

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 7 NOVEMBER 1978¹

*Mr President,
Members of the Court,*

In 1933 a Pigs Marketing Scheme was set up under the Agricultural Marketing Act (Northern Ireland) 1933 which was re-enacted in 1964. It is administered by the Pigs Marketing Board (Northern Ireland) whose members are largely pig producers; the Department of Agriculture does however have certain powers of control over the Board.

For particulars of the organization of the Board and its activities I refer to the description given in the judgment making the reference and to the statements in the written procedure. I shall mention only the following in my opinion:

It is significant that the Board has a marketing monopoly in respect of bacon pigs reared in Northern Ireland of a minimum live weight of 77 kg but not in respect of animals for breeding or pigs under that weight. Anyone wishing to sell such animals (apart from certain exceptions provided for) must basically be registered with the Board as a producer. Sale is allowed only to the Board or through its agency or at its direction. The Board sells the pigs to processors, in particular curers, in whose activity it has itself a very important interest; apparently some half of the bacon production in Northern Ireland is controlled by the Board. In this respect, that is in respect of the resale (and this will not be of further concern here) quotas apply which are laid down by the Department. The purchase prices are determined by the Board on the basis of its estimate of its annual income. A percentage of this, determined by the Secretary of State, who moreover may exempt certain classes of producers from

contributions, is retained by the Board to cover expenses. Whatever is not required for this, that is any surplus, is with the approval of the Secretary of State put in a special account from which payment may be made to producers where prices fall. If I have understood the position correctly, the Board does not apply any uniform prices and also determines to a certain extent the amount of pigs it will buy. In this respect a system of long-term contracts with producers, apparently in operation since 1976, should be mentioned. Under this system the producers must offer in advance the quantities which they expect to supply in a 13-week period and this represents the so-called *contract number* for the first period. For subsequent periods (and this is the restriction on numbers which I mentioned) the number delivered is subject to limitation by the Board if a producer has failed to supply at least 85% of his contract number in the previous period or if the total number offered by all producers is considered excessive having regard to market conditions. As regards prices, there are contract prices which apply in respect of 115% of the contract number. Non-contract prices which are less than these apply to pigs supplied in excess of 115% of the contract number or for pigs supplied without a long-term contract. Further there is a bonus for producers who supply at least 85% of the contract number and premiums for marketing during certain periods in the summer.

The Movement of Pigs Regulations (Northern Ireland) 1972 form part of this system. They prohibit the transport of bacon pigs elsewhere than to the purchasing centres of the Board and it is also necessary for consignments to be

¹ — Translated from the German.

accompanied by documents supplied by the Board. Breach of these provisions is punishable by imprisonment and/or fines; further the animals may be forfeited.

I come now to the facts of the main proceedings: in January 1977 a consignment of 75 bacon pigs which were not intended for a purchasing centre of the Pigs Marketing Board and for which the necessary transport documents were not available was observed in the district of Armagh. As a result, in July 1977 proceedings at the instigation of the Board were commenced against Mr Redmond, the owner of the pigs. As a result of his defence (he claimed in particular that the Northern Ireland Pigs Marketing Scheme was incompatible with Community law) the magistrate before whom the matter came in September 1977 gave a judgment in which it was stated that a preliminary ruling under Article 177 of the EEC Treaty was necessary to clarify a number of questions of Community law. The Board appealed against this to the Court of Appeal for Northern Ireland. After the appeal was rejected the original magistrate forwarded the said judgment on 10 March 1978 to the Court of Justice of the European Communities. It contains the following questions:

Is the Board an "undertaking"? Is it a "national market organization"? Is it a "State monopoly of a commercial character"? Is it all three, or is it a combination of any two?

