

- conferred on the Court of Justice by Article 177, the Court is free to extract from all the factors provided by the national court and in particular from the statement of grounds contained in the reference, the elements of Community law which, having regard to the subject-matter of the dispute, require an interpretation or, as the case may be, an assessment of validity.
2. It follows from Article 38 (2) of the EEC Treaty that the provisions of the Treaty relating to the common agricultural policy have precedence, in case of any discrepancy, over the rules relating to the establishment of the Common Market. The specific provisions creating a common organization of the market have precedence in the sector in question over the system laid down in Article 37 in favour of State monopolies of a commercial character.
 3. Once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.
 4. The common organizations of the agricultural markets are based on the concept of the open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by those organizations.
Any provisions or national practices which might alter the pattern of imports or exports or influence the formation of market prices by preventing producers from buying and selling freely within the State in which they are established, or in any other Member State, in conditions laid down by Community rules and from taking advantage directly of intervention measures or any other measures for regulating the market laid down by the common organization are incompatible with the principles of such organization.
 5. The provisions of Articles 30 and 34 of the EEC Treaty and of Regulation No 2759/75 are directly applicable and confer on individuals rights which the courts of Member States must protect. As regards the new Member States, the effects of those provisions applied, according to the terms of the Act of Accession and in particular of Articles 2, 42 and 60 (1) thereof, as from 1 February 1973.

In Case 83/78

REFERENCE to the Court pursuant to Article 177 of the EEC Treaty by the Resident Magistrate, County Armagh (Northern Ireland), for a preliminary ruling in the proceedings pending before that court between

PIGS MARKETING BOARD (Northern Ireland)

and

RAYMOND REDMOND, a pig producer,

on the interpretation of a number of provisions of the EEC Treaty and of regulations on the common organization of the market in pigmeat having

regard to the national legislation applicable in Northern Ireland to the movement and marketing of pigs,

THE COURT,

composed of: H. Kutscher, President, Lord Mackenzie Stuart (President of Chamber), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keefe and G. Bosco, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

I — Facts and issues

In Northern Ireland marketing of pigs is governed by the Pigs Marketing Scheme (Northern Ireland) 1933, which is administered by the Pigs Marketing Board (Northern Ireland) under the Agricultural Marketing Act (Northern Ireland) 1964. In particular the system requires producers not to sell pigs weighing over 77 kg live weight (or over 56.5 kg dead weight), known as "bacon pigs", except to or through the agency of the Pigs Marketing Board. This provision is implemented by the Movement of Pigs Regulations (Northern Ireland) 1972, which prohibit any transport of bacon pigs otherwise than to one of the Board's purchasing centres, a destination for which the producer must be in possession of a document authorizing transport. Any offence against the regulations is punishable by a term of imprisonment not exceeding three months and/or a fine of £200; the pigs may be forfeit.

On 12 January 1977 a police officer at Maytone near Markethill in County Armagh (Northern Ireland) stopped a

cattle lorry containing 75 bacon pigs (pigs weighing more than 77 kg).

The lorry driver was unable to produce a transport authorization issued in pursuance of Article 4 of the Movement of Pigs Regulations (Northern Ireland) 1972, by the Pigs Marketing Board.

The lorry and its contents were seized and proceedings were commenced on 28 January 1977 before the Resident Magistrate, County Armagh. On 7 July 1977 within the context of those proceedings a summons, followed by an application for forfeiture, was issued by the Pigs Marketing Board against the owner of the pigs, Raymond Redmond.

Mr Redmond claimed before the Resident Magistrate that the provisions of national law on the basis of which he was being prosecuted were contrary to various provisions of the EEC Treaty and of regulations adopted for its implementation relating to the production of and trade in agricultural products, more particularly in the pigmeat sector.

In his judgment, delivered on 19 September 1977, the Resident Magis-

trate, County Armagh, having regard to the defence put forward by Mr Redmond, took the view that he ought to ask the Court of Justice whether the defendant's conviction under the Northern Ireland legislation would be compatible with Community law. He therefore decided in pursuance of Article 177 of the EEC Treaty to defer a decision and to submit the question for a preliminary ruling to the Court of Justice.

