

I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 8/2004

**on the Commission's management and supervision of the measures to
control foot-and-mouth disease and of the related expenditure, together
with the Commission's replies**

(presented under Article 248(4) second subparagraph EC)

(2005/C 54/01)

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SUMMARY

I. The need to complete the single market and promote trade in livestock in general made it essential for the Community to establish a common policy for preventing and controlling foot-and-mouth disease (FMD). As from 1992, therefore, it extended to all Member States the ban on preventive vaccination of livestock against the disease and introduced a complex system of prevention and control with the aim of both restricting the introduction of the virus and preventing it from spreading throughout the territory of the Community. In the event of an epidemic, contaminated animals were to be slaughtered, the carcasses destroyed, and premises and equipment disinfected. All the expenditure defrayed by Member States in this connection would then become partially reimbursable from an emergency veterinary fund set up within the EAGGF Guarantee Section.

II. Following the 2001 crisis Member States requested reimbursement of 1 616 million euro from the emergency veterinary fund. That cost, combined with the scale of the outbreak, was the motivation for the Court's audit. The audit had three objectives: to ascertain, firstly, whether the analytical method used by the Commission as the basis for the strategy for eradicating the disease was up-to-date; secondly, whether the strategy had been implemented effectively; and thirdly, whether the system for reimbursing to Member States expenditure on compensating farmers and slaughtering their animals was adequate, rapid and non-discriminatory. In as far as some of the lessons learned from previous epidemics might be relevant to the strategy for preventing and controlling FMD, the Court examined Commission action before, during and after the crisis.

III. The report makes the point that, before the 2001 crisis, the Commission had not revised its strategy in the light of changes in risk factors.

IV. It also shows that in the absence of comprehensive evaluation and inspections by the Commission before 2001, some weaknesses in the prevention and control arrangements were not corrected in time, especially as regards protective measures at borders, animal feed, contingency plans, sheep identification, and the messaging system concerning livestock movements between Member States (ANIMO). Parliament criticised the Commission for failing to review Member States' contingency plans before the crisis, but acknowledged that the Commission acted very positively during it ⁽¹⁾. At the time of the crisis the Commission did, in fact, identify very quickly the weaknesses of the arrangements and their implementation in the Member States, as regards the number of veterinarians, disease notification and rapid culling, but it was too late to remedy them. More particularly, the Court observed that the effectiveness of the arrangements that had been introduced relied heavily on farmers notifying the disease immediately and complying with movement restrictions.

V. The audit showed that the Community financing system could be further improved. The compensation paid to farmers by Member States was not always adequately defined at Community level, even though it was reimbursed at a rate of 60 % of the amount accepted as eligible by the Commission. In the absence of a better-defined Community framework Member States were able to introduce a variety of systems that gave rise to variations in the treatment of farmers within the Community.

VI. Since then, the recent revision of the Community regulations has remedied many omissions. Nevertheless, the financial framework was not revised and the Community measures are still minimal in terms of the notification of the disease, supervision of farms and speed of culling. There is thus a risk that Member States' application of these measures could once again prove to be insufficient to contain a future epidemic, and yet still give rise to Community reimbursement.

VII. The Court recommends that the Commission update its evaluations and analyses of the strategy at a time when there is no crisis. It is in favour of examining ways of including farmers in the control system, to induce them to notify the disease rapidly and to comply with movement restrictions. Lastly, it calls on the Commission to clarify the financial framework as applied to epidemics of animal disease and, as far as possible, to reduce financial risk to the Community budget.

⁽¹⁾ European Parliament resolution adopted on 17 December 2002, paragraph 54.

INTRODUCTION

Background

1. Foot-and-mouth disease (FMD) is a disease of animals, harmless to humans, but highly contagious among cloven-footed animals. It can destroy the food sources and means of subsistence of farmers in less developed countries virtually overnight because it affects many cloven-footed species, including cattle, pigs and sheep. The virus can be transmitted by direct contact between animals and through animal feed, by indirect contact with various vectors, such as vehicles or people, and may even be spread by wind-borne transmission. The mortality rate among infected adult animals is low. Most animals recover within three to four weeks, but they are nevertheless still severely affected: the growth of young animals is retarded, the abortion rate increases and milk production declines significantly, and permanently. Countries that are free of the disease are obliged to put security measures in place, in order to protect themselves against the virus and avoid embargoes on their exports of animal products.

2. The completion of the internal market within the Community was planned for January 1993. Consequently, since the free movement of animals and agricultural products is a fundamental aspect of the common organisation of markets, the rules on trade in animals and animal products within the Community had to be harmonised. That also required the establishment of a common policy for preventing and controlling FMD. In a 1989 report on Member States' policies for controlling FMD ⁽²⁾, the Commission noted that some Member States that did not practise preventive vaccination of livestock ⁽³⁾ could impose restrictions on trade in animals with Community partners that did vaccinate. The restrictions were justified by the fact that even though vaccinated animals appear clinically normal they may be carrying the virus.

3. In order to remove veterinary and similar obstacles to the development of intra-Community trade in animals and animal products the Commission considered health regulations applicable to international trade in animals and animal products, such

as those laid down by the Office international des Epizooties (OIE) ⁽⁴⁾. Under its rules, if there were an outbreak of FMD, return to unrestricted trading conditions would be much faster if a stamping-out policy were applied (three months) than if any kind of vaccination were used (12 to 24 months).

4. Because of these commercial considerations, the same Commission report concluded that the adoption of a non-vaccination policy was preferable to a policy of preventive vaccination. This was why the stamping-out policy was supplemented at Community level, in 1990 ⁽⁵⁾, by the ban on preventive vaccination and by prohibition of imports of vaccinated animals into Community territory. However, it was still possible to vaccinate, but only as an emergency measure when the presence of FMD had been confirmed and there was a danger of large-scale spread of the disease.

5. Since the adoption of this new strategy there have been several outbreaks in the Union, in Italy in 1993 (57 outbreaks) and in Greece, in 1994, 1996 and 2000 (95, 39 and 14 outbreaks respectively). Epidemics have occurred in neighbouring areas (Albania, Macedonia, Kosovo, Algeria, Georgia, Armenia, Azerbaijan, Turkey and Iran). In addition, on 21 February 2001, an unprecedented crisis hit the United Kingdom and lasted for a period of 10 months. There were 2 034 outbreaks of infection extending to 10 124 farms and leading to the slaughter of some four million animals ⁽⁶⁾. In addition, more than two million animals were slaughtered because of the welfare problems that arose when they were confined to farms following movement restrictions ⁽⁷⁾. It was not possible to contain FMD to the United Kingdom: it spread, on 13 March 2001 to France (two outbreaks), on 20 March 2001 to Ireland (one outbreak), and on 21 March to the Netherlands (26 outbreaks). The United Kingdom had to apply slaughter measures until September 2001. In January 2002 it was able to recover the status of an FMD-free country that did not practise vaccination, which allowed it to start trading again.

⁽²⁾ Report from the Commission to the Council on a study carried out by the Commission on policies currently applied by Member States in the control of foot-and-mouth disease, Commission of the European Communities, SEC (89) 1731 final, 18 October 1989.

⁽³⁾ Preventive vaccination should not be confused with emergency vaccination; the latter is possible if an outbreak occurs. Two different policies were being applied in 1988: eight Member States (Belgium, Germany, Spain, France, Italy, Luxembourg, Netherlands, Portugal) vaccinated livestock as a precautionary measure, followed by partial or total stamping out of contaminated animals if the disease occurred. The other Member States (Denmark, Greece, Ireland and the United Kingdom) did not carry out preventive vaccination and eradicated all animals in the event of an FMD outbreak.

⁽⁴⁾ An intergovernmental organisation set up in 1924. The World Trade Agreement recognises the OIE standards as a reference for international animal health rules.

⁽⁵⁾ Council Directive 90/423/EEC of 26 June 1990 amending Directive 85/511/EEC introducing Community measures for the control of foot-and-mouth disease, Directive 64/432/EEC on animal health problems affecting intra-Community trade in bovine animals and swine and Directive 72/462/EEC on health and veterinary inspection upon importation of bovine animals and swine and fresh or meat products from third countries (OJ L 224, 18.8.1990, p. 13).

⁽⁶⁾ *Statistics on foot-and-mouth disease*, DEFRA, United Kingdom, 12 December 2002.

⁽⁷⁾ *Livestock Welfare Disposal Scheme*, state aid introduced by the United Kingdom on 22 March 2001, administered by the Rural Payments Agency and accepted by the Commission.

Main characteristics of measures to prevent and control FMD

6. A complex set of prevention and control measures aims to limit the risk of the virus being introduced into the Community territory and spreading (see Box 1). The prevention and control measures are provided for in Community directives ⁽⁸⁾. The Member States are responsible for bringing them into force and applying the rules derived from them. The Commission, on the other hand, is responsible for checking that the Community provisions are implemented by the Member States. The Commission also supports non-member countries' efforts to control and eradicate epidemics of animal diseases. At the Commission the Directorate-General for Health and Consumer Protection is responsible for the direct management and control of Community veterinary expenditure ⁽⁹⁾.

Box 1

Community measures for prevention and control of FMD

The system of prevention focuses on collaboration with international organisations and substantial support for neighbouring countries in combating the disease, on veterinary, zootechnical and health controls on stock farming and meat in the Union and at its frontiers, the drafting of contingency plans by the Member States, with the resources needed to counteract any crisis that might arise, and systems for identifying and tracing animals.

The control system relies on immediate notification of the disease, introduction of restrictions on movements of people and animals, the launch of epidemiological inquiries to identify animals suspected of being contaminated, and on Member States applying their contingency plans and implementing the necessary culls, followed by destruction of the carcasses and disinfection of contaminated premises and materials.

7. After the 2001 crisis the Commission presented a proposal for a directive modifying the system for controlling

FMD ⁽¹⁰⁾. The Directive was adopted by the Council on 29 September 2003 ⁽¹¹⁾.

Impact on the budget

8. The conditions applicable to the Community financial contribution to the expenditure for eradicating certain serious contagious animal diseases, including FMD, were laid down in 1990 by the Council ⁽¹²⁾. The contribution is compulsory if the Member States have implemented the prescribed Community measures and takes the form of reimbursement, at a rate of 60 %, of FMD expenditure incurred by Member States in compensating farmers for the slaughter and destruction of animals and disinfection of premises and equipment. It is entered in the budget ⁽¹³⁾, under the heading of 'Emergency fund for veterinary complaints and other animal contaminations which are a risk to public health' ⁽¹⁴⁾.

9. Following the adoption of the new strategy the appropriations for the Fund, for all animal diseases together, were increased fourfold in 1999 and were doubled in 2000, reaching a grand total of 978,1 million euro for financial years 2001, 2002 and 2003 ⁽¹⁵⁾, mainly due to the 2001 FMD crisis. For the 2001 crisis alone the overall total expenditure declared by Member States for compensation for slaughter and destruction of animals as well as disinfecting of farms and equipment was around 2 693,4 million euro, of which 1 616 million euro was claimed for Community reimbursement. The total declared for slaughter compensation alone was 1 775,1 million euro, of which 1 065,2 million was claimed for reimbursement (see Table).

⁽¹⁰⁾ Proposal for a Council Directive on Community measures for the control of foot-and-mouth disease and amending Directive 92/46/EEC, COM (2002) 736 final, 13 December 2002.

⁽¹¹⁾ Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (OJ L 306, 22.11.2003, p. 1).

⁽¹²⁾ Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field (OJ L 224, 18.8.1990, p. 19).

⁽¹³⁾ The item in question is heading B1-332. The budget classification was changed for 2004. The emergency fund is now included in Article 17 04 03 of the budget.

⁽¹⁴⁾ This does not cover bovine spongiform encephalopathy (BSE).

⁽¹⁵⁾ The annual budget of the emergency veterinary fund rose from five million euro between 1995 and 1998 to 20 million euro in 1999, before reaching a total of 41 million euro for financial years 2000 and 2001. The FMD crisis necessitated a transfer of 400 million euro in addition to the initial appropriations of 41 million for the Fund for 2001, a supplement of almost 10 times the initial amount. For financial years 2001, 2002 and 2003, the final appropriations entered in the budget reached a total of 978,1 million euro.

⁽⁸⁾ Council Directives 90/423/EEC and 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ L 315, 26.11.1985, p. 11).

⁽⁹⁾ Although the Community reimbursement for veterinary expenditure incurred by the Member States is booked to the EAGGF Guarantee Section, it is treated as a grant. For that reason it is not subject to the procedure for clearing Member States' accounts, nor does it involve the bodies that certify their paying agencies' accounts. Instead, it is subject to direct management and financial control by the Directorate-General for Health and Consumer Protection.

Table
Claims for reimbursement submitted by Member States in connection with their expenditure on compensation for animals slaughtered

Country	Number of animals covered by compensation					Total compensation (euro)						
	Sheep	Goats	Cattle	Pigs	Other	Total	Sheep	Goats	Cattle	Pigs	Other	Total
France	48 573	206	1 406	10 138	—	60 323	5 739 074	23 651	1 697 635	1 868 433	—	9 328 794
Ireland	50 172	98	1 172	70	15	51 527	7 359 366	18 658	859 862	9 800	11 443	8 259 129
Netherlands	39 011	9 654	90 842	136 545	1 134	277 186	3 965 380	1 363 801	65 247 745	16 339 358	586 037	87 502 322
United Kingdom ⁽¹⁾	2 449 424	—	579 637	135 084	2 438	3 166 583	625 586 405	—	1 018 384 592	22 415 862	3 660 692	1 670 047 551
Total	2 587 180	9 958	673 057	281 837	3 587	3 555 619	642 650 225	1 406 110	1 086 189 835	40 633 454	4 258 172	1 775 137 795

⁽¹⁾ Exchange rate: 1 euro = 0,62380 pound sterling (on 3 December 2001)

NB:

The Member States' reimbursement claims cover 3,5 million animals. The highest number is for the United Kingdom, with 3 166 583 animals, representing 89 % of the total. The compensation paid amounts to 1 775,1 million euro, of which 1 670 for the United Kingdom, i.e. 94 % of the total compensation for countries affected by FMD in 2001. The category of animals most affected by FMD in 2001 was sheep, with 2 587 180 sheep. The number of sheep for which compensation was granted in the United Kingdom accounts for 94,53 % of this total. The highest compensation per animal category is that for cattle, with a total of 1 086 189 835 euro, 93,8 % of which was paid to the United Kingdom.

Source:

FR/ Reimbursement claims (5 October 2001 and 6 December 2002),
IRL/ Reimbursement claim (6 February 2002),
NL/ Reimbursement claim (April 2002),
UK/ Reimbursement claims (December 2001 and 26 February 2003) plus reimbursement claim for Northern Ireland.

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UK/ Reimbursement claims (December 2001 and 26 February 2003) plus reimbursement claim for Northern Ireland.

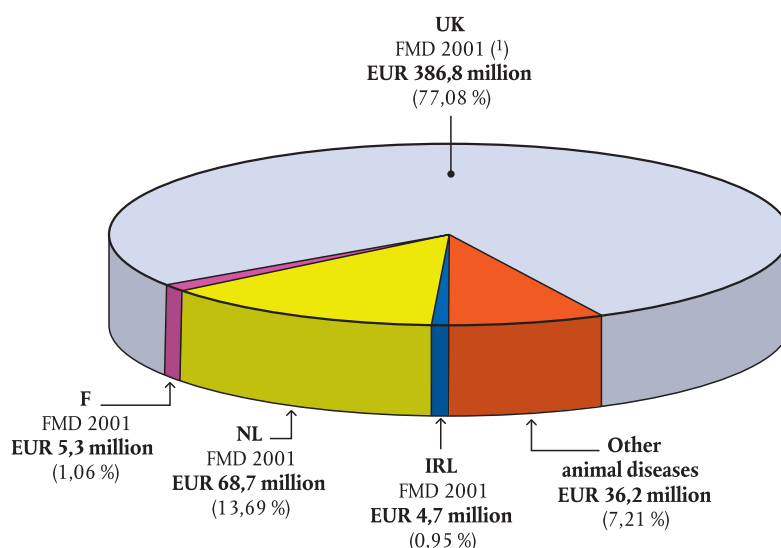
10. Following its decisions to grant aid ⁽¹⁶⁾ in connection with FMD, the Commission allowed payments to Member States for a total of 433,5 ⁽¹⁷⁾ million euro for slaughter expenditure and 32,1 million euro for other costs, bringing the total Community reimbursement to 465,6 million euro at 31 December 2003 (see *Diagram 1*).

11. The Commission has not yet completed its review of Member States' expenditure and reimbursed the balances due as compensation for this 2001 expenditure (except in the cases of France and Ireland). As a consequence, the budget appropriations available for the emergency veterinary fund were under-utilised by more than 48 % for financial years 2001 to 2003 (see *Diagram 2*).

Diagram 1

Total payments from Emergency Veterinary Fund at 31 December 2003

based on final appropriations entered in budgets 2001, 2002 and 2003



⁽¹⁾ FMD 2001: foot and mouth disease in year 2001.

NB:

The payment of around 17 million euro in 2001 for avian influenza has not been included under the heading 'Other diseases' as it was funded from carry-overs of appropriations from 2000.

Expenditure of around 2,5 million euro for FMD in Greece in year 2000 has been included in 'Other diseases'.

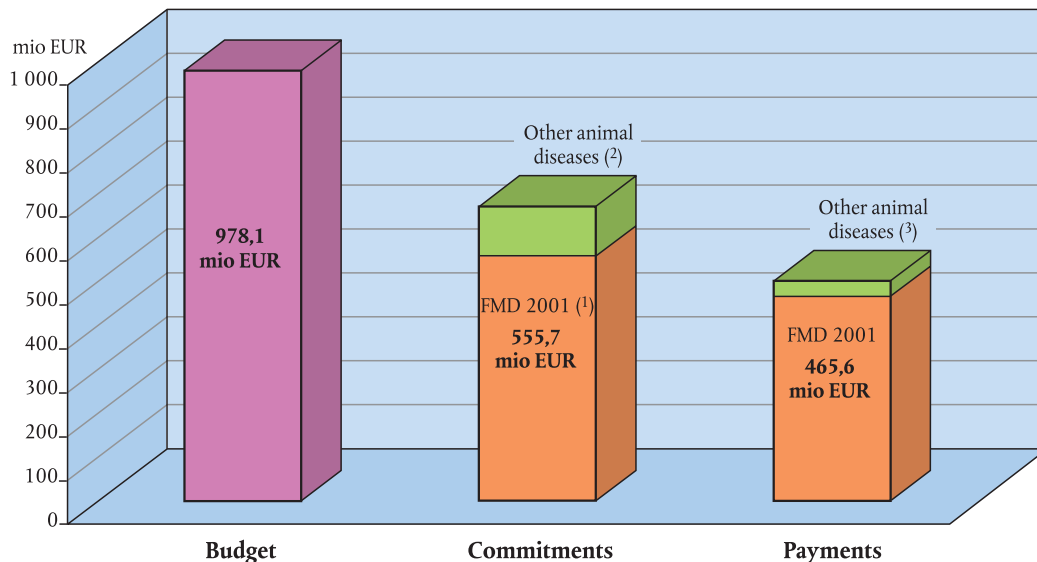
Source: Commission

⁽¹⁶⁾ Commission Decisions 2001/646/EC (OJ L 228, 24.8.2001, P. 24), 2001/652/EC (OJ L 230, 28.8.2001, p.8), 2001/653/EC (OJ L 230, 28.8.2001, p. 12) and 2001/654/EC (OJ L 230, 28.8.2001, p. 16) concerning a financial contribution towards the eradication of foot-and-mouth disease in France, Ireland, Netherlands and United Kingdom.

⁽¹⁷⁾ Payments made as of 31 December 2003.

Diagram 2

Use of Emergency Veterinary Fund budget for years 2001, 2002 and 2003



⁽¹⁾ FMD 2001: foot-and-mouth disease in year 2001.

⁽²⁾ Commitments for 'Other animal diseases': 114,38 million euro.

⁽³⁾ Payments for 'Other animal diseases': 36,2 million euro.