1. If it is an "undertaking" is it an undertaking within the meaning and intention of Articles 85 and 86? If it is, then in view of the provisions of its Scheme the Board's activities clearly violate these Articles — particularly Article 85 (1) (a) (b) and (c).
2. If it is a "national market organization", does it fall within Article 2 of Regulation No 26 so as to be in a position to attract the exemptions provided for there? In my opinion this particular regulation only applies to national market organizations which are established by agreement and about which there is nothing compulsory. The Board administers its Scheme by compulsion and restrictions eg "A producer who is neither a registered producer nor a person exempt from registration shall not sell any pigs."
3. If it is a "State monopoly of a commercial character", does it fall within the meaning of Article 37 (1) of the Treaty of Rome so as to gain the protection of Article 44 of the Treaty of Accession which provides for a transition period up to 31 December 1977?
4. If it is a "State monopoly of a commercial character" within Article 37 of the Treaty of Rome and the period of grace for adjustment does not expire until 31 December 1977, does this save it from the immediate effect of Articles 85 and 86 until that date? Or can it be argued that "undertakings" within the meaning of Articles 85 and 86 can be construed to include State monopolies? Counsel for the Board argued that the term "undertakings" is not defined but is used as distinct from "State monopolies".
5. Do the Board's activities fall within the provisions of Article 85 (3) so as to exempt it from the provisions of paragraph (1)? This point was not raised. If the Board is exempt from the application of Article 85 by the operation of paragraph (3) it has no

need to fall back on the "transitional period" argument.

6. And what about Article 8 of the Treaty of Rome which provides that:

"(1) the Common Market shall be progressively established during a transitional period of 12 years; and

(2) to each stage there shall be assigned a set of actions to be initiated and carried through concurrently." —

Does this provision affect the present case?

Further, in an accompanying letter dated 10 March 1978, the Resident Magistrate stated that the following questions arose incidentally:

- (a) Whether Articles 30, 31, 32, 34, 37, 40, 41, 42, 43, 85, 86 and 90 of the Treaty establishing the European Economic Community are directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom.
- (b) Whether Regulations Nos 121/67, 2759/75 and all other regulations on the common organization of the market in pigmeat adopted in accordance with the Treaty establishing the European Economic Community are directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom.
- (c) Whether, upon the proper interpretation of the articles and regulations alone, or any relevant Community Law, the Pigs Marketing Scheme in Northern Ireland is in contravention of the rules of Community law.
- (d) Under the above articles, regulations or any relevant Community law can a Member State be authorized:
 - 1. to continue a national organization of the market at a time when the common organization of the market is in force?

2. to compel producers within its jurisdiction to become registered producers with the Pigs Marketing Board (Northern Ireland) before they can sell pigs?

3. to compel producers within the jurisdiction to enter into contracts with the Board and sell pigs solely to the Board at prices and in numbers fixed by the Board?

4. to permit the Board by way of an express or implied intervention measure to buy every pig regulated by the Scheme?

(e) Does imposition of the aforesaid obligations relating to the total regulation of numbers of pigs produced, sales and controlled prices constitute infringement of Community law in so far as they may represent measures having an equivalent effect to quantitative restrictions on exports, bearing in mind that the Northern Ireland legislation in question has as one of its main aims and effects the prevention of exportation of pigs to the Republic of Ireland?

(f) Was the United Kingdom covered on the date of accession by a common organization of the market in so far as agriculture was concerned, and in relation in particular to pigmeat and live pigs, and if so did it apply from 1 February 1973?

(g) Was the United Kingdom Government entitled to introduce the Movement of Pigs Regulations (Northern Ireland) 1972 in the month of May 1972?

My opinion on this reference for a preliminary ruling is as follows:

1. First I must make some observations on the scope of the inquiries the Court has to undertake.

The British Government has stressed that only the questions in paragraph 10 of the

national judgment are relevant, as is apparent from the letter of the Resident Magistrate dated 10 March 1978 which refers to the questions put in the judgment given in September 1977. The government states that in so far as the letter contains additional questions it should not be overlooked that in the view of the magistrate they are only "incidental", that is, not pertinent and in truth not essential for the purposes of judgment in the matter. Further, it is stated that if it is borne in mind that only the Movement of Pigs Regulations are relevant for the Resident Magistrate and not all aspects of the Northern Ireland Pigs Marketing Scheme it follows that only the questions raised in relation to Article 37 of the EEC Treaty are relevant and that the questions in relation to Articles 85 and 86 of the Treaty and Regulation No 26 or Article 8 of the Treaty are certainly not necessary for judgment to be given in the main proceedings.

