures relating to aids granted by Member States in the livestock and livestock products sector.

⁽²⁰⁾ See point 27.

- (51) The two measures can therefore be considered compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

Measure 3 — Aid for the maintenance until first calving of female breeding animals meeting specific requirements

- (52) The aid covered by the measure concerned is a premium for the maintenance until first calving of female animals of the Chianina breed meeting specific requirements. The aid, which is in the form of a 'one-off' premium (ITL 350 000) per livestock unit, is a function of the unit of production and as such is in principle incompatible with the common market. Like aids based on the quantity produced or marketed, on the price of the product or on the means of production (animal feed, etc.), this type of aid is regarded as operating aid⁽²¹⁾, that is aid which simply confers a short-term economic advantage. The objective of this aid is merely to cut beneficiaries' production costs for the duration of the aid, relieving them of the business costs they normally sustain in the day-to-day management of their business. This aid has no structural effect on the development of the sector and cannot be considered to facilitate the economic development of certain economic activities or of certain economic areas. Furthermore, the payment of such aid is likely to interfere with the operation of the mechanisms established by the common market organisations in the framework of agricultural policy to the disadvantage of producers who are not in receipt of aid.
- (53) An exception to the strict rule prohibiting this type of aid is however provided for by the Commission letter to the Member States S 75/29416 (see point 48), which authorises the granting of aid at a rate of 30% for the retention of pure-bred male breeding animals if this is justified by special considerations, particularly of a regional nature⁽²²⁾.
- (54) The exception clearly refers to the granting of aid for the maintenance of 'male' breeding animals. 'Female' breeding animals, to which Measure 3 is addressed, are not covered.

It could be argued that the exception should apply 'by analogy' to female animals, in line with the Commission's practice in other cases. However, the very fact that this provision is an exception to the strict rule which prohibits aid based on the unit of production, regarded as operating aid by definition, means that it must be interpreted strictly. The reason for the different approach to male and female breeding animals lies in the totally different nature of the two types of aid: the rearing of high-quality male breeding animals is a major factor in the process of genetic development and therefore in the overall qualitative improvement of the livestock sector. However, the decision to use high-quality male animals, registered in a herd book, for breeding purposes prevents their use for the more lucrative business of meat production. Thus in deciding to use these animals for breeding instead of for meat production the stockfarmer has chosen a costly, high-risk investment that will pay off only in the long term, if at all. It is very expensive to maintain breeding bulls, and their slaughter price is usually extremely low, and insufficient to offset the costs of maintenance. Stockfarmers therefore tend to reduce the number of breeding bulls as far as possible, and to use them for as long as possible, with consequent eventual deterioration of the genetic heritage. In providing for an exception in the case of these animals, the Commission considered, in the light of all the above considerations, that the distortive impact of an aid measure based on the unit of production was more than counterbalanced by the positive effect of such a measure on the structural development of the livestock sector.

- (55) This reasoning cannot be applied in the same way to female breeding animals. Stockfarmers do not have to choose between two different and mutually exclusive uses. The same female animal can be — and usually is — used first for breeding and later for milk and meat production, with no reduction in value. In this case, a premium per livestock unit to cover the cost of maintenance would constitute aid to stockfarmers to reduce the normal operating costs of their business. Such a premium is caught by the definition of operating aid, which, as explained in point 52, is incompatible with the common market and cannot therefore benefit from the exception provided for by Article 87(3)(c). That is why the exception referred to in point 53 relates exclusively to male breeding animals, and why in this case it must be interpreted strictly, and cannot be applied 'by analogy', in line with the Commission's practice in other cases, to female breeding animals. The premium for female breeding animals of the Chianina breed is caught by the general prohibition on operating aid which, for the reasons outlined in point 52, is incompatible by definition with the common market and cannot therefore benefit from the exception provided for by Article 87(3)(c).

⁽²¹⁾ See footnote 4.

⁽²²⁾ See the following aid schemes: N 490/96; N 636/97; N 573/98.

- (56) The Italian authorities have contested the Commission's interpretation of the measure as aid for the maintenance of the animals, as described above. They have stressed that the aid should be rather seen as an 'incentive' designed to 'orient' producers towards rearing female animals for breeding purposes rather than for meat production. In this connection, it is worth recalling that orientation of production, as well as income support, is one of the objectives and tasks of the common organisation of the markets which, as repeatedly held by the Court of Justice, are complete and exhaustive systems excluding any power on the part of the Member State to take measures likely to derogate from them or to jeopardise them⁽²³⁾. In this respect, any aid interfering with the mechanism of the market organisations automatically excludes the applicability of the exceptions provided for in Article 87(3).