In the body of the judgment the Resident Magistrate indicated that the following questions arose with regard to the provisions of Community law pleaded before him:

Is the Pigs Marketing Board (Northern Ireland) "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 e.g. "A producer who is neither a registered producer nor a person exempt from registration shall not sell any pigs." But even if the Board falls within the meaning and intention of Article 2 of Regulation No 26, no evidence has been produced, nor has research on my part been able to throw up any

decision of the Common Market Commission relating to the exemption of the Board from the operation of Article 85 of the Treaty of Rome.

- (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 Article 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?

By a letter of 10 March 1978 the Resident Magistrate informed the Court that the facts of the case and the questions arising as set out in his judgment of 19 September 1977 also incidentally raised the following questions:

1. Are Articles 30, 31, 32, 34, 37, 40, 41, 42, 43, 85, 86 and 90 of the Treaty establishing the European Economic Community directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom?
2. Are 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 directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom?
3. Is the Pigs Marketing Scheme in Northern Ireland, upon the proper interpretation of the articles and regulations alone, or any relevant Community law, in contravention of the rules of Community law?
4. Under the above articles, regulations or any relevant Community law can a Member State be authorized:
 - (a) to continue a national organization of the market at a time when the common organization of the market is in force?
 - (b) to compel producers within its jurisdiction to become registered producers with the Pigs Marketing Board (Northern Ireland) before they can sell pigs?
 - (c) 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?
 - (d) to permit the Board by way of an express or implied intervention

measure to buy every pig regulated by the Scheme?

5. 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 effect equivalent to a quantitative restriction 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?
6. 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?
7. Was the United Kingdom Government entitled to introduce the Movement of Pigs Regulations (Northern Ireland) 1972 in the month of May 1972?

The Resident Magistrate's judgment of 19 September 1977 and his letter of 10 March 1978 were lodged at the Court Registry on 16 March 1978.

In pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted on 31 May 1978 by the Commission of the European Communities, on 9 June by Raymond Redmond, the defendant in the main action, on 15 June by the Pigs Marketing Board (Northern Ireland), the complainant in the main action, and on 16 June 1978 by the Government of the United Kingdom of Great Britain and Northern Ireland.

On hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry. It did however

invite the Government of the United Kingdom and the Pigs Marketing Board to reply before the hearing to a number of questions. This request was complied with within the time specified.

II — Written observations submitted to the Court

The *Pigs Marketing Board (Northern Ireland)*, the complainant in the main action, points out, as regards the procedure, that many of the questions raised by the national court do not relate to the interpretation of Community law but to the interpretation and validity of provisions of national law or to the application of the Treaty to a specific case; the Court should refuse to answer such questions. Moreover, by reason of certain special features of the procedure before the national court, the latter had never had the whole picture with regard to the facts. Finally it would be ironical that the Court of Justice should be asked to pronounce upon the rights of the defendant in the main action under Community law when, on the national court's view, the Community itself was almost certainly the potential victim of a fraudulent operation. The question also arises whether rights under Community law can arise in favour of those who use such rights to defraud or attempt to defraud the Community; such rights may only be invoked by those who, to draw an analogy from equitable concepts, "come with clean hands".

In order fully to grasp the basic problems raised by the questions submitted to it, the Court of Justice should take a careful look at the situation in the pig industry in Northern Ireland and at the system under which it is organized.

In Northern Ireland the pig industry constitutes an integral part of the economy in the agricultural sector; it accounts for roughly 16 % of agricultural receipts and about 18 % by value of the country's agricultural