In my opinion it is certainly right to recognize that the Movement of Pigs Regulations are the principal issue in the main proceedings. Disregard of it is a punishable offence and the question immediately arises whether it is compatible with Community law. In my opinion, however, it is also clear that the Movement of Pigs Regulations are not a self-contained scheme. They are intimately connected with the Bacon Pig Marketing Scheme applicable in Northern Ireland and their purpose is to ensure that the Board's marketing monopoly is effectively enforced. Therefore the latter cannot be left out of consideration. If it should appear that the marketing monopoly conflicts with Community law then it would also be clear that the national regulations whose exclusive function is to serve the marketing monopoly are also unlawful.

Further I think (and here I come to the other part of the problem raised by the British Government) that solely on the basis of these premises it must be

determined which of the many questions raised must be dealt with by the Court. I should not consider it right if by reason of the unusual reference with which we are concerned here (questions in the judgment itself and in addition questions raised incidentally in an accompanying letter) the Court were to adopt a strictly formalistic attitude and consider itself concerned only with the questions contained in the judgment without regard to the related risk of delaying the proceedings as might happen if there had to be a fresh reference. All that is important is that the Court should now be clearly aware of the questions arising out of the main proceedings. Accordingly it must endeavour to provide the national court as far as possible with all the relevant criteria from the point of view of Community law so that the Magistrate can consider the compatibility of the Northern Ireland marketing scheme with Community law. I therefore think that the narrow restriction of the reference for a preliminary ruling which the British Government regards as necessary is in no way essential and that the Court can consider all the aspects relevant to the ultimate judgment contained in the national judgment itself and in the accompanying letter of the Resident Magistrate if it takes the view that this is reasonable for the purpose of dealing properly with the reference for a preliminary ruling.

There is yet one further issue to be considered, although this will present few problems. Various questions are worded in such a way that the Court might find itself called upon to consider the compatibility of the national law with Community law. It has no jurisdiction to do so because this would mean *applying the law* which is within the exclusive jurisdiction of the national court. To this extent it will be necessary to proceed in the manner which has already been adopted in a number of other cases by extracting from incorrectly-worded questions the various factors which are

suitable for consideration in a reference for a preliminary ruling; then the necessary findings of Community law are to be made enabling the national court to resolve the particular case. This causes just as few difficulties in the present proceedings as in earlier cases with the same problem.

2. Since, as already mentioned, the central issue arising for the national court is whether the Northern Ireland Board's marketing monopoly in respect of bacon pigs is compatible with Community law, it is appropriate first to consider the question of the nature of the marketing rules of Community law in relation to this product and what consequences the existence of a common organization of the market has on the lawfulness of national measures.

(a) The common organization of the market in pigmeat was originally and also at the time of the accession of the United Kingdom governed by Regulation No 121/67 (Official Journal, English Special Edition 1967, p. 46) and is now the subject of Regulation No 2759/75 of 29 October 1975 (Official Journal 1975, No L 282, p. 1). It applies to live swine other than breeding animals and to meat and meat preparations. The imposition of levies and the grant of refunds is provided for in respect of trade with third countries. As regards internal trade there is a certain common price system which, however, cannot be regarded as complete: in fact prices are determined largely by the market. In the case of certain falls in prices, intervention measures within the Community are provided for. Such measures as aid for private storage or buying in by intervention agencies are however not automatically applied; they are determined by the Commission but this (including the buying in by intervention agencies) has so far not happened frequently. The provisions contained in Article 2 of Regulation No

2759/75 should also be mentioned. This provides that "in order to encourage action by trade and joint trade organizations to facilitate the adjustment of supply to market requirements" Community measures may be taken. Basic rules for these measures have to be adopted under the procedure in Article 43 (2) of the EEC Treaty which so far has apparently not been done.

(b) It is significant that this organization of the market which is not limited to co-ordinating national organizations of the market as provided for in Article 40 of the EEC Treaty but replaces the various national organizations of the market was applicable under Article 60 of the Act of Accession from 1 February 1973 in the new Member States with its various basic rules (special provisions applied with regard to the accession compensatory amounts). Exceptions applied to the United Kingdom in accordance with Article 76 (2) of the Act of Accession only in so far as the United Kingdom was authorized until 31 October 1974 not to apply the Community scale of classification for pig carcasses. Since no other exceptions are made in respect of the United Kingdom (contrary to the position under Article 89 for Denmark in relation to the organization of the market in milk) it must be assumed that the common organization offers "equivalent safeguards for the employment and standard of living of the producers concerned" to the previous national organizations of the market and that therefore their basic rules applied from the said period in the United Kingdom.