NB:

Payment appropriations do not include carryovers of appropriations of around 17 million euro from year 2000.

Around 2,5 million euro has been included under the heading 'Other diseases' for FMD expenditure for year 2000 in Greece.

Source: Commission.

The Court's audit

12. Following the classical swine fever and bovine spongiform encephalopathy (BSE) crises, the Court examined the Community measures to control these animal diseases ⁽¹⁸⁾.

13. In view of the scale of the FMD crisis and the cost to the budget the Court decided to carry out a new audit with the objective of establishing whether:

- (a) the analytical method followed by the Commission in determining the strategy for preventing and controlling FMD was sufficiently up-to-date;
- (b) the Commission, on the basis of its checks and appraisals, had presented adaptations to the Community strategy to the Council;

- (c) the system introduced by the Commission for reimbursing Member States' expenditure was adequate, rapid and non-discriminatory.

14. In order to answer these questions, the Court assessed the Commission's action in the light of the latter's analytical methods, its supervision of Member States' implementation of the Community measures and any proposals that it made for adapting the Community regulations. In as far as some of the lessons learned from previous epidemics might be relevant to the strategy for preventing and controlling FMD, the Court first examined the Commission's action before and during the crisis. It then studied the reimbursement system, especially in the light of its previous recommendations. This examination was confined to the expenditure on compensation for the slaughter of animals ⁽¹⁹⁾. Lastly, the Court undertook a review of the lessons learned by the Commission after the 2001 crisis.

⁽¹⁸⁾ Annual Report concerning the financial year 1995 (OJ C 340, 12.11.1996, p. 1). Special Report No 19/98 concerning the Community financing of certain measures taken as a result of the BSE crisis (OJ C 383, 9.12.1998, p. 1). Special Report No 1/2000 on classical swine fever (OJ C 85, 23.3.2000, p. 1). Special Report No 14/2001. Follow-up to Special Report No 19/98 on BSE (OJ C 324, 20.11.2001, p. 1).

⁽¹⁹⁾ As long as the Commission has not completed its negotiations with the Member States and adopted a final decision on the reimbursement to be granted, the Court will not be able to give an opinion either on other FMD expenditure in connection with the disposal of carcasses and the disinfecting of premises and equipment or on the Commission's financial controls.

15. The audit work was carried out at the Commission and in Member States affected by FMD (France, Ireland, the Netherlands and the United Kingdom) ⁽²⁰⁾. The audit visits were mainly to the agriculture ministries responsible for the health and veterinary aspects and their regional offices ⁽²¹⁾. Account has been taken in this report of work by the authorities visited and by the European Parliament and the International Conference on Control and Prevention of Foot-and-Mouth Disease and other public inquiries carried out in the Member States ⁽²²⁾.

COMMISSION ACTION BEFORE THE CRISIS

Analytical method not sufficiently up-to-date

16. In the 1989 report ⁽²³⁾ mentioned above (see paragraph 2), the Commission carried out a cost-benefit analysis of the various policies followed by the Member States in controlling FMD (policy of preventive vaccination, or policy of systematic slaughter), with a view to defining the strategy to be followed at Community level. In particular, it assessed the risk of FMD occurring in the Community if one or other of the two policies were to be applied from 1992 onwards, together with the economic effects

of the two possible alternatives. The Commission projected the costs over a period of 10 years (from 1993 to 2002) according to three different scenarios for the scale of the crises. For the non-vaccination policy it used an intermediate scenario with 13 epidemics of 20 outbreaks. The estimated cost over the same period was 35 million euro. The estimate for the cost of the optimistic scenario, on the other hand, was 0,3 million euro, and that for the worst scenario was 955 million euro.

17. Moreover, the main emphasis of the 1989 report was on commercial considerations and consideration of budgetary and agricultural costs and profits, without taking into account the wider social and environmental costs.

18. Because of the nature of the animal disease epidemics that occurred in the Union before 2001, the Commission was unaware of the need to check whether the Community arrangements were viable. There had, in fact, been three epidemics that involved more than 20 outbreaks (the maximum possible in the scenario used by the Commission), but on the other hand, there had only been four crises in eight years (compared with thirteen in ten years according to the same scenario). On the other hand, a number of risks conducive to the spread of the virus had increased since 1993: the number of livestock movements had increased ⁽²⁴⁾ with the completion of the single market, the number of abattoirs had fallen ⁽²⁵⁾, leading to increased concentrations of animals and an enhanced risk of infection, while stocking densities, particularly of sheep, goats and pigs, had soared ⁽²⁶⁾. In February 1998 the FAO ⁽²⁷⁾ drew the attention of the 33 Member States of the European Commission for the Control of Foot-and-Mouth Disease to the fact that, at any time, 'Europe may face further devastating animal disease epidemics due to long-distance transport of animals and increasingly dense livestock units' ⁽²⁸⁾.

⁽²⁰⁾ Three of the audit visits were carried out jointly with Commission staff.

⁽²¹⁾ Beneficiaries and valuers who had established the value of the slaughtered animals were also interviewed. The Office international des epizooties (OIE) in Paris, Pirbright Laboratory and the National Audit Office (NAO) in London were also visited.

⁽²²⁾ *International Conference on Control and Prevention of Foot-and-mouth disease, Final Report*, organised by the Belgian EU Presidency, European Commission, Netherlands and United Kingdom, Brussels, 12-13 December 2001;

The 2001 Outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General, 21 June 2002, The Stationery Office, London;

Rapport d'information n° 405 by J-P Émorine of the French Senate, adopted at the Senate meeting of 21 June 2001;

Foot-and-mouth disease 2001: Lessons to be Learned, Inquiry Report by Dr Iain Anderson CBE, July 2002, The Stationery Office, London;

Infectious diseases in livestock, The Royal Society, July 2002;

Response to the Reports of the *Foot-and-mouth disease Inquiries*, HM Government with the Welsh Assembly Government, November 2002;

European Parliament resolution of 17 December 2002 on measures to control foot-and-mouth disease in the European Union in 2001 and future measures to prevent and control animal diseases in the European Union, and Report of the Temporary Committee on foot-and-mouth disease, European Parliament, document No A5-0405/2002.

⁽²³⁾ *Report from the Commission to the Council on a study carried out by the Commission on policies currently applied by Member States in the control of foot-and-mouth disease*, Commission of the European Communities, SEC (89) 1731 final, 18 October 1989.

⁽²⁴⁾ In the case of cattle, there are movements involving around three million head per year.

⁽²⁵⁾ The number of abattoirs in the United Kingdom fell from 1 400 in 1990 to 400 in 1999.

⁽²⁶⁾ Between 1987 and 1997 the density of pigs per farm had more than tripled in Ireland, and increased by more than 50 % in the Netherlands, the United Kingdom and France. The density of sheep per holding had also increased substantially in Spain, Ireland and the United Kingdom in particular, where it reached almost 500 head per holding, four times higher than the average density for the Union (137,9 head per holding). The stocking density for goats increased likewise over the period, especially in Greece, Spain, France, Italy and the Netherlands. (Structure of agricultural holdings Historic results — Surveys from 1966/1967 to 1997 — Final version: October 2000 Eurostat, p. 88, 89 and 92).

⁽²⁷⁾ United Nations Food and Agriculture Organisation.

⁽²⁸⁾ FAO press release 98/05.

19. Moreover, the swine fever epidemic in 1997/1998 had generated significant costs for the Community⁽²⁹⁾, Member States and producers. In the light of that experience, the Commission itself judged the anti-FMD measures provided for in Directive 85/511/EEC incomplete⁽³⁰⁾. Based on expert opinion the Commission then began to revise the Directive, but its work was interrupted when the disease broke out in the United Kingdom on 20 February 2001.

20. The strategy has not been fully evaluated by the Commission since its adoption in 1990. Furthermore, the Commission has not submitted a report to the Council and the Parliament every three years on the conditions of application of Decision 90/424/EEC concerning Community eradication measures and the financial aid granted for that purpose⁽³¹⁾. Neither has it updated the study of Member States' veterinary services carried out by the Directorate-General for Agriculture in 1992, even though the updated study would have enabled it to check whether they were in an adequate state to ensure that the strategy succeeded (see paragraphs 48 to 49)

Commission supervision was insufficient in some respects and deficiencies in the regulations were not remedied in time

21. In normal times Commission supervision of health and veterinary aspects essentially takes two forms: firstly, its staff in Brussels verify that directives have been incorporated into national law, and secondly, inspectors from the Health and Veterinary Office (HVO) in Dublin⁽³²⁾ carry out on-site inspections. In the period preceding the 2001 crisis the inspections required by the regulations should have focused, in the Court's opinion, on the essential measures for preventing and controlling FMD that are defined in Community directives and with the transposition of them into the national law of the Member States. Those measures include:

- (a) veterinary and health checks at frontiers in the case of imports of animals and animal products;
- (b) checks on animal feed in order to avoid contamination of animals or animal products;

⁽²⁹⁾ A total of 650,5 million euro was charged to the Community budget for 1997 and 1998. Court Special Report No 1/2000, paragraph 1.

⁽³⁰⁾ COM (2002) 736 final of 13 December 2002, p. 4.

⁽³¹⁾ Article 43a of Decision 90/424/EEC requires the Commission to submit a report on the conditions of its application to the Parliament and the Council every three years.

⁽³²⁾ Directorate F of the Directorate-General for Health and Consumer Protection.

- (c) drawing-up of contingency plans by the Member States to ensure that human resources, equipment and adequate organisation can be drawn upon, should a crisis arise;

- (d) the drawing-up by Member States of systems for identifying and tracking animal movements and a system of messages between Member States (ANIMO), all of which are essential for tracing and slaughtering contaminated animals quickly.

Transposition of Community directives into national law not systematically verified for compliance

22. The Commission verifies quasi systematically the formal transposition of legislation by Member States within the time allowed by Community directives. Compliance tests, on the other hand, are not operated systematically. In practice they are only carried out when there are HVO inspections⁽³³⁾ in Member States, or following complaints by third parties. The risks of non-compliant transposition are thus high and may still exist now.

23. The Commission has addressed to the Member States a large number of warnings for not transposing directives in time. When the national measures adopted were communicated the Commission archived the files, without checking them for compliance. Consequently, no infringement file has ever been opened by the Commission as far as non-compliance is concerned. As regards the directive on animal identification, and identification of sheep in particular, which Member States were to transpose by 1 January 1995, the Commission had sent warnings to Member States for not communicating national measures between 1993 and 1996. Between 1994 and 1997 it archived the files, following formal transposition of the Community law in the Member States, without making a compliance check. During the 2001 crisis, however, the HVO pointed out that in all the Member States affected by FMD (apart from the Netherlands) there were significant omissions regarding the Directive and they had had a negative impact on the spread of the epidemic in 2001 (see paragraph 35).

⁽³³⁾ During on-site visits the HVO also checks that the national transposing measures are effective and makes recommendations for the attention of the Commission if, amongst other things, it considers that the national measures are not in accordance with Community norms.

Health and veterinary checks at Union frontiers well supervised but certain risks not adequately covered by regulations

24. The HVO carried out numerous health and veterinary checks at Member States' border inspection posts (BIPs) in order to check that only products that met the Community standards for animal health and food safety entered the Community territory through the BIPs. In cases where deficiencies were found the Commission temporarily suspended BIPs' approval, and in order to have the suspensions lifted Member States were fairly quick to take the corrective action required by the HVO, for example, providing additional personnel, stepping up veterinary controls, improving hygiene in installations and equipment, strengthening the systems for recording batches introduced, veterinary certificates and registers.

25. Even though it is impossible to provide total protection against external sources of contamination, there were nevertheless a number of shortcomings in the Community regulations at the time of the crisis. They mainly concerned border-protection, especially as regards the carriage of foodstuffs by travellers and the possibility of storing in free zones products that did not comply with Community regulations (see paragraph 91(a)). Before the crisis the Commission had proposed that introduction into the Community territory be limited to products of animal origin, which meet European animal health standards, but the proposal was only adopted in 2002 ⁽³⁴⁾. Not until November 2002, after the crisis, did the Commission propose reinforcing controls on imports of products of animal origin intended for personal consumption. The Decision was adopted in December 2002 ⁽³⁵⁾.

Delays in imposing controls and banning the use of catering waste for animal feed

26. The HVO inspections concerning animal feed were carried out late, partly after the crisis. The HVO highlighted the gaps

in Member States' checks on the treatment of waste used for animal feed. In so doing it brought to light the risks associated with this type of feedstuff, but partly only after the crisis.

27. The risks associated with this type of animal feed had already been illustrated however in 1997/1998, when there was an outbreak of swine fever in Germany as a consequence of using for pig food catering waste and swill that had been inadequately treated and thus infringed Community legislation. For that reason some Member States had forbidden the use of catering waste on their territory before the 2001 FMD crisis, even if the waste had been treated (France and the Netherlands). Others (Germany and the United Kingdom) had not done so. At the Community level, the use of processed catering waste in pig feed was still legal in February 2001 ⁽³⁶⁾, despite the Commission's proposals.

28. In the United Kingdom the farm where the crisis originated was licensed to feed catering waste to pigs, provided that it had been treated. In practice the farmer collected catering waste from restaurants, hotels, schools and an armed forces establishment in the vicinity, and stored it outside the farm before sending it to two processing establishments close to the farm. Once it had been treated the catering waste was given to the pigs. However, inspections carried out by the Ministry after the start of the outbreak revealed the presence of abnormal waste in the feeding troughs, clearly demonstrating that the waste had not been adequately treated ⁽³⁷⁾. The exact provenance of the pan-Asiatic O type virus could not be established with certainty. The possibility of the virus having entered via BIPs was more or less ruled out and suspicion fell on illegal shipments of products presented as non-food imports for wholesale outlets or for sale to restaurants or canteens ⁽³⁸⁾.

⁽³⁴⁾ Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption (OJ L 18, 23.1.2003, p. 11).

⁽³⁵⁾ Commission Decision 2002/995/EC of 9 December 2002 laying down interim safeguard measures with regard to imports of products of animal origin for personal consumption (OJ L 353, 30.12.2002, p. 1).

⁽³⁶⁾ The Commission presented a proposal to the Parliament and the Council concerning a ban on the use of catering waste and swill in animal feed (COM (2000) 574) in 2000, but it was not adopted until 2002 (Regulation (EC) No 1774/2002, OJ L 273, 10.10.2002, p. 1). In January 2001, just before the crisis, it also presented a proposal for a ban on the use of catering waste as pig feed, but it was not adopted until 23 October 2001. Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever (OJ L 316, 1.12.2001, p. 5).

⁽³⁷⁾ *Origin of the UK foot-and-mouth disease epidemic in 2001*, Department for Environment, Food and Rural Affairs (DEFRA), June 2002.

⁽³⁸⁾ *Foot-and-mouth disease 2001: Lessons to be Learned Inquiry*, p. 47.

Insufficient checks and criteria for Member States' contingency plans

29. In 1990 the Council ⁽³⁹⁾ called on the Member States to draw up contingency plans setting out the action to be taken if an outbreak of FMD occurred. The plans were to facilitate access to the plant, equipment, personnel and all other appropriate materials necessary for the rapid and efficient eradication of an outbreak. The Commission was to lay down the criteria to be applied in drawing up the plans, examine them in order to determine whether they provided a feasible means of achieving the desired objective, and suggest to the Member States where they could be amended. The Council had provided for the possibility of supplementing or amending the plans later, to take account of any changes in the situation.

30. In 1991 the Commission laid down the minimum criteria to be met by Member States' contingency plans ⁽⁴⁰⁾. The aim of the criteria was to ensure that the contingency plans allowed rapid mobilisation of the resources needed to eradicate the disease quickly and efficiently in the event of an outbreak of FMD. Although the Commission required the Member States to establish a basic crisis management structure such as emergency units, local emergency centres and personnel responsible for emergency measures, the Court noted that some important information and conditions for controlling the disease and for efficient financial and administrative organisation had not been required by the Commission at the time, including:

- (a) details of personnel and resources needed for different scenarios (optimistic, intermediate and pessimistic) and how the personnel and resources were to be mobilised;
- (b) a review of contingency plans in the light of experience and circulation of them to farmers, together with regular simulation exercises;
- (c) the criteria in excess of which emergency vaccination would be used;
- (d) information on the established procedures for recording the number of animals slaughtered, their value, payments made and cross-checks with existing veterinary and animal identification databases;

⁽³⁹⁾ Directive 90/423/EEC.

⁽⁴⁰⁾ Commission Decision 91/42/EEC of 8 January 1991 laying down the criteria to be applied when drawing up contingency plans for the control of foot-and-mouth disease, in application of Article 5 of Council Directive 90/423/EEC (OJ L 23, 29.1.1991, p. 29).

- (e) the system for recruiting valuers in an emergency and the general principles for remunerating them;

- (f) the farmer compensation system and its use before or after culling.

31. The Commission has not revised these criteria since 1991. It adopted Member States' plans between 1993 and 1995. During that process, however, the Commission confined itself to making documentary checks, with no on-the-spot checks of the effectiveness of the described measures. Contrary to the Commission's reply to paragraph 33, its 1995 Guidelines for the preparation of contingency plans ⁽⁴¹⁾ only required the Member States to have sufficient veterinary staff to deal with up to 10 outbreaks of disease at any one time, and did not ask them to provide for the number of staff to be increased as a function of the epidemiological situation. Moreover, the first on-the-spot inspections of these plans by the Commission (HVO) in the Member States affected by FMD only took place at the end of 2001 and during the 2002 year, after the crisis. The Parliament also pointed out that, before the crisis, the Commission did not 'review the Member States' contingency plans within an appropriate period'. It went on to say, 'At the time of the 2001 crisis – apart from the assessments in connection with the approval of the contingency plans – [the Commission] had still not reviewed the implementation either of the UK's contingency plan or of those of the Netherlands or France' ⁽⁴²⁾.

32. As a consequence the Member States' plans, although adopted by the Commission, could not be adapted to a crisis that was unprecedented and on a scale that was difficult to imagine. The plans had not provided adequately for the worst scenario, made no provision for stepping up the resources to counteract it and did not provide the necessary administrative and financial organisation.

⁽⁴¹⁾ Guidelines for the preparation of contingency plans for epidemic diseases, paragraph 6.12: 'Each Member State should ensure that it has immediately available sufficient trained staff to deal with, at any time, up to 10 outbreaks of disease and to properly maintain surveillance in the 3 km radius protection zone associated with each. It has been estimated that a trained veterinarian can visit and examine stock at no more than five holdings on one day if he/she properly undertakes the required disinfection procedures at each place.'

⁽⁴²⁾ European Parliament, Resolution adopted on 17 December 2002, paragraph 54.

33. For example, the plan submitted to the Commission by the United Kingdom had not been substantially reviewed since its adoption in 1991. In line with the Commission's guidelines it did not make provision for a pessimistic scenario ⁽⁴³⁾ and even in the national plan, the basis for plans at local level, the scenario only covered up to ten outbreaks at any one time ⁽⁴⁴⁾, without establishing any procedures for rapidly increasing the resources needed to handle culling and destruction. There was no mention of any system for recruiting valuers in an emergency, nor the general principles for paying them. The plan had not been issued to farmers or farmers' representatives. In France the plan made it possible to deal successfully with the two outbreaks that occurred simultaneously, but there was no provision for the increased resources needed to deal with a more pessimistic scenario. The Irish contingency plan envisaged dealing with ten outbreaks at any one time. Only the Netherlands had learned from the swine fever crisis and had provided for the necessary resources to be increased to deal with its 26 outbreaks by introducing emergency vaccination as soon as the resources were found to be insufficient to carry out culling immediately.

34. The Commission's internal audit showed that the Directorate General for Health and Consumer Protection, which is constantly being confronted with crises in the animal sector, had introduced standardised routines, which were judged effective, but these working procedures had not been documented. Moreover, crisis management materials and manuals were not available. Although the Commission responded rapidly during the crisis (see paragraph 44), the Court considers that good groundwork by the Commission, especially from the point of view of the financial arrangements for the reimbursement to be granted to Member States (see paragraphs 74 to 81), would have made it possible to avoid some of the problems encountered during the 2001 crisis.