exports. By reason of the difficulties which it faces (absence of a substantial home market, high primary production costs, remoteness from the principal export markets, high shipping costs), it has been subject since 1933 to a system regulating marketing (the Pigs Marketing Scheme), re-enacted by the Agricultural Marketing Act (Northern Ireland) 1964, as amended by the Agriculture (Miscellaneous Provisions) Act (Northern Ireland) 1970. Over 80 % of pig production is cured and processed into bacon. The Scheme applies only to Northern Ireland and only to bacon pigs produced in Northern Ireland; it does not affect either importation into Northern Ireland or other types of pig. It is administered by the Pigs Marketing Board, a body corporate consisting predominantly of producers, controlled and run by producers, subject to certain powers retained by the Minister (now the Department of Agriculture Northern Ireland, through which Her Majesty's Secretary of State for Northern Ireland exercises executive responsibility in agricultural matters). The Board keeps a register of pig producers in which every producer is entitled to be registered, persons who produce pigs other than bacon pigs being exempt from registration. Producers who are neither registered nor exempt from registration may not sell any pigs. A registered producer may sell bacon pigs only to or through the agency of the Board. The main operation of the Board is the buying and selling of pigs. The Board is financed by a special fund and is self-financing; it receives no government aid. The Board has certain investments on the processing side but these are managed by a separate company, Pigs Marketing Board (Investments) Ltd.

The Board buys pigs from producers for resale; purchase and sale prices are determined by market forces. To a small extent the Board uses self-generated funds known as "Special Account Funds" to smoothe over short-term price

fluctuations. The Board exercises no influence on the level of pig production which is determined solely by considerations of profitability. Sales through the intermediary of the Board are carried out on the basis of a schedule of producer prices which it publishes; these prices are dictated by the market. The Board attempts to regulate sales, to reduce costs and to improve marketing by means of the Pig Contract Scheme. The Board sells to processing-factories in Northern Ireland at negotiated prices. It is also active in other spheres, in particular with regard to the improvement of quality, encouragement of diversification and research.

The Movement of Pigs Regulations were introduced to assist the Board in obtaining the pigs which it is entitled to receive and to make fraudulent practices more difficult.

With regard to the common organization of pigmeat as set out in particular in Regulation (EEC) No 2759/75 of the Council of 29 October 1975 (Official Journal No L 282, p. 1) the essential questions of Community law which arise in this case are as follows:

- (a) In the particular circumstances of the present case, is there any incompatibility with the working of the common organization of the market in pigmeat?
- (b) What is the effect, in this case, of Articles 34 and 37 of the Treaty and Article 44 of the Act annexed to the Treaty of Accession?
- (c) What, if any, is the relevance of the rules of competition?

In the examination of these topics account must be taken of the fact that the Board is, within the meaning of Article 90 (1) of the Treaty, an undertaking to which a Member State has granted a special right, but not an exclusive right: the right to require bacon pigs produced in Northern Ireland to be marketed through the Board does

not extend to imports and does not cover all pigs. The Treaty does not *per se* prohibit a Member State from conferring on an undertaking such special monopoly rights, subject to the provisions of Article 37 if applicable.

Moreover, the questions put to the Court of Justice concern only Article 4 (1) of the Movement of Pigs Regulations (Northern Ireland) 1972; it is therefore unnecessary to examine the Pigs Marketing Scheme as a whole.

In the absence of any provision to this effect in Regulation No 2759/75, national measures in the pigmeat sector are not to be regarded as incompatible with the common organization of the market unless, after a detailed analysis of the facts, they are found to be inconsistent with the nature or objectives of Community legislation for the sector or, in any case, constitute an obstacle to its proper working. This is not the case with the Pigs Marketing Scheme.

As far as trade within the Community is concerned, the most important feature of the common organization set up by Regulation No 2759/75 is the provision of a Community intervention system; in the absence of a national intervention system for pigmeat in the United Kingdom, there can be no incompatibility with the Community intervention system. Furthermore, both the level of output and the prices received for pigmeat in Northern Ireland are ultimately determined by market forces. The operation of the Special Account does not have any effect whatever on the process of price formation within the Community and does not affect the Community intervention system. The Pig Contract Scheme is only an unexceptionable endeavour to encourage producers to make proper forecasts and to market regularly and efficiently. Once it is accepted that the Board operates in an open market environment, receiving and paying market prices, and that output is determined by individual producer

decisions, the working of the Marketing Scheme cannot affect the common organization in pigmeat for trade within the Community. Moreover it has never been suggested that the Scheme has any effect as far as the trading system with non-Member countries is concerned.