(c) Before we draw any conclusions from this for the present case is perhaps appropriate to refer to the case-law in which national measures played a part alongside common organizations of the market.

The first of these cases, Case 82/71 *Pubblico Ministero della Repubblica Italiana v Società Agricola Industria Latte (SAIL)* [1972] ECR 119, was concerned with the Italian milk centres' exclusive right of obtaining supplies and marketing and how this was to be judged in the light of Community law. For the Court it was decisive that by Regulation No 804/68 (Official Journal, English Special Edition 1968 (I), p. 176) a definitive organization, albeit incomplete since supplemental measures were necessary, had been created. Thus the Court was able to find that from that time on it was for the Community authority alone to decide upon the "maintenance of any national system of organization, intervention or supervision". Since, however, the Community regulations had provided only for a temporary concession for the Italian milk centres, the latter, after the expiry of the period provided for, had to be regarded as incompatible with Community law.

In a further case, Case 190/73 *Officier van Justitie v J. W. J. Van Haaster* [1974] ECR 1123 it was stated that a common organization of the market excludes the existence of national regulations rationing production; in this respect they are to be considered as a measure having an effect equivalent to quantitative restrictions on exports.

In Case 51/74 *P. J. Van de Hulst's Zonen v Produktschap voor Siergewassen* [1975] ECR 79 it was decided that once a common organization of the market had been established Member States could not adopt any measure which might undermine or create exceptions to it and in this respect it was necessary also to have regard to the aims and objects of the Community legislation.

The judgment in Case 111/76 *Officier Van Justitie v Beert van den Hazel* [1977] ECR 901 is to the same effect. It was held in that case that the existence of a common organization of the market excluded measures adopted

independently by trade and joint-trade organizations each in a specifically national framework, since unco-ordinated action might be of such a nature as to cause discrimination between producers and consumers and to distort trade between the Member States. Further it was stressed in this judgment that measures enacted by the national authorities to impose quotas are incompatible with a common organization of the market.

Finally, the judgment of 29 June 1978, which has not yet been published, in Case 154/77 *Procureur du Roi v P. Dechmann*, should be mentioned; this was delivered in relation to this same common organization of the market in pigmeat and concerns national measures in the field of consumer prices. For me the observation is significant that the common organization of the market in pigmeat "established a system comprising a set of material rules and of powers, including a framework of organization calculated to meet all foreseeable situations." Further it was stressed that the common organization of the market required the elimination of all obstacles to free movement of goods and all distortions in intra-Community trade.

(d) In view of what has already been stated in relation to the organization of the market in pigmeat and what has appeared to be the nature of the Northern Ireland Marketing Scheme, it is quite clear that the Northern Ireland Marketing Scheme is scarcely compatible with the organization of the market in pigmeat.

The decisive question is not, in my opinion, whether the Northern Ireland scheme is to be regarded as a national organization of the market. As the Court is aware, the Commission considers it to be so and refers to the definition contained in the judgment in Case 48/74 *Charmasson v Minister for Economic Affairs and Finance* [1974] ECR 1383, according to which the national organ-

ization of the market "amounts to a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority, with a view to ensuring, by means of an increase in productivity and of optimum utilization of the factors of production, in particular of manpower, a fair standard of living for producers, the stabilization of markets, the ensurance of supplies and reasonable prices to the consumers." Against this the Board states, in my view, however, not quite convincingly, that it is only a regional organization and that the powers available to it (it has no special intervention system to control the market with the help of restrictions on production, minimum prices or levies) are not sufficient to give producers a guarantee of production and thus safeguard their standard of living. This can be left open. The question of the breach of Community law does not decisively depend on whether there is a national organization of the market but, as is apparent from the case-law, all national systems, whether limited to regions or not, are relevant.