Incomplete identification and inadequate tracing of animals of FMD-sensitive species

35. At Community level there is a compulsory system for identifying and registering cattle individually ⁽⁴⁵⁾. However, the

Court noted that the system could not guarantee the traceability of cattle moved between Member States or between Member States and third countries. This covers around three million head per year (around 4 % of the total herd). In addition, there are still some weaknesses in its implementation in the Member States ⁽⁴⁶⁾. In the case of sheep (the species mainly affected by the 2001 crisis) and pigs, identification was compulsory from 1 January 1995 until November 2003, but only for batches of animals ⁽⁴⁷⁾. During the crisis the HVO pointed out that the system of batch identification had been poorly applied in three out of the four Member States affected by FMD ⁽⁴⁸⁾.

36. The fact that Community regulations did not require sheep to be identified individually, and that there were also shortcomings in the system of batch identification, hampered the tracing of animals that were suspected of being infected and so delayed their slaughter. In the United Kingdom sheep that should have been slaughtered were not killed, so adding to the risk of the virus spreading.

⁽⁴⁶⁾ Special report No 6/2004 of the Court of Auditors on the organisation of the system for the Identification and registration of bovine animals in the European Union (OJ C 29, 4.2.2005, p. 1).

⁽⁴⁷⁾ Council Directive 92/102/EEC of 27 November 1992 concerning the identification and registration of animals (OJ L 355, 5.12.1992, p. 32). Individual identification of sheep was made compulsory by Council Directive 2003/85/EC (OJ L 306, 22.11.2003, p. 1). Commission Decision 2000/678/EC required the Member States to establish a database of pig holdings and movements of pigs.

⁽⁴⁸⁾ The HVO's report on the audit visit to Ireland from 14-17 May 2001 said that before the FMD outbreak Council Directive 92/102/EEC had not been implemented in Ireland as far as sheep and goat identification was concerned.

See also the HVO's final report following an inspection visit to the United Kingdom from 12 to 16 March, pp. 9 and 10, 'Council Directive 92/102/EEC requires identification of small ruminants (sheep and goats) as to their holding of origin (although not on an individual basis). This Directive should have been transposed into national legislation by 1 January 1995. Official identification of small ruminants in UK, by means of an ear tag bearing the registration number of the holding of birth, has only been compulsory for animals born since 1 January 2001 (the date upon which the Directive was actually transposed for these animals in the UK). In the absence of an official tagging system, a mixture of unofficial permanent means of identification and temporary identification is used. The vast majority of animals moving through markets are marked with coloured dyes. There is no compulsory requirement for sheep to be accompanied by any form of official documentation during routine movements'.

See also the HVO's report on its inspection in France from 2 to 6 April 2001, which stated that the national emergency centre (the FMD unit), together with the local emergency centres, had made a great effort to trace animals, both inside and outside France (...). Their efforts had been compromised by (a) the weaknesses in the controls at various levels, (b) the incomplete implementation of Council Directive 92/102/EEC (presence of small unregistered flocks with unidentified animals and (c) unavailable, missing or defective information in the ANIMO system.

⁽⁴³⁾ *The 2001 Outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General*, 21 June 2002, The Stationery Office, London, p. 4, section 2, third paragraph: 'The plans were based on the most likely scenario and other scenarios were not considered. In line with European Commission guidance, the Department's plans were based on the supposition that there would not be more than 10 infected premises at any one time'.

⁽⁴⁴⁾ *The 2001 Outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General*, 21 June 2002, The Stationery Office, London, paragraph 2.30.

⁽⁴⁵⁾ Regulation (EC) No 1760/2000 of the European Parliament and of the Council (OJ L 204, 11.8.2000, p.1) established a system for identifying and registering bovine animals individually.

37. The Community rules ⁽⁴⁹⁾ also allowed Member States not to include on the compulsory list (which they are required to compile and update) of all farms in their territory holding animals, small holdings with a maximum of three sheep or goats for which the farmers do not claim premiums. In the Netherlands, for example, the responsible authority discovered in the course of the epidemic that 18 000 small holdings or individuals with only a very small number of animals were neither registered nor known, constituting an additional risk that it might not be possible to trace in time all the animals that had to be slaughtered. The HVO found the same problem in France.

Uncorrected deficiencies in the ANIMO system before the crisis

38. In 1990, the Community rules ⁽⁵⁰⁾ introduced a computerised system linking veterinary authorities, one of the main aims being to facilitate exchange of information on animal movements between the competent authorities of the regions of origin and the responsible authorities in the Member State of destination. This system is called ANIMO ⁽⁵¹⁾. The Commission developed the model message to be transmitted by this system in 1991 ⁽⁵²⁾.

39. Before the 2001 crisis the HVO had already pointed out that the ANIMO messages contained no mention of the transit points used during the transport of animals between a Member State of consignment and a Member State of destination. The farm of origin did not appear in the model message either. The Court, too, had already drawn attention to the deficiencies of the system, in its special report on classical swine fever ⁽⁵³⁾. Despite the HVO and the Court advocating changes to the regulations on these points, the Commission had not proposed any revision of the ANIMO system.

⁽⁴⁹⁾ Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market, Article 18 (OJ L 224, 18.8.1990, p. 29).

⁽⁵⁰⁾ Directive 90/425/EEC, article 20.

⁽⁵¹⁾ The ANIMO system was introduced in 1990 following the abolition of veterinary controls within the Union. It concerns all animals (not just cattle) and animal products. The system is based on the sending of messages from the veterinary unit of origin to the unit of destination. The messages give only the total number of animals per category being moved, without mentioning the individual identifications of the animals.

⁽⁵²⁾ Commission Decision 91/637/EEC of 3 December 1991 establishing the model for the message to be transmitted by means of the computerised network 'ANIMO' (OJ L 343, 13.12.1991, p. 46).

⁽⁵³⁾ Special Report No 1/2000 concerning classical swine fever, paragraph 29.

40. During the 2001 crisis, following the confirmation of the first outbreak in the United Kingdom, the other Member States did indeed need to trace the sheep that they had imported from that country over the previous month, in order to be able to increase surveillance of animals that were potentially carrying the virus. It was crucial to know the holding of origin of the animals and the transit points. However, the ANIMO messages did not always contain this essential information.

41. During the 2001 crisis these two omissions caused delays in locating and slaughtering animals suspected of being contaminated (see Box 2). The ministry of agriculture in the Netherlands told the Court that compulsory details of transit points would have made control of the disease much more effective, especially during the critical initial phase of the crisis.

Box 2

Court identified problems with tracing animals

During the crisis the authorities in the United Kingdom experienced problems in tracing the farms of origin for sheep exported to other Member States and determining whether the sheep were from contaminated farms, because that information was not given in the ANIMO messages. It was only possible for them to establish the link after an interval of between six and sixteen days after confirmation that the farms of origin were contaminated. On account of this they were not able to give Member States that had imported sheep timely warning of the risk of infection. Due to the lack of adequate information the Member States of destination had to carry out preventive culling of all sheep identified as having been imported from the United Kingdom, as it was impossible to differentiate between suspect sheep and others.

The absence of a trail for the sheep was evidence of the difficulties experienced by the responsible authorities in France in tracing the French farms that were the ultimate destination of sheep imported from the United Kingdom. Furthermore, the ministry was not sure that all the imported sheep had been slaughtered, which meant that there was still a potential risk of contamination. In the Netherlands, because of the absence of details of transit points in the ANIMO messages, it took a day to trace animals from Ireland. The animals had transited via a stopping point close to the farm in France (Mayenne) which, three weeks later, was found to be the site of an outbreak, following the importation of infected British sheep. The time taken to find the documents delayed precautionary action.

Restrictions on animal movements throughout Member States' territories

42. Directive 85/511/EEC requires immediate imposition of restrictions on animal movements in protection and surveillance areas of a minimum radius of 10 km around infected farms, in order to limit the risks of an epidemic spreading. These measures were implemented in the United Kingdom, but the restrictions alone could not contain the spread of the epidemic in view of the extent of contamination before the first outbreak had even been detected.

43. In the United Kingdom a nationwide ban on animal movements was not introduced until three days after the epidemic had been officially confirmed. On the basis of Article 10(4) of Directive 90/425/EEC the Commission, for its part, adopted Decision 2001/190/EC, banning movements of animals in Member States other than the United Kingdom. According to the NAO report, another 62 premises were believed to have been infected in seven other counties in the interval between confirmation of the first outbreak and the introduction of the ban on livestock movements in the United Kingdom ⁽⁵⁴⁾, with an increase in the scale of the epidemic (and, therefore, its cost) which university epidemiologists estimated to be twice what it would have been had restrictions been imposed on the same day that the disease was confirmed ⁽⁵⁵⁾.

COMMISSION ACTION DURING THE CRISIS

Effective supervision by the Commission

44. Commission staff were available 24 hours a day throughout the crisis. The Commission was able to take the necessary emergency measures promptly by, for example, notifying Member States of the existence of the disease, carrying out surveillance measures which included the slaughter of sheep imported before the crisis started, closing markets, etc. Many of the decisions taken by the Commission in the veterinary area during the crisis were deemed by the Member States to have been timely and appropriate.

45. Comparisons of the dates of inspections carried out by the HVO and crises arising show that, as far as the crisis itself was concerned, the HVO succeeded in carrying out inspections at the opportune time, even if it meant postponing other planned visits to later dates. Normal procedures were speeded up during the crisis and HVO inspection reports were available within two months of its consideration of the comments of other departments of the Directorate General for Health and Consumer Protection and the replies from Member States.

Deficiencies in control arrangements and in the implementation of them in the Member States

46. Some deficiencies which the HVO had found in the control arrangements in the United Kingdom (the country most affected by the crisis) could not, however, be dealt with promptly,

because they required fundamental revision of the measures in question by the Commission and the Member States. These deficiencies merit attention because, in fact, they potentially concern other Member States. The main ones are:

- (a) a significant shortage of government vets,
- (b) the effectiveness of the control arrangements relied on farmers notifying the disease immediately,
- (c) in some cases, unacceptable delays in identifying suspected cases, confirming them and slaughtering and disposing of the animals in question ⁽⁵⁶⁾.

47. During the audit the Court also identified shortcomings similar to those found by the HVO. They are described below.

Reduced veterinary services

48. In its 1989 report the Commission said ⁽⁵⁷⁾ that the success of abandoning preventive vaccination depended on the availability of a finely-tuned system of government veterinary supervision. Although the Council instituted a series of disease controls that qualified for Community funding, there was no Community funding for veterinary controls on non-endemic diseases, and FMD was, therefore, excluded. After the 2001 crisis, which brought to light the general decrease in the number of government vets, the European Parliament ⁽⁵⁸⁾ and the international conference in December 2001 ⁽⁵⁹⁾ raised the question of epidemiological monitoring of livestock and the funding of it as an effective means of preventing the disease. As yet there has been no Community-level response to this question which, in actual fact, concerns all animal diseases.

⁽⁵⁴⁾ See *The 2001 Outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General*, 21 June 2002, p. 14, paragraph 1.8, 'Between confirmation and a national movement ban being imposed on 23 February another 62 premises are believed to have been infected'.

⁽⁵⁵⁾ *Foot-and-Mouth Disease 2001: Lessons to be Learned Inquiry Report*, Dr Iain Anderson quoting Professor Woolhouse of Edinburgh University, p. 60.

⁽⁵⁶⁾ See the conclusions in the HVO's final report following its inspection in the United Kingdom from 12 to 16 March 2001: 'In some cases, there had been unacceptable delays in dealing with infected premises, from the identification of suspect disease, through to its confirmation, and the slaughter and disposal of animals. These have not only led to an increased risk of spread of the disease, but also undermined public confidence in the slaughter programme.'

⁽⁵⁷⁾ Report on the policies of the Member States in the control of foot-and-mouth disease, paragraph 4.10.

⁽⁵⁸⁾ European Parliament, Resolution 2002/2153, on foot-and-mouth disease-lessons to be learned and proposals for the future (A5-0405/2002), paragraphs 99 and 100.

⁽⁵⁹⁾ International Conference on Control and Prevention of Foot-and-mouth disease, Brussels 12 and 13 December 2001, Final Report, paragraph 3.1 of the conclusions and recommendations.

49. Cumbria was the region most affected by FMD and has four million sheep, more than 880 000 cattle and 170 000 pigs. In that region the number of government vets went down from 27 in 1967 to only nine in 2001 ⁽⁶⁰⁾. Statistics show ⁽⁶¹⁾ that the United Kingdom had 9,5 government vets per million animals (cattle, sheep and pigs), compared with an average of more than 20 vets per million animals for the other Member States. Due to the reduction in the number of government vets in the United Kingdom and the delay in calling up additional manpower ⁽⁶²⁾, the effectiveness of measures to control the epidemic was significantly reduced. The NAO noted ⁽⁶³⁾ that until April 2001 the increase in the number of government vets employed in the United Kingdom during the crisis lagged behind the increase in the number of infected premises. Hence the culling delays described in paragraphs 57 and 58 and Box 3.

Insufficient incentive for immediate notification of disease and compliance with animal movement restrictions

50. Immediate notification of the disease is fundamental to rapid eradication. The aim of the Community regulations is to ensure both that farmers notify the disease to the responsible supervisory authority and, similarly, that the Member State notifies it to the Commission. In the first case Directive 85/511/EEC requires Member States to ensure that they are notified of any suspected or actual cases of FMD immediately.

51. Paradoxically, although the success of Community control of FMD actually relies substantially on farmers themselves, as they are the first people able to note the physical condition of their livestock and to notify any diseases in the herd, the Community regulations did not require Member States to involve farmers in disease control, consult them over contingency plans, provide them with information about the nature of different animal diseases and immediate action to be taken, make them aware of their responsibilities or encourage them by some other means to notify the disease quickly.

52. Following a detailed epidemiological enquiry national reference laboratory experts took the view that a certain livestock unit was the origin of the 2001 epidemic, but it had not informed

the responsible authority in the United Kingdom of the infection among the livestock. The disease was detected approximately one month after its appearance in another region, by which time, according to estimates made since then, there were already 57 contaminated holdings ⁽⁶⁴⁾. In the meantime (between 1 February 2001 and 21 February 2001), however, 49 796 head of livestock had been exported to the other Member States, increasing the risk of the epidemic spreading beyond the frontiers of the United Kingdom.

53. As regards the Member State's notification to the Commission and the other Member States, it was essential that the latter be notified as early as possible during the crisis, so that they could take the necessary precautions. This compulsory notification of the disease by the Member State concerned to the Commission and the other Member States is, moreover, a requirement ⁽⁶⁵⁾. In the case of the first outbreak, however, it only has to be effected within 24 hours of the disease being confirmed on the basis of a test that is carried out by a specified national laboratory on samples taken from the animals. This interval of 24 hours can thus be added to the time needed for carrying out the tests, even though scientific confirmation has been obtained.

54. In order to offset this disadvantage the Council ⁽⁶⁶⁾ gave the Commission the option of establishing a warning system, allowing any Member State affected by an epidemic to alert the Commission and the other Member States quickly to the occurrence of an outbreak of FMD. On 20 February, five hours after the national reference laboratory had officially confirmed the disease, the United Kingdom, in accordance with the provisions of the Community regulations, notified the Commission of the existence of the first outbreak, thus demonstrating that the 24-hour period allowed by the regulations could be shortened, given modern methods of communication. The Commission then immediately informed the veterinary services in the other Member States and, on the following day, stopped exports from the United Kingdom. In the intervening period around 287 pigs were still exported from Northern Ireland to the Irish Republic, before the export ban was actually implemented, at 17.00 hours on 21 February.

55. Prompt notification is essential if FMD is to be contained. Farmers' observance of animal movement restrictions is equally important. Member States found that in some cases these aspects had been disregarded in their territories and took action against the farmers concerned in the courts.

⁽⁶⁰⁾ *Inquiry into Infectious Diseases in Livestock*, The Royal Society, visits to Cumbria and Galloway 1 and 2 November 2001.

⁽⁶¹⁾ Eurostat and Royal College of Veterinary Surgeons, year 2000.

⁽⁶²⁾ *Foot-and-Mouth Disease 2001: Lessons to be Learned Inquiry*, Dr Iain Anderson, sections 9.2, 9.7 and 9.8.

⁽⁶³⁾ *The 2001 outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General*, National Audit Office, United Kingdom, 14 June 2002, p. 52, paragraph 3.37.

⁽⁶⁴⁾ *Origin of the UK foot-and-mouth disease epidemic in 2001*, DEFRA, United Kingdom, June 2002.

⁽⁶⁵⁾ Council Directive 82/894/EEC (OJ L 378, 31.12.1982, p. 58), Article 3(1) requires Member States to notify the Commission and the Member States within 24 hours of an established primary outbreak on their territory of any of the diseases listed in Annex I to the Directive.

⁽⁶⁶⁾ Council Directive 90/423/EEC.

56. In the United Kingdom and France farmers who did not notify the disease or respect the animal movement restrictions were taken to court by the Member States concerned and were fined. These farmers were entitled to full compensation because the Community provisions did not make the payment of compensation conditional on compliance with essential aspects of the control provisions, such as disease notification and observance of movement restrictions ⁽⁶⁷⁾. The absence of such provisions made it possible for the Member States to claim back from the Commission the amounts that they had paid to those farmers (see paragraph 77).

In the other Member States, on the other hand, slaughter took place as soon as an outbreak was suspected, before the final results of laboratory tests were received. In the Netherlands, France and Ireland preventive culls were carried out, especially in the case of sheep imported from the United Kingdom.

In the United Kingdom animals were killed after they had been valued and after the valuation had been accepted by the farmer, thus delaying slaughter of infected animals. In France, on the other hand, animals were valued after slaughter, so as not to delay eradication of the infection.

Delays in culling

57. In order to be entitled to Community reimbursement Member States must immediately slaughter infected animals, as required by Directive 85/511/EEC, as soon as the disease is officially confirmed. Immediate slaughter is essential, to prevent the spread of the virus.

58. In the case of secondary outbreaks, however, the Community regulations allow, but do not require, Member States to slaughter animals, if the epidemic spreads, as soon as clinical symptoms of the disease are detected by an official veterinarian. Furthermore, they do not require animals to be culled before they have been valued and the relevant administrative procedures completed. In consequence culling was more or less rapid according to the practice of the Member State and the veterinary resources available (see Box 3), thereby increasing the risk of the epidemic spreading.

Box 3

Culling delays in Member States

In the United Kingdom, as allowed by the Community regulations, the responsible authority waited for laboratory confirmation of infection before culling the animals from the first outbreak: in the meantime three other outbreaks had occurred. In the case of the first 100 outbreaks the interval between confirmation of contamination and slaughter was, in most instances, more than 24 hours and could be up to seven days. The United Kingdom subsequently took the appearance of clinical symptoms as the basis for culling. In 78 % of such cases subsequent tests confirmed the vets' diagnosis (see NAO report, Table 38, p. 63).

⁽⁶⁷⁾ Only the Netherlands had made provision for up to 100 % of the compensation paid to farmers to be deducted if health or veterinary regulations had been infringed. The infringements in question were failure to comply with animal identification systems (75 %) and hygiene rules (18 %) and obstructing the killing of vaccinated animals, they did not concern notification and compliance with movement restrictions. However in view of the difficulties suffered by the persons concerned, the Dutch authorities cancelled the penalties *ex post facto*.

COMMISSION ACTION CONCERNING THE REIMBURSEMENT SYSTEM

59. Before the crisis the Court and the discharge authorities had already made recommendations to the Commission, some of them coinciding with the HVO findings mentioned in paragraph 46. In the financial area the Commission did not take advantage of the recommendations made by the Court in 1996, nor those made by the discharge authority in connection with classical swine fever and BSE - it did not adapt them to the FMD situation (see Box 4).

Box 4

Commission follow-up to previous recommendations by the Court and the discharge authority

Clarify the rules and procedures relating to eligibility of Member States' expenditure and compensation payments to farmers (Special Report No 1/2000, paragraph 80): in reply to the follow-up to the Court's 1995 Annual Report the Commission undertook to address directives to the Member States on compensation procedures and calculation of the amounts involved; this was not done.