Table 2

Breeding females per breed

	Bovines	Equidae	Sheep	Pigs
Breeds with stable populations	5 000	5 000	7 500	2 000
Breeds with decreasing populations	7 500	7 500	9 000	9 000
Breeds with increasing populations	4 000	4 000	6 000	6 000

and when in addition the total number of breeding females registered in the herd books is below the following:

Applicability of Regulation (EEC) No 2078/92

Table 3

Breeding females registered in herd books

Bovines	Equidae	Sheep	Pigs
1 000	1 300	2 000	600

- (57) A derogation from the above prohibition could have been claimed by the Italian authorities if the aid was granted for animals belonging to a breed in danger of extinction, in accordance with Community criteria. In this case, the aid would fall within the scope of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside⁽²⁴⁾. The protection of endangered breeds is recognised as one of the actions which may contribute to the achievement of the purposes of the Regulation, namely the protection and improvement of genetic diversity. Measures of this type may therefore be eligible for part-financing or for State aid within the meaning of Article 10 of the Regulation, which authorises Member States to implement additional aid measures where the aid is granted on different terms from those laid down in the Regulation or the amounts exceed the limits stipulated therein, provided that the aid measures comply with the objectives of the Regulation and with Articles 87, 88 and 89 of the Treaty.

- (58) Compatibility with the objectives of the Regulation is to be assessed on the basis of the same criteria set at Community level to establish whether the breed is in danger of extinction for part-financing purposes. The Commission regards a breed as being in danger of extinction for the purposes of Regulation (EEC) No 2078/92 whenever the number of breeding female animals is below the ceilings listed below⁽²⁵⁾:

- (59) According to the data submitted by the Italian authorities and reported in Table 1, in 1996 the number of female breeding animals registered in the herd book was thirteen times the Commission ceiling. Even if all female breeding animals were registered and therefore if this figure were representative of the entire female breeding population, the figure for 1996 would be twice that set to define endangered breeds. The Chianina breed is therefore not in danger of extinction and does not fall within the scope of Regulation (EEC) No 2078/92.

- (60) The Italian authorities do not dispute that the breed is not yet in danger of extinction. They maintain, however, that if the current trend continues unabated and no action is taken now to counter it, there is a risk that it may subsequently be in danger. That is why they believe that the Commission should not merely examine the scheme in the light of existing legislation and precedents, but rather assess it on a broader view on the basis of Article 87(3)(c) and regard this measure as one to facilitate the development of the sector without affecting trade to an extent contrary to the common interest.

⁽²³⁾ See Judgement of the Court of Justice of 18 May 1977 in Case C-111/76 (*Officier van Justitie v. Beert van den Hazel*, [1977] ECR 901).

⁽²⁴⁾ OJ L 215, 30.7.1992, p. 85.

⁽²⁵⁾ See Commission document VI/3768/98 on 'Programmes to protect genetic diversity of endangered breeds of farm animals and plant varieties under Regulation (EEC) No 2078/92'.

- (61) With respect to the fears expressed by the Italian authorities about possible extinction of the breed, data submitted by the Italian authorities and reported in

Table 1 show (as mentioned in point 10) that the Chianina population has decreased since 1990 at a yearly average rate of around 2%. However, the same table also indicates that this decline followed some 30 years of dramatic increase of the breed, whose population almost doubled from 1967 to 1990. To support their argument, the Italian authorities have also submitted projections⁽²⁶⁾, showing that, if the current downward trend continues at the same pace, in the year 2004 the number of registered females will drop to 10 780 (from the current 13 635). In making this calculation, however, the Italian authorities do not take into account the effect of the two aid measures on which the Commission has already expressed a favourable opinion in principle, nor do they mention that their figure would, in any case, still be 10 times the Community ceiling.