Thus it is relevant in the present case that according to the common organization of the market in pigmeat every producer should have free access to the market, that prices should largely be determined freely by the market and, if decisions are adopted by Community institutions to this effect, every party should have the opportunity of direct participation in intervention measures. On the other hand it is material that this is excluded under the Northern Ireland Scheme with the requirement of marketing through the Board. Producers thus have no free access to internal markets, they cannot export directly and they do not have the opportunity to sell their products to intervention agencies where intervention measures apply. Further, it is significant that the prices are not determined by the market but are laid down by the Board. From these

deductions are made which are required for financing the activities of the Board. Moreover, it must not be overlooked that the use of the funds in the special account maintained by the Board affects price trends even if they may be limited from the geographical point of view or as regards their scope (According to the particulars given in the proceedings less than one per cent of the Board's income is placed in the said special account).

This may well be sufficient for the purposes of judgment. The question whether, in addition, the double price system practised by the Board, which is obviously not a necessary component of the marketing monopoly, has contributed to unlawful restrictions on production or whether the Northern Irish Scheme has encouraged production, as the Board claims, can in the last resort be left open.

3. It is true that the considerations so far adumbrated provide no more than a *provisional* assessment. Now the question must be considered whether other considerations, as mentioned in the proceedings, may be set against the objections arising out of Community law and may justify the Northern Irish Scheme.

(a) Mention was made of the fact that the Board, which has the marketing monopoly, is largely made up of pig producers. This obviously brings to mind Article 2 of the common organization of the market in pigmeat (Regulation No 2759/75) which states that measures may be taken "in order to encourage action by trade and joint trade organizations to facilitate the adjustment of supply to market requirements". Moreover, it is said to be significant that there are similar groups in other Member States. Thus in France 50% of sales are made through co-operatives and in Denmark the importance of producer co-operatives which have their own slaughterhouses, export bureaux and stabilization funds, is even greater and involves some 90% of production.

Here, however, it is not possible to escape the view that in both the said Member States the producer groups are voluntary associations. Certainly the Board, which is a kind of compulsory cartel whose clutches no-one can escape, cannot simply be compared with them. Further, it is significant that in Article 2 of the common organization of the market in pigmeat mention is made of Community measures but not of national measures which are taken unilaterally and which are in question in the main case.

(b) Reference was also made to the difficult position of Northern Ireland and to the importance of pig production and processing in that area. If this branch of the economy which is mainly engaged in export is to remain competitive in other markets, then, it is claimed, in view of the difficulties in relation to transport over great distances and high producer prices in Northern Ireland and also in view of the strong position of competitors who are partly favoured by monetary compensatory amounts and in respect of whom, as of the Danes, it might be said that they dominate the British market, processing and marketing of bacon pigs in Northern Ireland has to be as rational as possible. It is said that the monopoly is vital for this because it permits long-term planning and processing of great quantities; to maintain the effectiveness of the system it is not possible to allow producers to sell to processors because of a short-term benefit.

I do not think we need now to go in detail into how far all this is true. In any case the rule is that where there is a common organization of the market unilateral national measures which conflict with it are basically not permissible and that in such situations only the Community authorities can decide on the maintenance of national organizations of the market or similar schemes. This is clearly apparent from

the case-law in which, as I have shown, on the very question of the organization of the market in pigmeat it has been stressed that the latter has established the framework of organization calculated to meet all foreseeable situations.

At the time in question there were no measures of the Community authorities capable of justifying the activities of the Board and even today there are none. We have heard only that talks have taken place with the Commission in relation to various boards in general, that is, without thoroughly going into the question of the Northern Ireland Pigs Board, and that in the spring of 1978 these led to the adoption of two regulations (Nos 1421 and 1422/78) in relation to the organization of the market in milk. There appear to be further talks still in progress on the Northern Ireland Bacon Pigs Board and according to the observations of the Commission's representative it is already clear that the marketing monopoly cannot be regarded as indispensable.

It cannot thus certainly be said that economic and regional requirements cannot justify the Northern Ireland marketing monopoly. Further it would be my opinion, if this line of thought needs to be pursued in the present connexion, that no justification can be found either in the consideration that the effects of the marketing monopoly on the Common Market are minimal in that the sales of the Board make up less than one than one per cent of the total sales in the Common Market. To me it is obvious that this is irrelevant, for disturbances and infringements of a common organization of the market can naturally not be tolerated simply because they affect a limited and relatively small part of the Common Market.