Align the cofinancing rates applicable to veterinary measures and market support measures (Special Report No 1/2000, paragraph 79); the Commission undertook to do this for classical swine fever; however, the cofinancing rates still vary according to the nature of the animal disease.

Submit to the Council a proposal for reviewing the regulations so as to increase the contributions from owners of intensive pig units to measures to combat the disease (Special Report No 1/2000, paragraph 81): the Commission carried out a comparative study of other forms of financing but did nothing towards the introduction of systems in the Member States involving farmers' contributions for FMD.

No Commission proposals for directives on procedures and calculation of compensation for farmers by Member States

60. The rules ⁽⁶⁸⁾ give the Commission the task of adopting the necessary implementing measures as regards the special Community financial contribution for eradicating FMD. It makes the Community reimbursement of expenditure to Member States conditional on 'adequate compensation of the livestock farmers', but without specifying the meaning of the expression. In December 2000 the Council ⁽⁶⁹⁾ made the Commission alone responsible for direct management of this expenditure. Paradoxically, although the Commission undertook to present directives containing the arrangements for compensating farmers in the Member States, it considers that it is not legally competent to do so. The regulations are incomplete as a consequence, in as far as the Commission has not presented the directives. On the basis of the current legal arrangements the Commission confines itself to determining whether Member States' expenditure is eligible for Community reimbursement, without providing the framework for their calculation of the compensation to be paid to their farmers.

61. On the other hand, in the context of compulsory slaughter of cattle affected by BSE ⁽⁷⁰⁾, the Commission set limits on the amount of compensation to be paid to farmers by the Member States ⁽⁷¹⁾. The latter are authorised to pay the objective current market value for each animal, established on the basis of a system of objective individual evaluation approved by them. Even if this system does not entirely meet the wish for a harmonised, fair and economic compensation system, it is still preferable to

the absence of any definition of compensation from Member States to farmers which prevails in the area of FMD. It was in fact the absence of any framework for compensation that made possible the inconsistencies and inequalities of treatment meted out to farmers according to their geographical location and/or the slaughter method chosen, as described below.

Variations in compensation systems and lack of uniformity in valuations

62. The compensation for direct losses by farmers, i.e. the gross value of slaughtered livestock, was not set in advance (except in the Netherlands). This meant that Member States had to set it during the crisis, when some price references were unavailable because markets were closed. Most Member States drew up price grids for use as a reference by the official valuers responsible for valuing animals, but without instructing that the figures were upper limits. Price references were unavailable for some categories of animals.

63. As regards indirect losses ⁽⁷²⁾ there was no compensation in three Member States (Ireland, Netherlands, United Kingdom), leaving farmers without resources for at least three weeks after animals had been slaughtered, while the farm was being decontaminated. In France, on the other hand, the losses were reimbursed to farmers by the French authorities, who considered that the expression 'adequate compensation' for farmers ought to cover all losses (animals and income). However, the Commission did not accept them for reimbursement.

64. The contracts concluded by Member States with valuers varied and the instructions for valuers were inadequate in some cases. In the absence of instructions from the Commission to Member States about cattle valuations, the bovine identification

⁽⁶⁸⁾ Council Decision 90/424/EEC, Articles 3 and 11(2).

⁽⁶⁹⁾ Council Decision 2001/12/EC of 19 December 2000 amending Decision 90/424/EEC on expenditure in the veterinary field (OJ L 3, 6.1.2001, p. 27).

⁽⁷⁰⁾ In the case of BSE the compensation payments to farmers for compulsory slaughter of cattle are still managed by the Directorate-General for Agriculture. The division of responsibilities for animal disease management between the Directorate General for Health and Consumer Protection and the Directorate General for Agriculture is due to historical reasons. Transferring the compulsory selective slaughter programmes from 'Guarantee — markets' to 'Guarantee — veterinary' has been mentioned, but the associated manpower problems within the Commission have yet to be resolved.

⁽⁷¹⁾ Commission Regulation (EC) No 164/97 (OJ L 29, 8.1.1997, p. 1). This Regulation is based on Article 37 of the Treaty, concerning the common agricultural policy, and on Council Decision 90/424/EEC on expenditure in the veterinary field.

⁽⁷²⁾ Farmers were not permitted to restock farms for three weeks after animals had been culled and premises decontaminated. During that period they had no income.

system ⁽⁷³⁾, which contains important data relating to the value of animals (breed, age, sex), was not used by valuers to determine cattle values, leaving them a good deal of latitude. The identity of cattle was not included in the valuation forms and there was no trace of valuations having been reviewed by senior valuers or by the ministry.

65. The systems adopted by Member States are described in Box 5.

Box 5

Compensation systems introduced by Member States

The compensation system chosen by the United Kingdom, Ireland and the Netherlands was based on the value of the animals, excluding indirect losses, whereas France included the latter, thus supplementing the animal value by around 30 %.

In the United Kingdom the system fluctuated between one where valuers alone assessed the value of the animals and a mixed system where farmers could opt for either a valuation based on a standard rate card or a value set by the valuers. The standard rate card did not include price references for all categories of animals and had no upper limits. After a very strong rise in valuation figures use of the standard rate card was abandoned. Valuers were not given precise guidelines, and instructions on including outstanding animal premiums in the compensation figure were imprecise, leading to variations in the practices followed.

In Ireland the responsible authority produced a monthly list of precise prices for all categories of cattle. In the case of sheep, on the other hand, the price grid established by the responsible authority was incomplete and provided no upper limits.

In the Netherlands the reference price grid was set in advance by the responsible authority and the valuation procedures to be followed had already been laid down in the contingency plan. This was a contributory factor in achieving more precise and uniform assessments of animal value.

In France a flat-rate scale had been set for sheep, but for other categories of animal the inadequacy of the national framework allowed prefectures to opt for various systems.

66. In the absence of detailed Community regulations the systems introduced in the Member States resulted in lack of uniformity in the compensation to farmers. In the United Kingdom the NAO, like the Commission and the Court, detected animal values that were higher than the values at the beginning of the crisis. Additional payments totalling 4,2 million euro relative to the initial valuation of the animals were granted to some farmers (France, Ireland, United Kingdom). In other cases the compensation was reduced (Netherlands). The average compensation paid to farmers was noticeably higher in the United Kingdom for cattle and sheep than in the other Member States, while in France it was higher for pigs (see Box 6 and Diagram 3).

Box 6

Compensation paid by Member States

In the United Kingdom the compensation paid was high: the National Audit Office reported that the standard rate card used to value animals during part of the crisis was based on the highest prices prevailing just before the crisis. The contracts that were concluded with the valuers tied their remuneration to the estimated value of the animals, with the inherent risk that the estimated value (and, therefore, the compensation paid) would be unduly increased. The Commission has calculated that the average compensation paid for cattle was more than twice their value, more than 2,5 times value for sheep and almost twice value for pigs, resulting in an over-valuation (811,7 million euro) of the amount declared by the responsible authority.

In the case of France the Commission estimated that 1,1 million euro of the amount declared was attributable to the over-valuation of animals, mainly because the compensation included indirect losses and the valuations for pigs were too high.

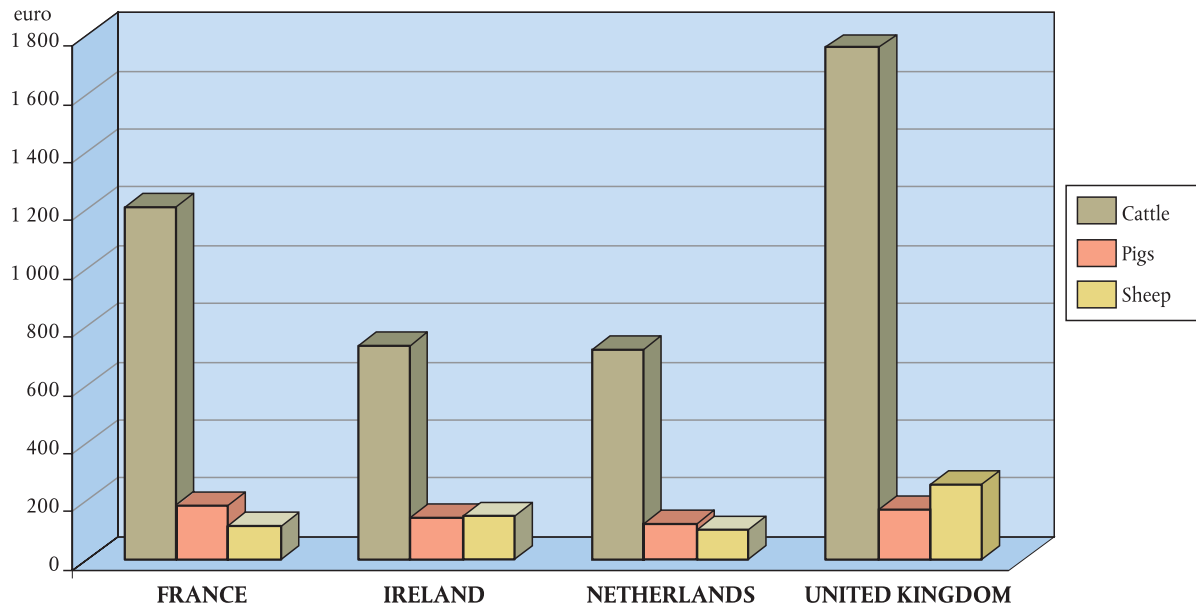
In Ireland and the United Kingdom additional amounts (0,5 million euro and 1,7 million euro respectively) were paid to farmers who disputed valuations, but the amount of compensation paid was not cut in cases where the responsible authority found the valuation too high. In France the flat-rate scale for sheep was revised upwards, adding almost two million euro to the compensation for destroying carcasses.

In the Netherlands the ministry decided to reduce the compensation for infected animals by 50 % of their value. As a consequence farmers received 50 % of the value of infected animals and 100 % of the value of other animals, all on the same farm. A price grid was drawn up in advance and used as a valuation guide.

⁽⁷³⁾ The cattle registration and identification system comprises ear tags and passports identifying cattle individually, individual registers kept on every farm, and computer databases set up by the Member States. The database must provide at any time the identity numbers of all the cattle present on a holding, together with all movements of all cattle from birth. Despite the weaknesses detected in the application of the system (see Special Report No 6/2004 on the cattle identification and registration system), it would have been possible for lists of cattle present on farms to be printed and used by vets and valuers to verify animals' history, slaughter them and establish their value.

Diagram 3

Average compensation paid per head for different categories of animals slaughtered in 2001



Exchange rate: 1 euro = 0,62380 pound sterling (on 3 December 2001)

Source:

FR/ Claims for reimbursement (5 October 2001 and 6 December 2002).

IRL/ Claim for reimbursement (6 February 2002).

NL/ Claim for reimbursement (April 2002).

UK/ Claims for reimbursement (December 2001 and 26 February 2003) plus Northern Ireland claim for reimbursement.

Established cases of double payments of animal premiums

67. Five months after the start of the FMD crisis, when Member States had already begun to award compensation, the Commission drew up a regulation of derogation⁽⁷⁴⁾ concerning Member States' payment of the Community per capita animal and slaughter premiums under market support measures⁽⁷⁵⁾. The Regulation authorised Member States to pay the premiums to farmers, in addition to the FMD compensation, without their having to comply with the conditions governing retention of animals on the farm which are necessary for control purposes under normal circumstances (identification and counting of the animals).

⁽⁷⁴⁾ Commission Regulation (EC) No 1458/2001 (OJ L 194, 18.7.2001, p. 4). This Regulation was drawn up by the Directorate-General for Agriculture.

⁽⁷⁵⁾ The regulations on animal premiums (Council Regulation (EC) No 1254/1999 (OJ L 160, 26.6.1999, p. 21) and the Commission implementing Regulation (EC) No 2342/1999 (OJ L 281, 4.11.1999, p. 30) for cattle and Council Regulation (EC) No 2467/98 (OJ L 312, 20.11.1998, p. 1) for sheep), which are market support measures, were drafted by the Directorate-General for Agriculture and administered by them. The premiums are granted to farmers holding cattle and sheep, provided that certain retention periods are observed.

68. However, when it drafted the derogation Regulation the Commission did not take into account the selling practices that normally apply, particularly in Ireland and the United Kingdom, whereby the sale price of animals includes the amount of any animal premiums still outstanding from which the next buyer might benefit. In actual fact, valuers in Ireland and the United Kingdom followed the usual practice and, taking the view that adequate compensation for farmers ought to include any premiums still due to the farmers, they included them in the livestock valuations for FMD compensation purposes. The Commission, however, omitted to take this practice into consideration and did not instruct Member States to refrain from paying animal premiums subsequently if they had already been included in the FMD compensation.

69. After granting farmers FMD compensation the Member States applied the derogating Regulation and then proceeded to pay any animal premiums that were still due. Given that Ireland and the United Kingdom had already included the amount of some of these premiums in the FMD compensation previously paid to farmers, this meant that some farmers were able to collect the amount of premium twice.

70. In practice the animal valuation forms only gave an overall amount, without distinguishing between the premiums and the intrinsic value of the animals, so that it was difficult for an auditor to set a precise figure on the extent of double payments. However, given that valuers had been instructed to include the amount of the premiums in the livestock valuations and that some of them had given direct confirmation of the inclusion, the Court was able to estimate that the total for animal premiums ⁽⁷⁶⁾ paid to the United Kingdom in duplication of those included in the FMD compensation could be of the order of 10 million pounds sterling (more than 16 million euro) ⁽⁷⁷⁾.

71. In Ireland as well, the Court identified cattle premiums that had been paid in addition to compensation, but the amounts were smaller ⁽⁷⁸⁾. In France some prefectures included bovine premiums in the compensation, others did not. The agriculture ministry in the Netherlands, on the other hand, told the Court that it had not included any premiums in the FMD compensation.

Variations in slaughter premium payments

72. Still in the context of market support measures, provision for payment of a slaughtering premium for cattle is included in a Council Regulation ⁽⁷⁹⁾ requiring an abattoir certificate to confirm that the animal has been slaughtered. This Regulation, however, does not specify the nature of the slaughtering, i.e. whether it is for purposes of human consumption (EAGGF Guarantee Section - market support) or on health grounds (EAGGF Guarantee Section - veterinary). Depending on the interpretation it was possible for the slaughter premium to be paid in addition to the FMD compensation, but only to a small minority of farmers whose contaminated animals were slaughtered at an abattoir. This led to inequality in the treatment of farmers within Member States, according to where slaughter took place.

73. When questioned on the subject by one of the Member States the Commission did not resolve the matter, and did not give a reply on the interpretation to be adopted before the deadline of 30 June 2002 set by the regulations for payment of the 2001 slaughter premiums. As a result the Member States adopted differing decisions, leading to inequalities of treatment among farmers. The Netherlands, where a significant part of the culling was carried out in abattoirs, did not pay slaughter premiums to farmers in addition to FMD compensation, thereby making a saving for the Community budget of some 3,5 million euro. On the other hand, in Ireland, where part of the culling was also carried out in abattoirs, the premiums were paid; they were recovered,

however, after the Court's audit visit. In the United Kingdom the premiums were not paid, in order to avoid possible duplication with the FMD compensation, which already included them. In France the question did not arise because contaminated animals were not slaughtered at abattoirs, and so slaughtering premiums were not paid either.

Rules and procedures governing eligibility of Member States' expenditure for Community reimbursement were defined late

74. Under Decision 90/424/EEC the Commission, with the help of the Standing Veterinary Committee ⁽⁸⁰⁾, is responsible for laying down procedures for implementing the Community financial contribution to Member States' expenditure. The Commission, again with the Committee's help, is also responsible for defining the nature of any additional measures that might be needed to eradicate an outbreak of disease, and the nature of the resultant Community financial contribution.

75. Before the crisis, the Commission had not made any proposals for procedures for implementing the Community financial contribution, despite the undertaking it had given earlier in response to the follow-up of the Court's 1995 Annual Report, 'to issue guidelines to the Member States concerning both procedures and the calculation of compensation with regard to Community co-financing of veterinary measures' (see Box 4). Neither had it provided Member States with details of the nature of the supporting documents that they would need to keep if their expenditure was to be allowed for Community reimbursement. In this way it deprived itself of resources that were important for its own checks.

76. Six months after the start of the crisis it informed the Member States ⁽⁸¹⁾ that it would only reimburse compensation for animals 'at the value the animals had immediately before they became affected', whereas all the Member States concerned had already paid a substantial part of the compensation to farmers, using different methods (see paragraphs 62 to 66). Furthermore, it did not say how the value would be determined, nor the documents on which it would be based.

⁽⁷⁶⁾ Cattle and ewe premiums.

⁽⁷⁷⁾ The official rate used by the Commission (1 euro = 0,62380 pounds sterling) is the rate for December 2001, the date when the United Kingdom submitted its request for reimbursement.

⁽⁷⁸⁾ A total of around 800 animals, corresponding to a sum total of 38 000 euro.

⁽⁷⁹⁾ Council Regulation (EC) No 1254/1999.

⁽⁸⁰⁾ The Committee was set up by Council Decision 68/361/EEC (OJ L 255, 18.10.1968, p. 23) and gives an opinion on the Commission's draft proposals on action to be taken.

⁽⁸¹⁾ The Member States were notified virtually at the end of the epidemic, namely:

- for Ireland: Decision 2001/646/EC,
- for France: Decision 2001/653/EC,
- for the Netherlands: Decision 2001/652/EC,
- for the United Kingdom: Decision 2001/654/EC.

77. Similarly, in the absence of Commission instructions, the Member States' requests for reimbursement included compensation paid to farmers who had not complied with national provisions implementing the Community directives on notification and movement restrictions (some 972 876 euro in the United Kingdom and 58 769 euro in France, see paragraph 56).

78. In the absence of Commission guidelines on the checks to be carried out by Member States and the supporting information to be kept, the beneficiary files examined on the spot were incomplete: in many cases slaughter certificates were missing, cross-checks of the number of cattle identified in the national databases against the number of cattle slaughtered had either not been carried out or revealed numerous discrepancies in most of the Member States audited. Even though many of these shortcomings can be attributed to the scale of the crisis, fuller contingency plans (see paragraphs 30 to 32) and more precise Commission criteria could have reduced the importance of them. For the other categories of animals, which were not recorded because the Community regulations provided for individual identification only in the case of cattle ⁽⁸²⁾, it was not possible to obtain assurance as to the reliability of the number declared.

79. After the crisis the Commission specified the eligibility criteria mentioned in Decision 90/424/EEC, together with the necessary documents for obtaining Community reimbursement (see Box 7). As the Commission itself said, in its reply to this paragraph, it had not made any substantial changes to the eligibility rules contained in Decision 90/424/EEC since 1990. The decision in question is not sufficiently precise and can be interpreted in various ways.

Box 7

Criteria and documents needed for reimbursement to take place were specified ex post facto

Protective culling in the Member States that had imported sheep from the United Kingdom the month before the crisis: in France there was reimbursement for the animals slaughtered, even though there was no Commission decision on the reimbursement.

Partial protective culling around outbreaks in Ireland, France and the United Kingdom (3 km slaughter zone in Cumbria gave rise to expenditure to a sum total of some 112,3 million euro); reimbursement decisions were adopted by the Commission in July 2002 for France, in December 2003 for the United Kingdom and Ireland and, at the time when this report was being drafted, were still being finalised in the case of the Netherlands.

Protective culling by Member States where there had been no outbreaks (Belgium, Germany, Spain and Portugal): the decision was not adopted by the Commission until August 2003, almost two years after the end of the crisis ⁽⁸³⁾.

Decisions on the financing of associated costs, with details of the information to be supplied to the Commission (veterinary costs, destruction costs, disinfecting costs): were not adopted until 2003 ⁽⁸⁴⁾.

80. The Community contributes to Member States' expenditure on condition that they have immediately implemented Community measures such as isolating holdings as soon as disease is suspected, combined with slaughter of all animals, destruction of the carcasses and cleansing and disinfecting of premises as soon as the disease has been confirmed officially ⁽⁸⁵⁾. However, the financial reports which, according to its decisions granting financial assistance to Member States, the Commission requires in order to determine the reimbursement due, only contain part of the information needed for assessing the eligibility of the expenditure mentioned in Council Decision 90/424/EEC ⁽⁸⁶⁾.