- (62) As to the observations concerning the Commission's approach in assessing the measure, it should be recalled that Article 87(3)(c) is itself an exception to the general prohibition of State aid laid down in Article 87(1). It must therefore be interpreted strictly and applied only when the Commission is fully satisfied that all the criteria laid down in the Article are met. Measures 1 and 2 of the notified aid scheme, which pursue the same objective as Measure 3, meet all these requirements and have in fact been authorised by the Commission. Operating aid such as that provided by Measure 3, however, does not meet the criteria, by definition, and cannot therefore be authorised.
- (63) The Italian authorities have not provided any sound argument to refute the Commission's assessment of the aid as operating aid. They have never quantified 'additional costs' or income losses incurred by stockfarmers, nor have they indicated any proportional relation between such costs and the planned premium. In the original notification, the Italian authorities simply defined the amount of the premium as 'appropriate'; in their letter of 11 December 1998 they make a general reference to the fact that the aid would cover at least 50% of the aforementioned additional costs. No further detail is given. The Commission can only note that the premium of EUR 180,76 envisaged by the Italian authorities for a breed which is not clearly in danger of extinction would be almost 50% higher than the premium provided for by Regulation (EEC) No 2078/92 (EUR 120,8) for endangered breeds.
- (64) Moreover, the economic arguments submitted to explain the difficulties faced by Chianina stockfarmers and justify the granting of the premium are of a very general nature (general weakness of the livestock sector at national level, structural conditions of stockfarms, environmental factors, lack of economies of scale, lack of quality assurance systems and of strategies for the commercial promotion of Chianina beef, 'discriminatory' system of

aid within the framework of the 1992 CAP reform). They depict a situation of structural weakness in the livestock sector at national and regional level which cannot be invoked by the Italian authorities as a reasonable justification for granting aid under a scheme whose favourable impact on the sector as a whole they have been unable to demonstrate, and which they cannot prove will not have a distortive effect vis-à-vis those stockfarmers who are obliged, faced with the same difficult living and working conditions, to survive with their own means and skills.

- (65) Finally, to justify the granting of the aid, the Italian authorities mention a similar scheme authorised by the Commission within the framework of the Integrated Mediterranean Programme for Tuscany in 1988 to 1992. In that case, a contribution of ECU 190/200 per livestock unit was authorised for a certain number of local breeds, including the Chianina. According to the Italian authorities there is no reason why a different approach should be adopted in the case at issue.
- (66) It will be remembered that the aid scheme concerned was authorised by the Commission on the basis of a specific Regulation⁽²⁷⁾ establishing a specific part-financed programme in favour of specific regions within the framework of the common agricultural policy and not on the basis of the competition rules laid down in Article 87 to 89 of the EC Treaty. In the present case, however, the scheme was notified by the Italian authorities to the Commission pursuant to Article 88(3) of the EC Treaty and is therefore to be assessed solely on the basis of Articles 87 to 89 of the Treaty. Consequently, it could be authorised only if it were considered compatible with the common market according to the articles in question, not on the basis of other provisions not applicable to the specific case at issue.

VI. Conclusions

- (67) The above considerations lead to the conclusion that Measures 1 and 2 of the notified aid scheme may be considered compatible with the common market according to Article 87(3)(c) of the Treaty, since the doubts on the retrospective nature of the aid scheme that had induced the Commission to initiate the Article 88(3) procedure against these two measures have been dispelled by the Italian authorities. Those authorities must notify the Commission of the decision amending the programme implementation.

⁽²⁶⁾ Letter from the Italian authorities of 11 December 1998 (see point 29).

⁽²⁷⁾ Council Regulation (EEC) No 2088/85 of 23 July 1985 concerning the Integrated Mediterranean Programme (OJ L 197, 27.7.1985, p. 1).

(68) Measure 3 of the aid scheme is incompatible with the common market and cannot therefore benefit from any of the exceptions to Article 87(1) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. The premium of ITL 350 000 (approximately EUR 175) per livestock unit granted for the maintenance until first calving of adult female animals of the Chianina breed which:

- (a) were born on a holding listed in the herd book;
- (b) are themselves listed in the herd book;
- (c) calved for the first time on a holding listed in the same herd book,

is incompatible with the common market.

2. The aid for the establishment of an artificial insemination programme providing for the financing of the following pilot projects:

- (a) the production of embryos with high genetic potential (taking oocytes from five-month old heifers and fertilising them *in vitro* with semen from the best breeding bulls);
- (b) implanting the fertilised embryos into breeding cows,

is compatible with the common market subject to the amendment of the period of implementation referred to in Article 3, to avoid the payment of any retrospective aid.

3. The aid for the purchase of breeding bulls of the Chianina breed listed in a herd book, in the form of a grant to cover 40% of the cost of the investment, is compatible with the common market subject to the amendment of the period of implementation referred to in Article 3, to avoid the payment of any retrospective aid.

Article 2

Italy may not implement the aid scheme described in Article 1(1).

Article 3

Italy shall amend the period of implementation of the aid measures referred to in Article 1(2) and (3) so that no aid is granted for expenditure incurred before the date of notification of the aid to the Commission.

Article 4

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

Article 5

This Decision is addressed to the Republic of Italy.

Done at Brussels, 10 November 1999.

For the Commission

Franz FISCHLER

Member of the Commission