(c) As regards export into other Member States and in particular the Republic of Ireland, from which the marketing scheme excludes producers, it was further stated that the monetary

compensatory amounts, which apply between the United Kingdom and the Republic of Ireland, because the former, in contrast to the latter, has not agreed to devalue the green pound, have for a long time made exports uneconomic. Thus, in January 1977 an export subject to a monetary compensatory amount into the Republic of Ireland produced £ 4.40 less than a sale at home and did not even cover the costs of production. It is claimed that exportation in circumvention of the monetary compensatory amount cannot be regarded as meriting protection. Because the frontier is difficult to control the only way to prevent it is by the Movement of Pigs Regulations. Only in this way can it be ensured that irregular exports to the Republic of Ireland do not cause the Northern Ireland processing industry serious damage.

With regard to these submissions in my view it must first be said that the question of export and obstacles to it is only *one* aspect of the problem that concerns us here. Moreover the monetary compensatory amount is not a permanent system subject to no amendment but on the contrary is often liable to be altered at short notice quite apart from the fact that the trend in market prices may make export appear reasonable once again in spite of monetary compensatory amounts.

Regarding the danger of circumvention of the monetary compensatory amounts and the prevention of phenomena which have at times been called rather colloquially U-turn pigs and O-turn pigs the Commission is certainly right in observing that this situation arising from the rejection of a devaluation of the British green pound does not justify other unilateral national measures having an effect equivalent to quantitative restrictions on exports. If exceptions to the principles of Community law are called for here then, where appropriate, measures to be adopted by the Community authorities are necessary instead.

(d) Finally, reference has been made to Articles 90 and 37 of the EEC Treaty in relation to the fact that marketing of bacon pigs reared in Northern Ireland can take place only through the Board which thus has special rights or even a monopoly.

(aa) My observations on this as regards the first of the said articles and the attempted justification related thereto can be quite brief.

It should not be overlooked that even assuming that Article 90 allows Member States to grant special or exclusive rights to undertakings it also provides that Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty. Thus Article 90 (1) cannot be used to justify the Northern Ireland measures. As regards, on the other hand, the application of Article 90 (2) to the present case, that is that the Board is an undertaking "entrusted with the operation of services of general economic interest" which would allow certain exceptions to the provisions of the Treaty, nothing has been said in the proceedings to this effect and in view of all that we know it would appear quite wrong to consider it as such.

(bb) As regards on the other hand Article 37 of the EEC Treaty and the State monopolies of a commercial character provided for in it, it is the Board's view that it comprises such a monopoly and that Article 44 of the Act of Accession allows until the end of 1977 for the adjustment of such monopolies. From this it follows that at the time the offence in question was committed, namely the beginning of 1977, Article 37 could not be said to apply directly in Northern Ireland or, in other words, that the Board's monopoly could continue to exist until 1 January 1978 even if it were not compatible in every respect with the rules of the Treaty.

However attractive this view may appear at first sight, let me say at once it does not hold in the present case.

It may well be doubted whether the Board is a "State monopoly of a commercial character" within the meaning of Article 37. This is not because it does not have the characteristics of a public body (it has been possible to show that the Board's statute is one of public law; three of its members are appointed by the Secretary of State who has certain powers of control and the power to issue directives, not only vis-à-vis the Board, but he may also alter the Scheme.) The Court, however, was reminded in the proceedings that the United Kingdom declared during the negotiations for accession that there was no monopoly of a commercial character within the meaning of Article 37 in its territory and this was confirmed not only in the literature produced at the hearing but also in the fourth report of the Commission on the competition policy of the Community. It has also become clear that we are concerned only with a regional establishment and not with a complete monopoly, for the marketing scheme clearly applies only to bacon pigs reared in Northern Ireland and not to imported products.