81. Member States submitted numerous amendments to reimbursement claims. The claims varied widely and, again, contained numerous errors, so that Commission staff were obliged to extend their checks and, therefore, to delay their final reimbursements.

⁽⁸³⁾ Commission Decisions 2003/619/EC (OJ L 216, 28.8.2003, p. 42), 2003/620/EC (OJ L 216, 28.8.2003, p. 45), 2003/621/EC (OJ L 216, 28.8.2003, p. 48) and 2003/622/EC (OJ L 216, 28.8.2003, p. 53), concerning a financial contribution by the Community towards the precautionary measures against FMD taken by Belgium, Germany, Spain and Portugal.

⁽⁸⁴⁾ The Commission did not adopt the decisions on reimbursement of expenditure to Member States for related costs, destruction, disinfection and cleansing until 14 March 2003 for the Netherlands (Decision 2003/182/EC (OJ L 71, 15.3.2003, p. 19)), France (Decision 2003/183/EC (OJ L 71, 15.3.2003, p. 22)), Ireland (Decision 2003/184/EC (OJ L 71, 15.3.2003, p. 25)) and 24 September 2003 for the United Kingdom (Decision 2003/676/G (OJ L 249, 1.10.2003, p. 45)).

⁽⁸⁵⁾ Decision 90/424/EEC, Article 3(2).

⁽⁸⁶⁾ The information required of Member States in the framework of either Council Directive 82/894/EEC (OJ L 378, 31.12.1982, p. 58) or the Commission decisions granting support does not mention the dates on which outbreaks are confirmed, the introduction of movement restrictions, slaughter, destruction of carcasses, cleansing and disinfection. The dates are needed for assessing the promptness of the measures taken by Member States.

⁽⁸²⁾ Regulation (EC) No 1760/2000.

Delays in reimbursing Member States' expenditure

82. Due to the variety of compensation systems adopted by the Member States (see paragraphs 62 to 73) and the amendments to reimbursement claims submitted by Member States, the Commission's task of identifying within reimbursement claims the eligible value of each animal, or, at least, each category of animal, proved to be complex. Added to this was the lack of assurance as to exactly how many animals had been culled.

83. This was why, as of 1 October 2003, more than two years after the end of the epidemic, neither Ireland, the Netherlands nor the United Kingdom had received any Community reimbursements, even though as a general rule farmers had received compensation within three months, after the culls in 2001.

Cofinancing rates aligned in the pig sector

84. Council Decision 90/424/EEC specifies that the Community contribution is equal to 60 % of the eligible costs incurred by the Member State in controlling FMD (see *Table*).

85. Management and specific regulations concerning reimbursement rates and compensation payable to farmers continue to be divided between the Directorate General for Health and Consumer Protection and the Directorate General for Agriculture: the Directorate General for Health and Consumer Protection handles the compensation for most animal diseases, with the exception of compensation for cattle slaughtered because of transmissible spongiform encephalopathy (TSE), which is still managed by the Directorate General for Agriculture. Even though the reimbursement rates applied by the Directorate General for Agriculture and the Directorate General for Health and Consumer Protection have been aligned for the pig sector, this does not apply for FMD and TSE: the rate is 60 % for FMD, while for TSE it is 70 %. For other animal diseases, including swine fever, it is 50 %. It follows that the reimbursement rates for the same categories of animal vary according to the disease that was the reason for slaughtering. The Court was unable to find the reason for these variations in the rates, which have been in force since 1996.

Farmers do not contribute to Community financing of the control system

86. In its reply to the Court's Special report on classical swine fever⁽⁸⁷⁾, the Commission recognised that 'producers should share greater responsibility for the financial aspects of the eradication of animal diseases' and said that it intended 'to evaluate the possibility of supporting the Member States in establishing these schemes, in the framework of the revision of Community legislation on these issues'. The Commission has not made any proposals for such support, neither for classical swine fever nor for FMD.

87. No-one in this branch of agriculture (neither farmers affected by the epidemic nor those unaffected) contributes to Community eradication costs, although, as a study carried out by a university on behalf of the Ministry of Agriculture in Ireland shows⁽⁸⁸⁾, some of them, namely farmers who were unaffected by movement restrictions or slaughter measures, were able to benefit from price rises. The study quantified agriculture-related benefits in Ireland as some 107 million euro for 2001, essentially due to the increase in the volume and prices of exports to the United Kingdom.

88. However, some initiatives were taken in some Member States independently of the Commission, by either the public sector or the agricultural sector in question, partly with a view to reducing or supplementing the national expenditure on eradication. In the Netherlands, following the classical swine fever crisis, an animal health fund was set up, to pay compensation in the event of an epidemic. It is funded from three sources: farmers, the European budget (where relevant) and the Dutch agriculture budget. The majority of contributions come from farmers. A similar system is currently under study in the United Kingdom. In France farmers who are members of animal health associations (*groupements de défense sanitaire*) voluntarily set up equalisation funds to compensate members who, in times of crisis, incur losses as a result of measures restricting animal movements if there is no Community reimbursement to compensate for such losses⁽⁸⁹⁾.

⁽⁸⁷⁾ Special Report No 1/2000, paragraph 81.

⁽⁸⁸⁾ *Economic evaluation of foot-and-mouth disease*, Department of Agriculture, Food and Rural Development, Ireland, March 2002, carried out by Trinity College, University of Dublin.

⁽⁸⁹⁾ Systems of insurance have also been developed in Spain and Germany.

89. There are thus interesting initiatives of various kinds under development in the Member States. There is a risk that without a Community framework they may create inequality between farmers. Moreover, although some of these initiatives may result in a reduction of Member States' contributions to the system for controlling disease, none of them offers any guarantee that the cost to the Community can be reduced.

COMMISSION MANAGEMENT AFTER THE CRISIS

Action in the veterinary field

90. In December 2002 the Commission presented a new proposal for a directive. It was adopted by the Council in September 2003 ⁽⁹⁰⁾ and made important amendments to the incomplete measures of Directive 85/511/EEC, in particular:

- (a) without prejudicing the policy that has been in force since 1992, which gives priority to slaughtering animals contaminated by the virus, the new Directive puts forward emergency vaccination as an important means of controlling an epidemic of animal disease and lays down conditions for the possible marketing of meat from animals vaccinated on Union territory during an outbreak of animal disease;
- (b) it extends the Community requirements as regards contingency plans and requires Member States to review them every five years in the light of real-time alert exercises ⁽⁹¹⁾; for their part, most of the Member States had already revised their plans in the light of the experience gained during the crisis;
- (c) it gives five separate criteria, any of which may be used as the basis for declaring an outbreak of FMD on a holding ⁽⁹²⁾; this should help to set preventive measures in motion more quickly;
- (d) it requires the Member States to introduce systems of penalties to be applied in cases of infringement of the national provisions adopted pursuant to Community directives ⁽⁹³⁾;
- (e) it requires Member States to provide information about the dates on which the Community measures were implemented. This should enable the Commission to determine the extent to which Community reimbursement is due.

91. Complementary measures were adopted at the same time, to reinforce the prevention and control measures:

- (a) as regards border controls, additional precautions were adopted by the Commission after the crisis, reinforcing checks on travellers' luggage and providing information to travellers ⁽⁹⁴⁾;
- (b) on the basis of earlier Commission proposals, a ban on the warehousing in free zones of products that do not meet Community veterinary requirements was adopted after the crisis ⁽⁹⁵⁾;
- (c) as regards animal feed, the Commission had already proposed a generalised ban on the use of kitchen waste and swill before the crisis ⁽⁹⁶⁾; it succeeded in obtaining the adoption of its proposals at EU level;
- (d) after the crisis the Commission introduced a proposal for individual identification of sheep ⁽⁹⁷⁾, which was adopted in December 2003 ⁽⁹⁸⁾.

92. However, the measures adopted thus far have not taken some aspects sufficiently into account and remain minimal in these respects:

- (a) the desirability of farmers' notifying the disease quickly has not been reinforced by means of incentive measures or by imposing conditions on the payment of compensation to them;
- (b) the time allowed for Member States to notify the Commission of the first outbreak has not been reduced and is still 24 hours from confirmation of the disease, whereas experience showed that this time could be shortened;
- (c) slaughter of animals is compulsory as soon as an outbreak is confirmed. Confirmation is now being obtained more quickly, but there is nothing to say that slaughter must be effected immediately, before the administrative procedures relating to valuation of the animals have been completed.

⁽⁹⁰⁾ Council Directive 2003/85/EC.

⁽⁹¹⁾ See Directive 2003/85/EC, Article 72(10).

⁽⁹²⁾ See Directive 2003/85/EC, Article 2 and Annex I.

⁽⁹³⁾ Article 86 of Directive 2003/85/EC requires Member States to lay down rules on penalties. Penalties must be effective, proportionate and dissuasive.

⁽⁹⁴⁾ Decision 2002/995/EC.

⁽⁹⁵⁾ Council Directive 2002/99/EC.

⁽⁹⁶⁾ Regulation (EC) No 1774/2002.

⁽⁹⁷⁾ COM (2002) 729 final of 13 December 2002.

⁽⁹⁸⁾ Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals (OJ L 5, 9.1.2004, p. 8).

93. Moreover, as was the case for classical swine fever ⁽⁹⁹⁾, the Commission has not updated its initial study, even though some of the data that were missing at the time have become available since the 2001 crisis ⁽¹⁰⁰⁾. The cost/benefit analysis of the new Community strategy of using emergency vaccination and authorising consumption of meat from animals vaccinated on European territory has not been updated, despite the changes introduced by the Office International des Epizooties (see paragraph 3) concerning the time limits for resuming commercial activities after an epidemic.

94. In 2002 the Office actually reduced the time limit for resuming commercial activity from 12 months to six where vaccination is used during a crisis. In terms of commercial consequences this has narrowed the difference between vaccination, on the one hand, and a policy of stamping out and no vaccination on the other (in the latter case the time limit is only three months). This is a significant factor, in as far as the policy change that has been made at Community level gives emergency vaccination more importance than it had before.

95. At the time of the audit the Court pointed out that a number of countries, some of which had concluded veterinary agreements with the Community, continued to block exports from the EU after the countries concerned had recovered their disease-free status ⁽¹⁰¹⁾.

96. The Commission, however, has not quantified the Community-level cost of export bans. There is a risk of bans becoming more significant if the EU pursues emergency vaccination, because of the risk that third countries that do not vaccinate may be reluctant to accept exports from zones that do.

⁽⁹⁹⁾ Special Report No 1/2000, paragraph 82.

⁽¹⁰⁰⁾ *The 2001 Outbreak of Foot-and-Mouth Disease, Report by the Comptroller and Auditor General*, 21 June 2002, The Stationery Office, London, paragraphs 1.23 to 1.29. For example, the estimate of losses to tourism is now available. In the case of the 2001 crisis they were valued at between 4 500 and 5 400 million pounds sterling for the United Kingdom alone (between 7 213 and 8 656 million euro at December 2001 rates).

⁽¹⁰¹⁾ The restrictions on exports from Member States were lifted very slowly and some were still in place. The Netherlands, for example, was still having difficulties with exports to the USA in September 2002, even though it had officially recovered the status of FMD-free country one year earlier. Similar problems were found in France, Ireland and the United Kingdom.

97. In addition, the Commission has still not updated its study on Member States' veterinary services. Despite the recommendations of the Parliament ⁽¹⁰²⁾ (and of the international conference), that Member States introduce regular farm inspections, the Commission has not, so far, presented any proposals encouraging Member States to introduce such a system.

Action in the financial field

98. In a memorandum of April 2002 ⁽¹⁰³⁾, the Spanish Presidency of the Council stated that agricultural insurance programmes in the livestock farming sector could provide an alternative solution to the mechanisms that are currently covered by the Emergency Fund. Following that memorandum, and earlier recommendations by the Court and the discharge authority (see paragraph 59 and Box 4), the Commission, in January 2003, ordered a study on insurance against the risks associated with animal diseases.

99. The study highlighted the inconsistencies of the current system and was clearly in favour of generalised introduction in the Member States of financial systems managed by farmers themselves, with their own financial contributions, to encourage them to participate in disease control. In the case of compensation for indirect losses, the study suggested introducing a system of voluntary insurance between farmers in the form of a mutual fund of some kind.

100. Due to the recency of this study (May 2003), the Commission has not yet proposed amendments to the current system and has not laid down implementing procedures for the financial contribution to Member States' expenditure.

CONCLUSIONS AND RECOMMENDATIONS

101. The need to complete the single market led the Community to ban preventive vaccination of livestock against FMD. At the time the choice was justified by commercial considerations and it was assumed that the counterpart would be a system of disease prevention and control that would make it possible to recover FMD-free status rapidly. The Community accordingly introduced prevention and control arrangements which effectively take into account the risks associated with the free movement of animals and animal products and seek to limit the risk of the virus being introduced into Community territory, as well as the risk of its becoming widespread throughout Community territory (see paragraph 6).

⁽¹⁰²⁾ Report on the proposal for a Council Directive on Community measures for the control of foot-and-mouth disease and amending Directive 92/426/EEC, European Parliament, doc. A5-0141/2003.

⁽¹⁰³⁾ Doc. 6270/02/AGRI 33.

102. In the nature of things such arrangements cannot be completely effective under all circumstances, but in the absence of full and timely appraisals and checks by the Commission some of the shortcomings of the arrangements, and deficiencies in their implementation by the Member States, could not be corrected in time. The omissions of the Community regulations were not corrected before the 2001 crisis, although some Commission proposals predated the crisis (see paragraphs 18 to 43). During the 2001 crisis the Commission was confronted with a large-scale epidemic, but quickly identified the shortcomings of the prevention and control arrangements and their implementation by some of the Member States, especially as regards the number of government vets and systems for notifying the disease and implementing culls. However, it was impossible to rectify these shortcomings immediately (see paragraphs 48 to 58). They were a contributory factor in the increased financial cost of the 2001 epidemic. Moreover one Member State had its disease-free status officially withdrawn for 11 months under the OIE animal health code, while the Union, for all practical purposes, lost that status for over a year in that its exports were blocked by non-member countries.

103. The audit revealed that the effectiveness of the control arrangements relied heavily on farmers notifying the disease immediately and complying with movement restrictions.

104. The Court also found that the system of funding could be further improved: the scope of compensation and reimbursement is poorly defined, some Member States have still not been reimbursed, and treatment of farmers varies, depending on the location of the holding or the method of slaughter (see paragraphs 60 to 73). The rules and procedures governing the eligibility of Member States' expenditure for Community reimbursement were laid down at a late stage (see paragraphs 74 to 83). Following Commission checks, payments for the United Kingdom and France were reduced by 58,1 % and 2,7 %, i.e. 573,2 million euro and 0,1 million euro respectively.

105. Since then, the Council and the Commission have remedied many of the omissions in the legislation (see paragraphs 90 and 91). The texts adopted are clear evidence that the Commission has learnt, and is still learning, from the experience acquired during the crisis. Some of the weaknesses persist nevertheless, and threaten to compromise the effectiveness of Community disease prevention and control. This is particularly true as regards surveillance programmes, notification of FMD, and rapid culling (see paragraph 92). Community regulations now require Member States to put in place penalties for non-compliance with the national rules implementing Community directives. They do not, however, include incentives to encourage farmers to participate actively in prevention and control. In particular, farmers do not make a direct contribution to the Community funding for prevention and control arrangements. Moreover, the funding system has still not been revised. In spite of these omissions the current arrangements may give rise to reimbursements to Member States, leaving a substantial persistent financial risk to the Community budget.

106. On the basis of the above findings the Court recommends:

- (a) outside crisis periods, regular evaluation of the prevention and control arrangements and increased supervision of their implementation;
- (b) a study of ways of involving farmers more closely in rapid notification of disease and compliance with movement restrictions;
- (c) clarification of the financial framework applicable to epidemics of animal disease, combined with maximum reduction of the financial risks to the Community budget.

This report was adopted by the Court of Auditors in Luxembourg on 21 July 2004.

For the Court of Auditors
Juan Manuel FABRA VALLÉS
President

THE COMMISSIONS REPLIES

SUMMARY

I. Directive 90/423/EEC, amending Directive 85/511/EEC on control measures for FMD, sets up a comprehensive system for the prevention, control and eradication of the disease.

While banning prophylactic vaccination for technical and economic reasons, the Directive introduced contingency planning for FMD and a system of antigen reserves to cater for the possibility of emergency vaccination, and modified other animal health legislation in order to prevent the spread of the disease.

III. In 1990 the Commission defined the overall strategy of the Community as follows: 'Maintain the FMD- and infection-free status of the Community without practising prophylactic vaccination'.

This strategy has since been supported by Member States, the European Parliament and the relevant industries. It is science-based, operates on established international standards and balances the risk of virus introduction with the technical and economic possibilities to react to the occurrence of the disease.

Furthermore, the Commission feels that, although this strategy is not formally updated, it incorporates enough regular scientific information to be operational ⁽¹⁾.

⁽¹⁾ Following the outbreaks of FMD in Italy and Greece, to which the Court refers below, the Commission together with the Member States analysed in the Standing Veterinary Committee the epidemiological situation and the effects of the control measures applied; based on the output of working groups involving all Member States, a report was prepared in 1998 outlining the principles of a future FMD control policy. The Scientific Committee also prepared a report on emergency vaccination in 1999. Each year the Commission coordinates the position of Member States in the General Session of the OIE, including positions on the FMD chapter of the Animal Health Code. Member States, together with the Commission as observer, discuss biannually the FMD situation in the world and Europe within the framework of the European Commission for the Control of FMD at the FAO. Taking into account the experience of past crises Council Directive 2001/89/EC summarised the lessons to be learned from the classical swine fever epidemic in parts of the EC in 1996/97 and provided ample opportunity to discuss key strategies for the control and eradication of major infectious livestock diseases. More recently, and in the light of the 2001 outbreak, the Community strategy defined in 1990 was unanimously reconfirmed by the International Conference in December 2001, by the Resolution of the EP in December 2002, in the Commission proposal for a new Directive submitted to the Council in December 2002, and finally by the Council adopting Directive 2003/85/EC following an opinion of the European Parliament, the European Economic and Social Committee, and the Committee of the Regions.

As far as an assessment of the Commission's action before the crisis is concerned, the report of the British National Audit Office on FMD notes under 9c: 'if contingency plans were not sufficient to deal with an outbreak on this scale, it is unrealistic to expect that any could have coped with all the problems and difficulties that arose or that the authorities could have forecast the unprecedented nature of the 2001 outbreak'.

Whilst at the time of FMD crisis in 2001 not all measures in preparation were ready for implementation, due credit or acknowledgement as regards the progress which has been achieved by the Commission since the establishment of the single market in 1993 is not given in the present report.

IV. The Commission is constantly analysing the animal health situation in Member States and third countries and in particular has taken measures addressing the points raised by the Court as follows:

(a) *The controls by the Commission in Member States*

The Commission's veterinary inspection services carried out missions in Member States in relation to the implementation of Community legislation with regard to control measures for major epidemic diseases.

(b) *Provisions for the prevention and control of FMD*

FMD is an exotic disease as regards the Community. In order to prevent the introduction of the virus, the Commission has established a system of import conditions and controls. In addition, the Commission in cooperation with international organisations supports neighbouring countries in their efforts to control and eradicate the disease.

The provisions of Directive 85/511/EEC together with specific measures adopted by Comitology facilitated the eradication of FMD in 2001.

(c) *Protection of borders*

There were strict rules in place before the 2001 outbreak. Some of these provisions were reinforced during or shortly after the 2001 crisis.

(d) *Swill feeding*

In 1980 feeding of swill to pigs was prohibited, unless such swill was collected, processed and provided under specific conditions authorised and controlled by the competent authorities.

(e) *Contingency planning*

The inspection of the implementation of the approved contingency plans had started before the crisis.

(f) *Identification of small ruminants*

Identification of small ruminants allowing the tracing of the holding of origin was already regulated by Directive 92/102/EEC.