There is another consideration, which is in my view more significant, and this concerns the relationship of Article 37 to the provisions of the Treaty on agricultural policy. Article 38 (2), according to which Articles 39 to 46 are to be regarded as special rules, was rightly referred to. In the present case it has to be assumed on the one hand that the function of the marketing scheme which has been adopted under the Agricultural Marketing Act is above all to protect the interests of pig breeders by regulating and stabilizing the market. Whether or not the Board with its marketing rules is to be regarded as a national organization of the market it may certainly be assumed that like a national organization of the market it is intended to secure safe-

guards for the employment and standard of living of the producers concerned. On the other hand, it is equally clear that this function in particular has been taken over by the common organization of the market which in accordance with Article 43 of the Treaty had to replace the national organizations of the market and to take care of the equivalent safeguards for the employment and standard of living of the producers concerned. It is therefore apparent that with the creation of common organizations of the market not only is there no longer any room for national organizations of the market but that the same thing, that is, complete replacement, applies also to State monopolies of a commercial character within the meaning of Article 37 whose main functions correspond to those of a national organization of the market. Not least, it is also of interest in this connexion (and with this I complete my observations on Article 37) that in the judgment in Case 82/71, which has already been mentioned, the Italian milk centres in question at the time were considered not under Article 90 or Article 37 of the Treaty but exclusively within the context of the agricultural law of the Treaty.

4. Since it may thus indeed be concluded that the impression that the Northern Ireland marketing rules for bacon pigs are incompatible with the common organization of the market in pigmeat is correct, it is not really necessary to consider further questions from the national court to see whether other aspects may further strengthen the judgment arrived at. However, I should like at least to consider the problem whether there can be said to be measures having an effect equivalent to quantitative restrictions on exports, that is whether there can be said to be a disregard of the general provision in Article 34 of the EEC Treaty (since after the expiry of the transitional period no such prohibition in relation to trade

within the Community has any longer been included in the organization of the market). As the Court is aware, under Article 42 of the Act of Accession this prohibition applied in relation to quantitative restrictions as from the date of accession and in relation to measures having equivalent effect as from 1 January 1975 at the latest.

In my opinion what the Commission said on this subject also is quite correct.

In this respect it is significant that in accordance with the case-law (Case 2/73 *Riseria Luigi Geddo v Ente Nazionale Risi* [1973] ECR 865) the movement of goods within the Community must be freed from every obstacle and, as was held in the judgment in Case 68/76 *Commission v French Republic* [1977] ECR 515, even special formalities must be regarded as obstacles within the meaning of the said prohibition. Further, it is clear, as we have seen, that pig producers cannot themselves export from Northern Ireland but only via the Board; the implication cannot be rejected here that the Board (its involvement in the Northern Ireland processing industry may be recalled) may be inclined to protect this processing industry may be recalled) may be inclined to protect this processing industry by restrictions on export when it might be possible to obtain higher prices by exporting. In this

respect it is also not insignificant that according to the national judgment and the evidence of an official of the Board in the main proceedings an essential objective of the marketing scheme is to prevent export to the Republic of Ireland.

In view of this there can really be no question but that the Marketing Scheme has effects equivalent to quantitative restrictions on exports and this is not altered by the already mentioned fact that, at least temporarily, the monetary compensatory system might result in stopping exports.

5. These findings are sufficient for an appropriate answer to the reference for a preliminary ruling. It is unnecessary to consider the further questions in the reference such as whether the Board is to be regarded as an undertaking within the meaning of Articles 85 and 86, whether a national organization of the market comes under Article 2 of Regulation No 26 and the effect of Article 8 of the EEC Treaty; equally there is no point in considering the question in the accompanying letter of 10 March 1978 whether the British Government still had the power in May 1972 to adopt the Movement of Pigs Regulations after the Treaty of Accession had already been signed.

6. Accordingly, the questions of the Magistrate's Court in Armagh may be answered as follows:

The existence of the Common organization of the market in pigmeat, the rules of which basically applied to the United Kingdom as from 1 February 1973, excludes unilateral national measures which may adversely affect the functioning and objectives of the organization of the market. In particular the establishment and maintenance of a marketing monopoly for pigs in favour of an association of producers supervised by the State is incompatible with the common organization even though the monopoly applies only to a restricted region forming an economic unity and to pigs produced there.

Such a marketing scheme which prevents producers from directly exporting pigs to other Member States is to be regarded as a measure having an effect equivalent to quantitative restrictions on exports. If it has functions which are at least comparable with those of a national organization of the market, it cannot be justified by reference to Article 37 of the EEC Treaty which applied directly to the new Member States only as from 1 January 1978.