(g) *ANIMO system*

The ANIMO system was very useful for the initial tracing of animals that had been dispatched from the United Kingdom to other Member States during a period of three weeks preceding the detection of the first outbreak. The problems encountered relate to primarily to the rapid movement and re-certification of fattening sheep.

(h) *Compliance with movement restrictions*

Movement restrictions imposed in accordance with Community and national legislation on disease control measures must be enforced by the Member State concerned.

The Commission's response and the decisions taken during the crisis were deemed to be prompt and appropriate.

The Commission invites the Court to consider the declarations of the Council during the crisis, as well as the conclusions of the International Conference on the prevention and control of FMD held on 12 and 13 December 2001 in Brussels.

Furthermore, the European Parliament's Resolution of 17 December 2002, which endorses the modified report mentioned in footnote ⁽¹⁾, acknowledges in §53: 'The Commission responded to the crisis immediately and took the necessary decisions. In the course of the crisis, it promptly adapted and documented its decisions on the basis of the opinions of the standing committee in the light of the events. No shortcomings have been identified in the Commission's management of the crisis. The high quality of the Commission's work in controlling the crisis has also been expressly stressed by the national veterinary authorities of Member States concerned'.

V. The Commission does not have legal authority to harmonise at Community level the indemnification paid by Member States to their livestock farmers in the event of an epidemic.

However, the Commission took care to harmonise the conditions for Community reimbursement of Member States, under which the amounts presented by the Member States were reduced by EUR 583 million (of a total of EUR 1 051 million).

VI. Financial framework: since 2002, the Commission has been working on reviewing the arrangements for Community cofunding so that, *inter alia*, improper overstatement of the value of animals, to which farmers in the United Kingdom were particularly prone during the crisis, could be curbed and the burgeoning costs of eradicating diseases reined in. A proposal to this effect will be made soon.

From the veterinary point of view, it is important to note that:

First of all, there is no alternative to the system of notification of diseases. The EU standards comply with international standards,

Secondly, livestock holdings are under veterinary supervision and this supervision is being increased by stricter requirements for animal welfare, on-farm investigations to ensure compliance with public health requirements (food-chain approach) and in the context of disease eradication or control programmes.

Finally, the Commission has taken a number of measures to strengthen further controls on the movement of animals.

Community legislation on animal health in general and disease control measures in particular allows the Member States to implement the most appropriate measures for rapid eradication of the disease concerned. The measures laid down are minimum measures that may be or in other cases must be supplemented according to the epidemiological situation.

The Commission wishes to point out that a large part of the overall costs of an epidemic, including all indirect costs, is borne by the affected Member State.

VII. With regard to the general control strategy for major infectious diseases there are no alternative strategies to the measures currently provided for in Community legislation. These measures aim at disease eradication while providing sufficient flexibility with regard to the instruments employed. The control measures for CSF in wild boar and for bluetongue are examples of this flexible approach.

By placing more emphasis on emergency vaccination in the event of major epidemic diseases (CSF, bluetongue, AHS, FMD) Community legislation provides for the instruments to limit the direct costs of disease control measures.

⁽¹⁾ Report on measures to control foot-and-mouth disease in the European Union in 2001 and future measures to prevent and control animal diseases in the European Union – European Parliament report of 28 November 2002 (FINAL A5-0405/2002).

Decision 90/424/EEC provides a sensible incentive for producers to notify animals showing suspicious clinical signs at the earliest opportunity (see also paragraph 92). In addition, there are penal measures to be taken by Member States in cases of non-compliance with control measures.

In agreement with the request of the European Parliament, the Commission launched a study on existing compensation schemes in Member States and received the final report in October 2003. As a matter of follow-up and based on dedicated budget arrangements, a further study should provide exact expert estimates and calculations to carry out an impact assessment. These will be discussed with the Chief Veterinary Officers in September 2004 and will be presented to the International Conference on the prevention and control of infectious animal diseases in December 2004.

Guidelines on the nature and scale of eligible expenditure are currently being adopted in order to clarify the financial framework and reduce the risks for the Community budget.

INTRODUCTION

2. In preparation for the single market, the Council adopted Directives 89/662/EEC and 90/425/EEC laying down the veterinary controls on intra-Community trade in products of animal origin and live animals.

In accordance with these Directives, veterinary controls at national borders were abolished. However, animals move from one Member State to another under clearly established conditions to be certified by an official veterinarian at the place of dispatch. All necessary and harmonised guarantees are provided at the place of departure and controls en route or at destination are carried out in a non-discriminatory way.

3. As vaccination prevents disease rather than infection, waiting periods are necessary to confirm the absence of circulating virus. The waiting periods established by the OIE reflect the progress made in developing techniques to detect infected animals in a vaccinated population.

Until specific discriminatory tests were mentioned for the first time in the Manual of Standards of the OIE published in August 2001, longer waiting periods were necessary to detect remaining infection through close contact of receptive, i.e. unvaccinated sentinel animals, with vaccinated potentially virus-carrying animals.

4. The harmonised rules for the control of FMD in Member States adopted in 1985 (Directive 85/511/EEC) contributed to the eradication of FMD in the 12 Member States by the end of the 1980s. From that time onwards FMD has been an exotic disease for the EC and prophylactic vaccination was no longer a realistic option, as it would have been a complete lottery to select the appropriate vaccine strain given the multitude of serotypes and strains of the FMD virus.

The introduction of the 'non-vaccination' policy was accompanied by a range of measures including improved movement controls, better protection of borders, import requirements, a system of compensation, a system of antigen reserves for the formulation of vaccines and capacity building for laboratories and also support measures to neighbouring third countries.

5. The Commission considers that the management of the outbreaks reported in various Member States during the years 1993 to 2001 documents the efficiency of the measures adopted by the Commission and the Member States.

In the context of the disease control measures relating to the 2 034 confirmed outbreaks of FMD in the United Kingdom, the animals of over 8 000 premises were killed and destroyed as dangerous contacts, contiguous or on suspicion.

The 2001 FMD epidemic had a significant impact on animal husbandry in the whole of the EC in spite of taking all possible measures to continue trade in safe products with the affected Member States and commencing for the United Kingdom a carefully operated phasing out of the restrictions in October 2001, well before it was recognised as free of the disease by the OIE in January 2002 (see also paragraph 102).

The Commission wishes to clarify that the outbreaks in France (a total of two outbreaks, the first of which was detected on 13 March 2001) and the outbreaks in the Netherlands (a total of 26 outbreaks, the first of which was detected on 21 March 2001) are related to the movement of incubating sheep from the United Kingdom prior to the adoption of Decision 2001/145/EC.

6. The Commission agrees with the observations of the Court that Community legislation provides a comprehensive system of measures to prevent the introduction of FMD virus onto EU territory.

The agreement with the European Commission for the Control of FMD Disease of the UN with its headquarters at the FAO in Rome and the formalised operation of the Trust Fund maintained in support of that organisation is an impressive example for the support of control measures in neighbouring third countries.

7. Directive 2003/85/EC does not modify the main principles of the control measures.

Various additional measures were also adopted by the Council, reinforcing identification and traceability of animals, exchange of information, and controls on introduction of products of animal origin, and the Commission adopted Decisions to support the FMD-control measures in neighbouring countries.

Furthermore, the stocks of antigen for vaccine formulation have been updated and further research on FMD has been supported.

9. In the first sentence of this comment, the Court refers to the total resources under the budget heading (for all diseases, including FMD). In the remainder of its comment, the Court analyses expenditure by the Member States on FMD. The two sums are not comparable and must be dealt with separately.

11. The underspend is entirely related to the year 2002, for which EUR 400 million were entered in the budget. However, only EUR 50,8 million were committed because the United Kingdom, which should have been the main beneficiary, was unable to submit its request for reimbursement of the operational costs until 2003. The time taken for the Commission to conduct its checks is a result of the intensive nature of its audit, which resulted in applications for EUR 583 million of the total of EUR 1 051 million being rejected.

COMMISSION ACTION BEFORE THE CRISIS

16. The ban on prophylactic vaccination came into force on 1 January 1992. However, most Member States that had practised prophylactic vaccination ceased doing so during 1991.

The central case scenario described in the 1989 report estimates, for a 10-year period without vaccination, i.e. 1993 to 2002, a total of 273 outbreaks, with 13 primary outbreaks related to unknown sources and 20 secondary outbreaks for each primary outbreak.

The best case scenario is based on 13 primary outbreaks related to unknown sources without subsequent secondary infection.

The worst case scenario describes, for a 10-year period without vaccination, a total of 1 963 outbreaks resulting from the above 13 primary outbreaks and 150 secondary outbreaks for each of them.

17. Social and environmental issues had been included in the Community policy only following the Treaty of Maastricht in 1992, and could therefore not have been included explicitly in a study carried out prior to that date.

However, the report reflects on certain direct social consequences and on the effects of the non-vaccination policy on vaccine production plants, laboratories and veterinarians.

As regard environmental measures, they were harmonised subsequently.

18. The actions taken by the Commission in relation to imports of live susceptible animals and their products were effective in restricting virus introduction into the Community and contact between the virus and susceptible animals. This may be attributed in particular to the tightened import conditions and controls and the support for third countries to control FMD.

The outbreaks in Greece occurred under extensive holding conditions, as most of the outbreaks did in 1993 in Italy. FMD is an exotic disease and the incursion is related to illegal or accidental introduction through human activities. The Commission responded to the increase in trade in animals related to the completion of the single market by proposing in particular harmonisation of the trade rules for live animals ⁽¹⁾ by including the conditions for assembly centres, dealers and transporters.

Animals intended for export to a third country are accompanied during their journey on EU territory by an animal health certificate for animals for slaughter.

Animals of susceptible species originating in and coming from third countries are subject to the animal health conditions for imports and the required controls at approved veterinary border inspection posts.

19. The measures provided for in Directive 85/511/EEC have been considered incomplete in so far as that they do not detail in advance the treatment and handling of various animal products and the complete exit strategy following an outbreak. However, the measures described in the case of suspicion or confirmation are the minimum measures to be taken to eradicate an outbreak and these measures were successfully implemented in the past and are recognised by international trading partners and the OIE.

⁽¹⁾ For sheep and goats (Directive 91/68/EEC) and for other biungulates (Directive 92/65/EEC).

20. The strategy review started in 1998 when Council Directive 2001/89/EC was being prepared in the wake of the classical swine fever epidemic in 1996/1997 and was continued in 2002 in particular under a proposal for a new Directive on FMD (2003/85/EC, COM(2002) 736 Final). This strategy was confirmed by all the Member States and the Parliament. Even though a formal report was not produced, all the decisions relating to the financial contributions to the various veterinary activities were subject to the opinion of the Standing Committee on the Food Chain and Animal Health and were approved by the Commission and published in the Official Journal. The various decisions relating to the Community contribution to eradicating FMD were therefore discussed in all transparency in the said Committee. Management of veterinary appropriations is also discussed in the Council and the budgetary guidelines are debated regularly as well.

Since the mid-1990s the FVO has carried out a large number of inspection missions, in particular in the Member States, which included assessments of the competent authorities and their ability to implement Community veterinary legislation.

21. Regulatory checks of essential measures were made and specific reports produced:

- (a) veterinary and health checks at borders on imports of animals and animal products were dealt with in FVO report 9001/02 on inspections carried out in 2000, 2001 and 2002;
- (b) checks on animal feed intended to prevent contamination of animals or animal products were covered by FVO report 9007/02 on inspections carried out in 2001 after the crisis broke out;
- (c) the Member States' contingency plans for mobilising adequate human, material and organisational resources in the event of a crisis breaking out were covered by FVO report 9502/03 on inspections carried out in 1999-2002;
- (d) a report on the Commission's preliminary study on the introduction of the TRACES system covered the Member States' identification and tracing systems for animal movements and a Member State information system (ANIMO), which were essential for locating and rapidly slaughtering contaminated animals.

22. It is difficult to envisage a systematic check of compliance of all national transposing legislation with the Community directives, given the scale of the Community legislation to be checked.

However, the Commission carries out its tasks of surveillance and monitoring with the instruments at its disposal.

During its missions, the FVO checks whether those elements of EU legislation that are relevant to the mission's objectives have been transposed. The recently adopted provisions of Regulation (EC) No 882/2004 on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules establish a new legal framework whereby the role of the Commission's departments is more focused on ascertaining that appropriate and reliable controls systems are in place and effectively managed at Member State level.

FVO inspections are not the Commission's only source of information on potential infringements of Community legislation, in particular with regard to infringement procedures referred to in Article 226 of the Treaty. A fair number of infringement procedures are initiated following complaints submitted or on the Commission's own initiative.

Occasionally, the Commission also decides to institute infringement proceedings on its own initiative on the basis of information which has come to its notice, regardless of the source.

23. The Commission deems it to be entirely in keeping with existing provisions and procedures for an infringement file, opened as a result of inadequate transposal of a directive, to be closed once the shortcoming has been remedied by the Member State in receipt of the letter of formal notice. The closing of files opened following non-transposal of legislation does not, of course, prevent compliance of national provisions with Community directives being examined or a subsequent procedure being opened.

24. Between 1998 and 2000, the FVO carried out 47 missions in relation to veterinary Border Inspection Posts (BIPs) in the Member States. All reports are available on the website (www.europa.eu.int/comm/food/fs/inspections/index_en.html).

25. Concerning the incompleteness of its legislation existing in 2001, notably in relation to passenger luggage and free warehouses, the Commission makes the following point: Council Directive 90/675/EEC introduced, in modification of the Commission's proposal, provisions for controls on the storage of non-EC standard products of animal origin in free warehouses and free zones. Thereby the veterinary services in the Member States obtained the possibility to carry out checks on these warehouses that existed before, but exclusively under the control of customs services. Consequently, Directive 97/78/EC, which replaced Directive 90/675/EEC in the light of the development of the single market, took over the provisions on controls over free warehouses and free zones. Commission Decision 2000/571/EC laid down the methods of veterinary checks for products from third countries destined for introduction into free zones, free warehouses, customs warehouses or operators supplying cross border means of sea transport.

Directive 90/675/EEC also modified Directive 72/462/EEC to the effect that the general rule requiring all products imported to comply with EC standards was deleted. According to Article 1(2)(c) of Directive 72/462/EEC quantities larger than 1 kg of meat and meat products transported in the personal luggage of travellers must be fully heat-treated. Article 16 of Directive 97/78/EC allows derogation from the veterinary controls for small quantities of products of animal origin for personal consumption that originate in third countries listed for such imports, but does not exclude customs controls to verify these facts.

In 2000 the Commission proposed to the Council a Directive (COM(2000) 438), later adopted as Council Directive 2002/99/EC, that requires all products introduced onto Community territory to comply with the Community animal health requirements, regardless of the customs procedure.

26. Catering waste from international means of transport was banned by Directive 72/462/EEC and Directive 90/675/EEC.

In accordance with Directive 80/217/EEC, the feeding of swill to pigs was forbidden, unless such swill was properly treated under authorisation.

There is no evidence that the feeding of swill in compliance with Community rules has ever caused an outbreak of either CSF or FMD. Illegal swill feeding is, however, by its very nature hard to control.

27. The risks from swill feeding were addressed on various occasions, in the CSF legislation and not least in the context of inspections on the control and supervision of swill feeding which were carried out in relation to CSF in Germany as early as 1994. One of the conclusions at that time was to gradually phase out the on-farm heat treatment. This concept of separating the treatment of the swill from the feeding was confirmed by adopting Decision 2003/328/EC.

30. Decision 91/42/EEC allows the Commission to adopt recommendations and explanatory notes on the criteria to be applied when drawing up contingency plans.

Guidelines for the preparation of contingency plans for epidemic diseases were made available to all Member States in 1995, supplemented specifically for FMD in 1998. The latter document includes a requirement for different scenarios, including the worst case, taking into account the specific risk factors and other characteristics of the Member State.

(a) Contingency plans are based on a risk assessment in relation to both virus incursion and subsequent spread. They are assessed during real-time exercises conducted by the Member States.

In the Decision and the Guidelines the Commission could not indicate to the Member States the number of personnel required to comply with the plans, as it then had little authority, especially in the field of animal health, and therefore scarce expertise to interfere with the organisation of administrative action by the Member States when issues of police, public order and civil liberties were involved.

(b) Missions have been carried out since 1999 to investigate the implementation of the contingency plans. These inspections were carried out in application of Decision 91/42/EEC and the aforementioned Guidelines which address such points as propagation of the plan to the national farming community and regular exercises.

- (c) Article 13(3) of Directive 85/511/EEC provided that a decision on emergency vaccination may be taken by the Commission in collaboration with the Member State concerned (Committee procedure) 'when FMD is confirmed and threatens to become extensive'. Such a decision would specify the conditions under which emergency vaccination would be carried out. In addition, the decision to introduce emergency vaccination around an outbreak could be taken by the affected Member State following notification to the Commission, provided that basic Community interests would not be endangered and these national measures would be reviewed in the Standing Veterinary Committee and harmonised by Commission decision.

Work on laying down criteria at Community level started in 1991 and continued in 1999. In 2001 all the criteria were used to assess whether it was advisable to carry out emergency vaccination in the Member States requesting it.

Directive 2003/85/EC requires preparations to be made for vaccination after the first confirmed outbreak, but for it to be initiated depending on the epidemiological situation and only if there is more than one outbreak. This Directive also provides guidance for the decision-making process on emergency vaccination, based on the report of the Scientific Committee of 1999.

- (d) In the case of suspicion, Directive 85/511/EEC required a census of all animals on the holding in question by species and category, already dead, infected or liable to be infected or contaminated to be prepared and kept up to date, in order to take account of animals born and animals dying. Only these figures are important for the control of the disease.

However, records available on the holding or in a central/veterinary database in accordance with Community systems for the identification and registration of animals should be consulted and cross checked.

- (e) The need to incorporate livestock valuers in the local disease control centres is laid down in document VI/5211/95.
- (f) At the end of 2003 the Commission sent a questionnaire to the Member States and to the accession countries on the system for recruiting assessors, the general principles governing their remuneration and a system for compensating livestock farmers.

31. Contingency plans are to be considered as implementing legislation. The measures provided for in the plans may have a serious impact on the economic and social situation of the rural community and the national economy as a whole. Until evaluated against harmonised criteria and formally approved they can neither be implemented nor tested. Real-time alert exercises cannot be easily carried out within a short time-span.

In addition, the European Commission for the Control of FMD at the FAO, of which all Member States are members and to which the Commission contributes financially, carried out an evaluation of the contingency plans in 1999.

32. An exceptional situation in Member States should not be taken as indicative of potential FMD outbreaks.

33. The contingency plan for FMD of the United Kingdom may have changed little during the years following its adoption. However, by the end of 2000 the United Kingdom was reviewing certain aspects of its contingency planning in the light of the experience with CSF ⁽¹⁾.

The recommendation by the Commission in 1995 was that any veterinary service had to provide the capacity for the instant control of 10 (?) simultaneous outbreaks, with an option to expand should the epidemiological situation so require.

The preliminary results of an Expert Elicitation Workshop on the risk of introduction of FMD to Europe were discussed at the meeting of the Research Group of the European Commission for the Control of FMD at the FAO in 2000. This report estimated the risk of virus introduction into the islands and the northern Member States of the EU as very remote.

It is important to note that the situation in the United Kingdom, with infection already seeded in more than 50 premises prior to the confirmation of the first outbreak, cannot be compared with the situation in other affected Member States that had a sufficient period of warning.

35. The current practice of identifying bovine animals should ensure traceability of these animals both on national territory and in intra-Community trade. Animals intended for export to third countries are accompanied to the exit point by an animal health certificate established for bovine animals for slaughter. If such animals were to be re-imported they would be subject to the established import requirements which include a mandatory residence in the approved country of dispatch as well as pre-export isolation and testing verified by appropriate veterinary certification.

⁽¹⁾ FMD 2001-Lessons to be Learned Inquiry Report (p. 34)

⁽²⁾ Document VI/5211/95 point 6.12.

Traceability of bovine animals in third countries is therefore of concern to the Commission as far as the approval of third countries for exports are concerned, but is from an animal health point of view not a Community responsibility.

Identification of sheep and goats is one of the aspects to be controlled by the FVO during specific missions for the eradication of *B. melitensis*. However, the United Kingdom, Ireland and the Netherlands are free of *B. melitensis* throughout their territories and have therefore been spared from such missions.

36. Identification of sheep and goats allowing the tracing of the holding of origin was already being regulated by Directive 92/102/EEC.

Following difficult discussions in the Council and the European Parliament, in 2003 the Council adopted Regulation (EC) No 21/2004 which requires individual identification of sheep and goats and record keeping on the registered farms.

37. In accordance with Directive 92/102/EEC sheep, goats and pigs were identified as a group so as to allow tracing of the holding of origin. Article 3(2) of that Directive provides for a derogation in relation to small holdings keeping not more than three animals of the ovine or caprine species or one pig, provided that any such animal was subject to the controls laid down by legislation prior to movement. Regulation (EC) No 21/2004 withdrew this derogation in relation to sheep and goats.

38 and 39. The ANIMO system as a management tool operated by the Member States was developed prior to the Internet period. The amount of information exchanged was therefore limited to the essentially necessary information.

As a consequence of the technical developments the Commission adopted Decision 2003/24/EC laying down that the TRACES computer system was to be developed, integrating the functions of the ANIMO and SHIFT systems into a single architecture. Consequently, the necessary resources were mobilised and the Commission adopted Decision 2004/292/EC of 30 March 2004 on the introduction of the TRACES system and amending Decision 92/486/EEC.

40. Following the first outbreak in the United Kingdom in 2001, the information stored in the existing ANIMO system was made immediately available to Member States of potential destination and was subsequently completed.

Difficulties have been encountered in relation to triangular trade in fattening sheep forwarded from the Member State of first destination to another and accompanied by a new certificate recorded in a new ANIMO message. Clarification of such movements required close cooperation between Member States. This problem is related to the particular trade conditions for fattening sheep that had not provided for a mandatory residence before dispatched to another Member State. Directive 2003/50/EC addressed this problem by introducing a residence and stand-still period prior to dispatch to another Member State.

In other cases tracing of sheep was hampered when the sheep originating in the United Kingdom had been moved under national conditions from the holding of destination indicated in the ANIMO message to another holding within the same Member State.

41. The Commission has taken steps to permanently include information on the transit through staging points in the messages issued by the new TRACES computer system, integrating the functions of the ANIMO and SHIFT systems into a single architecture (Decision 2004/292/EC of 30 March 2004). In addition, the sanitary conditions for the operation of staging points were strengthened by the introduction of a sanitary break with compulsory disinfection between the occupation by subsequent consignments (Decision 2003/483/EC and Regulation (EC) No 1040/2003).

42 and 43. The question of a transport ban on a large part or indeed the entire territory of a Member State is already an extremely serious restriction of animal health policy, having wide-ranging consequences for public order and civil liberties. It is applied by the Member State under the responsibility of the competent authorities. The Commission did adopt Decision 2001/190/EC of 8 March 2001 which introduced EC-wide restrictions on the movement of susceptible animals within and between Member States other than the United Kingdom, and which had the above-mentioned effects.

On 19 February 2001 the disease was noticed in sows at the abattoir in Essex and subsequently confirmed on 20 February 2001. Tracing to source farms led on 21 February 2001 to the conclusion that the abattoir was contaminated before these animals had arrived. Also, about 600 holdings that had supplied slaughter pigs, first of all swill-feeders, and their respective contacts had to be visited.

On 23 February 2001 the disease was reported in cattle on a holding from where sheep had been sent to a big livestock market days before. The national movement ban was immediately introduced.

Movement of mainly sheep before the detection of the disease and the installation of movement restrictions accounts for nine out of 12 of the major geographical groups of outbreaks. Eight out of the nine areas, which account for 89 % of the outbreaks diagnosed by 15 June 2001, were infected before the first case of FMD was diagnosed.

The minimum requirements described in Article 9 of Directive 85/511/EEC, which aim to prevent airborne spread or spread through fomites of the FMD virus, have been effective in the context of the outbreaks in other Member States to which the Court referred previously and also in relation to more isolated outbreaks in the United Kingdom.

By contrast with the scientific studies carried out afterwards on archive data of the 2001 epidemic, the competent authorities had to operate at the time of the first outbreaks on a much less complete set of information.

43. The NAO report reads on page 14:

'Between confirmation and a national movement ban being imposed on 23 February 2001 another 62 premises are believed to have been infected, involving another seven counties.'

The NAO in its report on page 56 point 3.53 explains the concerns of the department to introduce on 20 February 2001 on the basis of existing epidemiological evidence a nationwide movement ban. Such a drastic measure, with far-reaching consequences for stranded animals and feed supply, was considered disproportionate, as the disease at that stage existed only in pigs and the pig industry does not tend to move animals through markets.

The NAO also makes it clear that the conclusions quoted by the Court were based on a developing model and that data had been subsequently improved.

COMMISSION ACTION DURING THE CRISIS

44. The responsible services in the Commission have been and are available 24/24 not only during crisis situations, as can be gathered from the rapid response to the notification of the first outbreak.

45. The Commission agrees with the Court that during the crisis the procedures for completing a mission report had been accelerated.

However, during and after missions to affected Member States, the FVO informed the relevant Commission departments immediately about important and relevant findings, notably through direct contact and back-to-office reports. The completion of the reports within two months of the end of the mission is therefore only a formal aspect taking into account the need for careful preparation of the reports intended to be published on the Internet.

46. (b) Compulsory notification of any suspicion of a major infectious disease is an internationally accepted measure, which has for technical reasons no alternative and is required and regulated by Community legislation.

The responsibility of the food chain operators, including livestock keepers, has been clarified in Article 17 of Regulation (EC) No 178/2002 which was based on a Commission proposal (COM(2000) 716 Final) and was reconfirmed by both the European Parliament and the Council when adopting Regulation (EC) No 882/2004 of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

(c) FMD is usually a disease with clear clinical symptoms in cattle and pigs but may go unobserved in small ruminants. An initial negative result in a laboratory test requires complementary investigations. The report of the NAO (p. 61) details the steps taken by the United Kingdom authorities in March 2001 to accelerate the diagnosis and to shorten the report-to-killing delays.

Killing on clinical grounds has been practised from the very beginning but was formalised on 15 March when up to 50 new outbreaks per day threatened to overwhelm the capacities of both the veterinary services and their laboratory back-up. Shortly after killing on suspicion and the contiguous cull were instituted.

48. The Court rightly observed that the Commission supports a range of programmes for the control and eradication in Member States of both viral and non-viral infectious diseases in livestock and notably of zoonotic diseases and those previously included in list A of the OIE.

In addition, some Member States have been granted additional guarantees in relation to viral diseases and these guarantees require additional on-farm surveillance.

Also Community legislation on animal welfare requires the appropriate level of veterinary supervision and inspections on farms and Member States are obliged to report about the results of their controls.

Furthermore, in accordance with the health legislation on milk production (Directive 92/46/EEC), farms producing milk must comply with specific animal health conditions and hygiene standards. Article 3 of Regulation (EC) No 882/2004 of the European Parliament and the Council on official feed and food controls provides for official controls on all levels of the food chain.

Article 3.8.1.3 of the OIE Terrestrial Animal Health Code provides for Guidelines for the discontinuation of specific surveillance after recognition of freedom from infection:

A country that has been recognised as free from infection in accordance with the provisions of the Terrestrial Code may discontinue specific surveillance while maintaining the infection-free status, provided that:

- (a) it is a notifiable disease;
- (b) an early detection system is in place;
- (c) measures to prevent disease/infection introduction are in place;
- (d) vaccination against the disease is not applied;
- (e) infection is known not to be established in wildlife.

Given the short incubation period of FMD, surveillance on holdings cannot prevent an outbreak, as it is not feasible to have an official or authorised veterinarian permanently on-farm. It is for this reason that the keeper of the animals and any other person in charge of the animals is responsible for notifying any suspicion of a contagious disease. As part of contingency planning, these persons have to be trained to recognise the key diseases.

49. The number of official veterinarians should be compared not only to the total number of livestock, but more importantly to the number of holdings, as most of the diseases in question are herd diseases rather than affecting individual animals, and the contacts between holdings. Such estimates must also consider the general animal health situation in the country and the progress made in infrastructure, logistics, communication, education of farmers and first and foremost the capability to recruit additional staff in case of emergency. The number of official veterinarians in the United Kingdom was based on the minimum requirements for FMD contingency planning.

51. For the success of the measures to be taken in the case of FMD, rapid notification of suspicions is essential, and farmers must be trained in disease recognition as part of contingency planning.

The establishment of measures such as the imposition of penal sanctions in case of failure to notify, or enquiries and public order restrictions affecting private property, were hardly conceivable at Community level under the legal framework then applicable.

Consultation with the various bodies, organisations and other stakeholders involved in the control of a possible disease outbreak is carried out in the preparation of contingency plans and the Commission prepared suitable guidelines well in advance of the outbreak.

Commission Decision 91/42/EEC requires the drawing-up of contingency plans in such a way that would in particular allow rapid contact of persons and organisations directly or indirectly involved. Contingency plans must be exercised to maintain and develop skills in field and administration procedures.

In the case of a suspected or confirmed outbreak the keeper of livestock is instructed by the official veterinarian on the measures to be taken in order to prevent the spread of disease. These measures are of a general nature laid down in national law in transposition of relevant Community law and of a specific nature depending on prevailing circumstances and outlined in the contingency plans.

52. While early notification of suspicious cases is essential to control the spread of FMD, the disease does not in each and every case produce clearly detectable clinical symptoms and farmers have different levels of training and skill in detecting them. It is a challenge for the veterinary profession to work with a biological system embedded in a diversity of social, cultural and economic circumstances. Community legislation therefore provides for a cascade of measures to ensure that the spread of major infectious livestock diseases is avoided or at least minimised. The official veterinarian at the slaughterhouse who carries out the ante-mortem inspection is therefore an essential element in detecting diseases in livestock.

Where a person in charge of animals wilfully fails to report suspicious signs of disease, he or she is subject to the punishment provided for in the respective national legislation.

53. Community legislation requires an immediate notification of any suspicion of FMD by the livestock keeper to the authorities. Equally, Article 4 of Directive 85/511/EEC requires the suspect holding to be placed immediately under restrictions and an epidemiological investigation to be started in order to rule out or confirm the presence of the disease and to trace dangerous contacts. In such cases, a negative result in the initial screening test is the most complicated as this requires time-consuming complementary investigations until a definitive diagnosis can be established. The measures applied to suspect holdings may be extended to other holdings likely to be infected or contaminated.

The notification of the confirmed outbreak to the Commission and the other Member States, and indeed the OIE, is a secondary step. It is an internationally accepted standard to notify other countries within 24 hours.

The United Kingdom authorities informed the Commission before the final results of the ultimate proof, the virus isolation, had become available.

A carefully established diagnosis is essential to justify severe measures such as stamping out and large-scale movement restrictions.

Each year, several dozen suspicions of FMD are notified to the competent authorities in the Member States. Such reporting is strongly encouraged by both the Member States and the Commission. Measures taken in relation to such suspicions must be proportionate. It is unrealistic to shut down the entire livestock industry each time a suspicion is reported.

54. The Commission, using its standard procedures, reacted promptly and according to the legislation using the most direct and modern communication technology.

The Commission informed the Member States within less than one hour of the outbreak notification and adopted the appropriate safeguard measures within less than 24 hours.

In addition the United Kingdom, in accordance with Community legislation had stopped certifying and/or permitting exports of live animals and their products to other Member States.

The Irish authorities suspended imports of susceptible animals and their products on 21 February 2001 and informed the Commission thereof at 15.42. The Irish authorities also traced all animals introduced from the United Kingdom into Ireland and ordered their killing.

56. With the adoption of the 'non-vaccination' policy a system of compensation for animals killed for disease control purposes was established. This system was introduced because the keeper of animals was, in the interest of the farming community and the national and Community economy, no longer in a position to apply all available instruments for the protection of the herd, such as prophylactic vaccination.

At the same time this system of compensation set an incentive for swift notification by excluding from compensation animals that had died from the disease prior to notification.

58. Article 5(3) of Directive 85/511/EEC allows exemption from the taking of samples from animals in a secondary outbreak which has an epidemiological link to a confirmed outbreak for which such samples had already been taken. In other words, in such cases the diagnosis may be established on clinical grounds.

The stamping-out policy applies to all confirmed outbreaks and, in accordance with the contingency plans, to animals suspected of being infected or contaminated (Article 3(2) of Decision 90/424/EEC).

With regard to the organisation of administrative procedures related to the destruction, evaluation and compensation of herds, the Member States should remain entitled to organise themselves according to the requirements of their national legal order concerning administrative police and its interaction with the protection of private property and civil rights.

COMMISSION ACTION CONCERNING THE REIMBURSEMENT SYSTEM

59 and 60. The Commission shares the Court's view that more precise instructions should be given to the Member States on reimbursement of indemnification expenditure. Such instructions are currently being drawn up and a draft regulation laying down expenditure eligible for Community funding will be presented to the Member States soon.

For all market support measures adopted in the pig meat sector since the special report No 1/2000, the Commission has applied the same rate of co-funding (50 %) as for veterinary measures.

Although there was no working document or formal code of practice on the rules and procedures on eligibility, the Member States had already been given the essential information on slaughtering. In particular, the financing decision stipulated that only compulsory slaughtering would be eligible for Community reimbursement.

The financing decisions also clarified that only the 'market' value of the animals was eligible for Community funding. As far as the specific issue of indemnification of livestock farmers is concerned, the situation is very different from one Member State to another. There is no question of a single sum for a type of animal constituting adequate compensation for farmers whose animals have been slaughtered.

The Commission points out that it does not have the legal authority to harmonise the national indemnification systems in the event of an epidemic.

61. There were four Commission Regulations governing the United Kingdom, Portugal, France and Ireland on the compensation system laid down under measures for monitoring and eradicating bovine spongiform encephalitis (BSE) for animals slaughtered under the selective reform provided for by a Member State eradication plan and approved by the Commission. The same principles regarding the compensation system were enshrined in all four Regulations, including Regulation (EC) No 164/97 on France.

As regards animals which have contracted BSE, the Commission emphasises that indemnification of the owners is not covered by the emergency fund (Articles 3, 4, 6 and 11) of Decision 90/424/EEC⁽¹⁾.

62. It is firstly up to the Member States to decide on compensation depending on actual market conditions. Recent decisions on the Community contribution to costs incurred by Member States stipulated the level of indemnification eligible for Community funding. Only the market value of the animal immediately prior to slaughtering is eligible for Community funding.

63. Adequate compensation was defined as the market value of animals immediately before slaughtering; the losses of income mentioned are therefore not eligible for Community funding and any such applications were rejected.

64. The cattle database established in accordance with Regulation (EC) No 1760/2000 and Article 14 of Directive 64/432/EEC is an important tool for tracing the movement of animals, but is of limited value for valuation purposes. While it provides information on the age, sex, colour or breed and the identification code of the mother, it does not provide information whether or not an animal is a purebred breeding animal entered in a herd book. The Commission proposal to include the herd-book status was not adopted by the Member States.

66. The Commission has no legal authority to harmonise the Member States' systems for indemnification of livestock farmers nor do the Member States want them to be harmonised.

The differences in the Member States noted by the Court were also noted by the Commission during its *in situ* checks and are the result of the choices made by the Member States. The Commission made appropriate financial adjustments for any irregularities having an impact on the Community budget, as detailed below.

The Commission takes care to preserve the principle of equal treatment of the Member States in all its co-funding decisions.

The fact that the decisions are subject to the opinion of the Standing Committee on the Food Chain and Animal Health helps to ensure that this is the case.

67 to 71. The exemptions granted by Regulation (EC) No 1458/2001 adopted on 17 July 2001 on the application of premium schemes are to be seen in the light of the principle that the direct payment system is designed to compensate for the effects on producers' income of the progressive reduction of the level of market support introduced by the Agenda 2000 reform. The Commission therefore holds that the premiums may be granted to the producer irrespective of any other circumstances linked to the health situation of animals in the Member States.

The Member States affected by the FMD epidemic asked for exemptions to be adopted from the end of April 2001.

In response to these requests, the Commission found that the producers were unable to meet certain obligations under the regulations establishing the premium schemes because of measures which restricted the movements of animals in certain regions, adopted under the provisions for combating the spread of the FMD epidemic.

The Commission granted a temporary exemption from certain rules applicable in normal circumstances, especially with regard to the holding of animals. A series of proposals was put before the Beef Management Committee in mid-May, on which it finally gave a favourable opinion on 29 June 2001.

The process of adopting Regulation (EC) No 1458/2001 hence took two months from the time when the Commission was asked to take action.

As direct payments can be granted under these circumstances, the Commission feels that it is up to the Member States to ensure, during accompanying or subsequent checks of amounts set in another context for indemnification of producers in compliance with veterinary provisions, that producers do not receive the premiums twice.

⁽¹⁾ The principle of transfer of the 'Market guarantee' to 'Veterinary guarantee' of the selective compulsory slaughtering programmes will take effect on 1 January 2005.

The Commission considers that, under such circumstances it would in future be advisable to include, either in the rules governing direct payments or in the veterinary decisions conferring entitlement to indemnification, a clause to guarantee that no double payments are made and to place the responsibility for this clearly in the hands of the Member States.

Nevertheless, as part of its task of disease management, the Commission has taken the necessary measures to limit the impact of over-assessment of the price of animals on the Community budget. Following *in situ* checks, the average correction rate for the United Kingdom, France, the Netherlands and Ireland was 55 % or EUR 583 million of a total requested of 1 051 million.

72 and 73. The system of direct payments, including the slaughtering premium, is designed to compensate for the effect on producers' income of the gradual reduction of the level of market support introduced by the Agenda 2000 reform. The Commission took the view that there was good reason for granting a premium for animals slaughtered to combat FMD, if the regulatory conditions for granting the premium were met and the animals were slaughtered in a slaughterhouse.

The regulations in force do not make the application for a slaughtering premium contingent upon veterinary acceptance or the animal's destination and, in particular, fitness for human consumption.

The scope of these regulations was confirmed on several occasions, particularly by the Beef Management Committee at the time of the adoption of Regulation (EC) No 2777/2000 on exceptional measures to support the beef market (purchase for destruction system).

It was communicated in June 2001 to the authorities of the Netherlands in response to their question on the eligibility for the premium of animals slaughtered in the course of a FMD epidemic and was confirmed in February 2004 to the Netherlands Minister of Agriculture, specifying that the premium could be granted for animals slaughtered in a slaughterhouse as long as the sum of the premium was neither included in the evaluation of animals for the purposes of veterinary compensation nor paid on that count, in order to prevent double payment. The procedure followed and the decisions notified were intended not to be detrimental to the interests of the beneficiaries.

Under the regulations in force, the slaughtering premium may be paid beyond the deadline in duly substantiated exceptional cases.

The information supplied by the Netherlands Agricultural Services show that of 1 278 holdings affected, 791 had the animals slaughtered in a slaughterhouse.

74. Council Decision 90/424/EC affords only limited legal scope for establishing the arrangements for the Community to contribute to expenditure incurred by the Member State. To this effect, any draft regulation prepared by the Commission laying down rules for eligibility for Community financing must have Council Regulation (EC) No 1258/1999 as its legal basis.

75. The draft decision laying down rules for eligibility to Community financing of emergency action and combating FMD comprises an annex setting out the supporting documents to be provided on request by the competent supervisory authorities.

Article 9 of Council Regulation (EC) No 1258/1999 is applicable with respect to supporting documents, as is pointed out specifically in each veterinary co-financing decision. The Member States therefore know what information they need to provide and substantiate when checks are carried out.

The examples quoted by the Court, which were also noted by the Commission during its *in situ* audits, do not really indicate a problem in defining supporting documents, but highlight the poor quality of them in certain Member States. Any inconsistencies determined are, as a rule, the result of inadequate administrative organisation by the Member States at the time of the epidemic.

As the Commission has not yet had any problems of access to administrative information with the Member States and each national administrative system and each epidemic is different, it would appear difficult to draw up *a priori* an exhaustive list of supporting documents to be provided. Having said that, the Commission did have a problem with access to the data held by livestock farmers (operating registers, invoices for the purchase of slaughtered animals, etc.) during its checks. This point will be clarified legally with the Member States with a view to future Community reimbursement.

76. In general, the Member States are familiar with the idea of indemnifying animals 'at their value prior to being contaminated', as it had already been used previously for funding purposes.

The Member States did not therefore ask the Commission for any clarification on this notion during the epidemic.

77. The Commission would like to emphasise that it did give instructions to Member States on how to apply for reimbursement.

Also, Article 55 of Regulation (EC) No 882/2004 obliges Member States to lay down rules on sanctions applicable to infringements of feed and food law and other Community provisions relating to the protection of animal health and welfare, and to take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

In its proposal for a Regulation on feed and food controls (COM(2003) 52), failures to comply with the restrictions imposed by the authorities on the movement of animals or products were listed as criminal offences (Annex VI, Point 7 (b)). These provisions were not maintained by the Council and the European Parliament.

78. In the event of an outbreak it is only important to know which animals of susceptible species are on the holding in order to apply the measures correctly and in particular to prevent or detect illegal movement of potentially infected or contaminated animals.

Therefore, in the case of a suspected or confirmed outbreak Directive 85/511/EEC requires the competent authorities to carry out a census of all animals on the holding, including the animals that died from the disease. These inventories must be kept up-to-date, which cannot be always ensured by other data bases.

The shortcomings identified by the Court are not the result of a lack of guidance by the Commission but by the administrative disorganisation attributable to the Member States, which can be accounted for to some extent by the circumstances of the crisis.

79. The Commission does not share the Court's view that the arrangements for reimbursement were not laid down in good time.

- (i) The Commission has not changed the eligibility rules appreciably since Decision 90/424/EC was adopted.

The Commission's specific financing decisions were always adopted as soon as it was technically possible, i.e. when the Commission had received an application for co-funding, the statement of expenditure supplied by the Member State was sufficiently reliable and the budgetary authority had made provision for financial cover for the funding.

Financing decisions also require time to be taken to study the Member States' financial forecasts, which are often unreliable or imprecise during epidemics, and a favourable vote by the Member States in the veterinary committee followed by formal adoption by the Commission.

The Commission has not received any complaints about the late decisions mentioned by the Court.

- (ii) The Commission has not appreciably changed the eligibility rules, since the costs incurred for preventive slaughter have always been regarded as eligible for Community funding, as they were crucial in combating the epidemic.

The same applies to partial preventive slaughter of the different species.

Community funding for preventive slaughter carried out by the Member States where no outbreaks occurred is not obligatory. The funding provided for by the four decisions is based on Article 5(3) of Decision 90/424/EEC.

- (iii) Finally, priority was given by both the Member States and the Commission to Community financing of indemnification of livestock farmers. It was not until 27 February 2003 that the United Kingdom was able to present a provisional request for reimbursement of operational costs in addition to indemnification.

80. Detailed information on outbreaks is available in the ADNS data base.

The Member States also regularly reported to the Standing Committee the measures that they had taken to combat the disease.

81. The model for applying for reimbursement and the information required have been standardised since the swine fever epidemic in 1997. The model was not included in the annex of the specific financing decisions but was communicated directly to the Member States.

82. This problem was noted by the Commission. However, when it was not possible to obtain an adequate guarantee as to the number of animals for which indemnification had actually been paid, DG SANCO applied a flat-rate financial adjustment in order to cover the financial risk incurred by the Commission.

83. Given the scale and diversity of the expenditure presented, the Commission takes the view that the periods for checks are reasonable.

Moreover, the Court's statement relates only to payment of the balance. In fact, sizable advances were paid to the Member States after the financing decisions were adopted. These were paid in 2002 (EUR 355 million to the United Kingdom on 22 February 2002, EUR 3,3 million to France on 14 March 2002, EUR 2,7 million to Ireland on 1 March 2002 and EUR 39 million to the Netherlands on 26 February 2002). These EUR 400 million represent around 86 % of the total finally paid out.

85. The reimbursement rates for veterinary expenditure were established by a Council decision.

In the past, there was a discrepancy between the rates applied by DG SANCO and DG AGRI in the pig sector. Since the swine fever epidemic in 1997, the rates have been harmonised and set at a co-funding rate of 50 %.

86. Since its first report in 1999 on 'Income Insurance in European Agriculture', the Commission has conducted a follow-up study on 'Financing risk for livestock epidemics' that includes an analysis of current practices in Member States and outlines possible solutions for the future. It appears from that study that there is no simple solution to this complex issue. The complexity of the economic problems posed by animal diseases and the ways of facing the related risks is confirmed by studies done by international organisations such as the OECD and by recent experiences in other countries of the world which have been struck by FMD, BSE or avian influenza.

However, consultations and EU supported research on these matters continue with a view to establishing the sound scientific basis which is necessary to draft a proposal to amend Council Decision 90/424/EEC that can be supported by the EU legislator.

87 and 88. In several Member States, there are arrangements for livestock farmers to make compulsory contributions to a fund which is designed to cover the costs of eradication of animal diseases. The Commission does not think that, on the whole, the sector is profiting from an epidemic.

These profits mainly result from an increase in the volume of meat exports to the United Kingdom and the remainder of the European Union and an increase in market prices due to falling production in the United Kingdom. The part played by the wind-fall effect after the crisis is impossible to assess.

89. There is no equal treatment for breeders in all aspects throughout the Community. Tax policies remain the responsibility of the Member States.

In 2001 the Commission was acting on the basis of Decision 90/424/EEC.

COMMISSION MANAGEMENT AFTER THE CRISIS

90. On several occasions the Commission has described the new FMD control Directive 2003/85/EC as a prudent reform of the measures in place in 2001. This Directive does not change the main principles of the control measures.

- (a) Emergency vaccination was provided for in Directive 85/511/EEC. However, the absence of a pre-defined exit strategy, the uncertainty about the future of the vaccinated animals and their products, and the consequences for international trade discouraged Member States from simply having recourse to emergency vaccination.

Council Directive 2003/85/EC shifts the emphasis on emergency vaccination from an instrument of last resort more to the forefront of the control measures and reflects the technical developments in laboratory diagnosis and the regulatory modifications made to the OIE Animal Health Code.

- (b) The provisions on contingency planning included in Directive 2003/85/EC are by and large based on the recommendations provided for in the guidelines developed in 1995 and 1998. (Documents VI/5211/95 and VI/6319/98 – Rev.1).

The new requirements for contingency planning request also that account be taken of a worst case scenario which is defined not only by the natural course of the disease but also by the intentional release of FMD virus.

- (c) As clarified in point 58, diagnosing FMD on clinical grounds in conjunction with an epidemiological link to a confirmed outbreak was already provided for in Article 5(3) of Directive 85/511/EEC. Based on the experience in 2001, Directive 2003/85/EC included this option in the definition of an outbreak. In this respect the outbreak definition in Directive 2003/85/EC is different from the definition provided for in the OIE Animal Health Code.

However, in practice, a reasonable clinical diagnosis of FMD, even in the context of an ongoing outbreak, may only be established in animals of certain susceptible species that display clear clinical signs.

- (d) Article 4(3) of Directive 90/425/EEC already requires Member States to take the appropriate measures to penalise any infringement of veterinary legislation in relation to trade by natural or legal persons. However, the Council refused to reinforce further Community provisions on sanctions in case of violation of Community law, as laid down in Article 55 of Regulation (EC) No 882/2004.

- (e) As indicated in paragraph 80, the obligation to notify outbreaks through the system of ADNS is laid down in Directive 82/894/EEC, which also specifies the details of the required information.

92. (a) In its proposal for Regulation (EC) No 882/2004 on official feed and food controls (COM(2003) 52), adopted on 29 April 2004, the Commission sought to reinforce the consequences of failure to notify a suspicion of an animal disease by qualifying it as a criminal offence leading to penal sanctions. The European Parliament and the Council have declined such reinforcement in this provision.

Member States shall lay down the rules on sanctions applicable to infringements of feed and food law and other Community provisions relating to the protection of animal health and welfare and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

Furthermore, Articles 3(2) and 11(4) of Council Decision 90/424/EEC clearly set incentives for early notification and conditions for compensation. In particular it provides for compensation for animals slaughtered or killed for disease control purposes. It is in the economic interest of the farmer to notify possible disease as early as possible because any animals that die before notification are not eligible for compensation. These considerations are also included in the compensation schemes of certain Member States.

- (b) This requirement is in line with international standards.

Setting a shorter deadline would only be meaningful to the extent that it would become possible to punish intentional delays. However, it is necessary to acknowledge that outbreaks may occur under various conditions, including in remote areas with poor communication.

It is important to take account of the real situation, where the notification of any suspicion to the competent authorities has to be done immediately. These authorities have to take the necessary steps according to the legislation immediately, and thereby to prevent or at least limit the spread of disease.

- (c) Although it is advisable to slaughter the animals quickly, the need for supporting documents on the amounts to be reimbursed make it necessary to compile a detailed financial inventory. Rapid and decisive action is essential to the success of the measures. However, a detailed inventory of the animals of susceptible species was required in Articles 4 and 5 of Directive 85/511/EEC and is required in Article 4(3)(a) of Directive 2003/85/EC.

93. A cost-benefit analysis is particularly useful only if there are alternative strategies. As the EU is recognised as free of FMD and infection, prophylactic vaccination is not a realistic option because of the many different strains and types of the virus and the exorbitant costs. Directive 2003/85/EC does not change the principles of the control policy. A cost-benefit analysis as a follow-up to the one carried out in 1989 was therefore considered unnecessary.

However, conservative estimates only of the costs for the vaccines in case of pan-vaccination of the livestock population registered in the EU in 2001 amount to EUR 150 to 250 million per year. Were the costs for the administration of the vaccines included, this amount could easily double. These estimates do not take account of possible restrictions on exports from Member States, the increase in imports of animal products from countries vaccinating, the disruption of the single market if some Member States would not agree to prophylactic vaccination and the costs of the number of outbreaks still occurring despite vaccination.

The economic impact analysis carried out before submitting the proposal for a new Directive estimated Commission expenditure for maintaining the disease free status and preparing for an emergency at about EUR 4 million per year.

The control measures under Directive 2003/85/EC allow the Member States to use all available and proportionate measures to eradicate the disease as quickly as possible. Such measures could allow the coexistence of pre-emptive killing and emergency vaccination.

94. The most recent modifications made to the FMD Chapter in the OIE Animal Health Code helped the Commission and the Member States to adapt the Community control measures. However, the scientific basis for this move of the OIE comes by and large from the research carried out in Europe and supported by the Commission. It is worth comparing the report of the Scientific Committee of 1999 on emergency vaccination with the current OIE recommendation to acknowledge its pioneering character.

95. The Commission made numerous interventions in multilateral and bilateral forums to promote the principles of regionalisation.

The regionalisation policy dates back to Directive 72/462/EEC and has been at the heart of EC import and trade policy ever since.

The fact that, in an outbreak situation, certain third countries do not recognise the regionalisation proposed by the Commission and impose unjustified restrictions on trade suggests that these restrictions are primarily motivated by commercial considerations.

96. For the Commission and the Member States there are no realistic alternatives to the current provisions. In order to minimise the risks of economic sanctions in case of outbreaks of FMD, Directive 2003/85/EC provides the Member States with a maximum of flexibility as regards the control instruments employed to eradicate the disease quickly.

Moreover, the decision on emergency vaccination will in future be influenced by considerations such as Community legislation on the protection of the environment, on animal welfare and also, very importantly, the lack of public acceptance for the mass killing of animals.

To limit the detrimental impact of international sanctions, the Community has therefore promoted the concept of regionalisation for many years, and not least since its study of 1989, both in the framework of the OIE and of veterinary agreements with important trade partners.

97. Member States are regularly visited by the inspectors of the FVO and relevant aspects of the implementation of Community veterinary legislation are evaluated. The final version of the mission reports is then published on the Internet.

Article 3 of Regulation (EC) No 882/2004 of the European Parliament and the Council on official feed and food controls provides for official controls on all levels of the food chain.

In addition and in line with the request of the European Parliament, Member States are called on to ensure in the context of their contingency planning that farmers are familiar with and are applying the general rules on disease control and biosecurity.

98. The Commission had already alerted the Member States to the issue of agricultural insurance when it presented the Council Presidency's memorandum in 2002.

99. The Commission explained its activities in relation to a critical review of the provisions currently contained in Decision 90/424/EEC in its reply to point 86.

The Commission is aware of the conclusions of the study on current animal health insurance practices in Member States. However, the Commission cannot prioritise one suggested solution before all aspects of any possible new system for the compensation of livestock farmers have been considered, including, for example, the implications for competition.

100. The Commission has arranged for the translation of the study into one more official language in order to supply a copy of the study to the veterinary services in the Member States for reflection.

Under B2004, a specific budget heading 17 01 04 04 is intended to fund a pilot study on a 'Financing model incorporating the risks of diseases affecting cattle'. The purpose of this follow-up study is to obtain expert estimates and calculations in order to complete an impact assessment.

It is envisaged to discuss the issue with the Chief Veterinary Officers in September and to present initial results of this study at the International Conference on the prevention and control of infectious diseases organised by the Netherlands Presidency in December 2004.

CONCLUSIONS AND RECOMMENDATIONS

101. The introduction of the 'non-vaccination' policy was accompanied by a range of measures including improved movement controls, better protection of borders, import requirements, a system of compensation, a system of antigen reserves for the formulation of vaccines and capacity building for laboratories and also support measures to neighbouring third countries.

102. The Commission considers that the legal provisions in place in 2001 were sufficient to keep O1-PanAsia FMD virus out of the Community.

There are limits to the extent that the Commission can interfere with the Member States' authority in matters of police and administrative organisation, which are attributed to the nature of the competences vested to the Community.

The Commission, with its critical analysis of mission findings and its determination to constantly improve both legislation and its implementation, considers that even more surveillance and supervision on its part could not have limited the impact of the 2001 outbreak.

The 2001 FMD epidemic had a significant impact on animal husbandry in the whole of the EC in spite of taking all possible measures to continue trade in safe products, for example certain meat and milk products and a whole range of animal by-products, with the affected Member States and commencing for the United Kingdom, but similarly for the Netherlands, a carefully operated phasing-out of the restrictions in October 2001, for example fresh pig meat from the East Anglia pig areas followed gradually by other products as a consequence of the progress made in the completion of the post-outbreak surveillance.

In 'application' of the OIE code a country may regain its previous disease- and infection-free status 'three months after the last case where a stamping-out policy and serological surveillance are applied....' With the last outbreak in the United Kingdom in September 2001 and the first meeting of the appropriate Commission of the OIE in January 2002, the United Kingdom was recognised as free of the disease by the OIE at the earliest opportunity. The other three Member States affected by FMD also regained their free status within three months of the last outbreak or the slaughter of the last vaccinated animals respectively.

Despite some initial problems with certain trade partners the regionalisation of the EU on the basis of Member States was quickly re-installed and trade resumed from Member States not affected by the disease. The EU as a whole was therefore not blocked for all products for a period of 12 months.

103. Council Decision 90/424/EEC clearly relates the compensation for farmers to the animals that had been killed for disease control purposes. This requirement encourages farmers to report the disease as early as possible for financial reasons. Timely, adequate and fair compensation is therefore essential to ensure cooperation of the farming community.

Farmers are also sanctioned if they disobey veterinary restrictions on movement of animals and products, and the basic provisions for Member States imposing such sanctions are laid down for in vertical and horizontal Community legislation.

104. The Commission shares the Court's view that even more precise directives to the Member States are required for shouldering the burden of indemnification expenditure. Such directives are currently being drafted. A draft regulation formalising the arrangements for granting Community co-funding will be presented to the Member States soon. At present, all the files have been closed except for the one relating to operating costs in the United Kingdom (for which the application for reimbursement was presented only in 2003) and corresponding reimbursements were made as soon as the financial checks, which were intensified owing to the amounts involved and the complexity of the file, had been completed. The results of these checks were that applications for almost EUR 583 million, or 55 % of the total, were rejected without prompting any dispute with the Member States. The discrepancies ascertained by the Court are a result of the Member States' practices which the Commission has no legal authority to harmonise. On the other hand, the Commission has been scrupulous in ensuring that reimbursements to the Member States are corrected if necessary in order to ensure that they are treated equally. Moreover, it is stated under point 70 that any accumulation of premiums and indemnifications should be prohibited explicitly.

The system of direct payments, including the slaughtering premium, is designed to compensate for the effect on producers' income of the gradual reduction of the level of market support introduced by the Agenda 2000 reform. The Commission always took the view that, first, the premium could be granted to producers irrespective of the state of health of their livestock and, second, that there was good reason for granting the premium for animals slaughtered to combat FMD, if the regulatory conditions for granting the premium were met and the animals were slaughtered in a slaughterhouse.

105. The Commission holds that it has learned the financial lessons of each disease, first by establishing an increasingly precise framework for eligible expenditure and now by looking at ways to simplify the rules.

Although the Council has decided that the Member States should benefit from Community financial support to eradicate the disease, this does not alter the fact that the specific financing decisions adopted by the Commission after receiving a request for reimbursement (the general framework is mentioned in Council Decision 90/424/EC) point out that this is contingent on the planned action being taken immediately, such as isolation of the holding from the time of suspicion and, following official confirmation of the disease:

- slaughter of animals of susceptible species,
- their destruction,
- destruction of contaminated feed or materials,
- cleaning, disinfestation and disinfection of the holding and equipment,
- setting up of protection zones.

Moreover, on the strength of the experience gained in the classical swine fever epidemic in the Netherlands in 1997 (and, *a posteriori*, the positive judgment delivered by the Court of Justice at the end of 2003 in the case between the Commission and the Netherlands authorities on the financial corrections made to the request for reimbursement) and its desire to protect Community financial interests, the Commission deliberately laid down more stringent criteria for eligibility of expenditure in the financing decisions applicable to FMD.

These criteria were approved by the States concerned through the Standing Committee on the Food Chain and Animal Health.

Nevertheless, the Commission also learned the lessons of monitoring expenditure on FMD.

As it is always at pains to protect the Community's financial interests and also to simplify monitoring for both the Commission and the Member States, the Commission will shortly present a draft regulation laying down the expenditure that is eligible for Community funding.

106. (a) As control strategies must be scrutinised on a regular basis, Article 72(10) of Council Directive 2003/85/EC contains specific provisions on contingency planning, real-time exercises and in particular reporting to the Commission about the main findings of these exercises and the necessary adjustments to the contingency plans.

In addition, the Commission is following closely the FMD situation in the world and the development of the relevant chapter in the OIE Animal Health Code. Commission funding of major research projects on FMD has been agreed in recent months and this will contribute to the development of the legislation where necessary.

- (b) The Commission considers that the appropriate legal provisions guaranteeing fair and timely compensation are in place to encourage early notification of suspicions and that Member States are bound and economically motivated to enforce the restrictions necessary to contain and eradicate the disease.

- (c) As indicated above, the Commission will shortly present a draft regulation laying down expenditure that is eligible for Community funding.

The ban on export of live animals and their products was introduced on 21 February 2001.

The United Kingdom had therefore some initial problems to provide all the information to recipient Member States for the exports of sheep before that date in relation to holdings of origin that were subsequently, given an incubation period of about a fortnight, identified as outbreaks.

By adopting Decision 2001/190/EC on 8 March 2001, the Commission approved the measures already taken by the Member States, including the pre-emptive killing of all sheep imported from the United Kingdom between 1 and 21 February 2001. The problems relating to the tracing of these animals were thereby solved.

The first outbreak was confirmed on 20 February 2001 at the abattoir in Essex. On 21 February 2001 the second outbreak was confirmed on the farm next to the abattoir and on 22 February another outbreak, both related to the movement of animals from the slaughterhouse to the farm and subsequent contacts. All these outbreaks have *per se* no epidemiological importance with regard to the 2001 FMD epidemic, as they were marginal and dead-end events.