In these circumstances the only other question which might arise is whether it is incompatible with the common organization in pigmeat that in a small, remote and disadvantaged part of the Community there should be a statutory body through which the local producers are required to market their pigs.

With regard to the case-law of the Court of Justice, it should be pointed out that, as the Board does not have the exclusive right to market bacon pigs in Northern Ireland, it cannot exclude imports from other Member States, that there is no national organization of the market in the full sense of that expression as the Scheme operates only in one region of the United Kingdom and affects only a small part of the United Kingdom pig industry, that the Scheme does not consist of "a totality of legal devices", that it does not involve any quantitative restriction on production, any national intervention system or sales levy, any internal taxation system, any minimum price system, any quota system, any State intervention on the market or any measures restricting production. The Board's special marketing right does not give rise to a national organization of the market but merely to a regional measure. There is therefore no incompatibility between the Scheme and the Community organization in pigmeat.

It should also be borne in mind that it is Community policy to encourage the formation of producer groups and associations, that producer groupings of various kinds are very widespread in the pigmeat sector and that the only difference between the Board and other co-operatives in the pigmeat sector is that most of the latter are organized

under the binding forms of private law whilst the Board is constituted under public law with full democratic safeguards, whilst still being run for producers by producers. In the absence of any Community legislation concerning the form of agricultural associations in the pigmeat sector it would be wrong for the Court of Justice to rule out *a priori* the particular producer group concept represented by the Board especially in the unique economic, social and political circumstances of Northern Ireland.

As regards the free movement of goods and Articles 34 and 37 of the Treaty, it must be borne in mind that the Movement of Pigs Regulations became necessary because terrorism in Northern Ireland made other measures for supporting the Scheme impracticable.

Moreover neither the Board's special rights to acquire certain pigs nor the movement regulations which support those rights are to be regarded as falling within Article 34. The Treaty contemplates that Member States may grant certain undertakings "special or exclusive rights"; analogously they are permitted to create monopolies subject to the provisions of Article 37. The grant of a special right in the nature of a monopoly over certain home-produced goods cannot, in itself, be regarded as a quantitative restriction on exports which is prohibited by Article 34; it is merely a "special right" within the meaning of Article 90 (1). The concept of quantitative restrictions and measures having equivalent effect, even if broadly interpreted, does not extend to local monopolies over home-produced goods granted by a Member State.

In any event it must be admitted that the Movement of Pigs Regulations comprise part of a State monopoly of a commercial character within the meaning of Article 37 of the Treaty and that by virtue of Article 44 of the Act of Accession they were not invalid in their present form at the time of the offence

which is at issue in the main action. Where the national measure in question is linked to a State monopoly it is to be judged under Article 37 and not under Articles 30 to 34. The Movement Regulations, under Article 44 of the Act of Accession, did not require to be adjusted until 31 December 1977; hence Article 37 could not give rise to any individual rights capable of being enforced in the courts of the new Member States before 1 January 1978.

As regards the third question arising in the main action it is clear that the rules on competition, referred to in Articles 85 and 86 of the Treaty, have no application to the Movement Regulations.

The answers to the questions submitted by the Resident Magistrate, County Armagh, should therefore be as follows:

- (a) A national measure in the pigmeat sector by which a Member State grants an undertaking a special right, within a region, to require certain pigs to be marketed through the undertaking, is not as such incompatible with Regulation No 2759/75 or, as such, incompatible with Article 34 of the Treaty.
- (b) A national measure in the pigmeat sector which forms an integral part of a State monopoly of a commercial character in a new Member State is not capable of infringing the Treaty so as to give rise to individual rights which national courts must protect until after 1 January 1978.
- (c) Articles 85 and 86 of the Treaty have no application to the provisions referred to by the national court.

Raymond Redmond, the defendant in the main action, emphasizes that the Movement of Pigs Regulations 1972 came into force in Northern Ireland on 1 May 1972 subsequent to the signing of the Treaty of Accession and that as from that date neither the Government of the United Kingdom nor a subordinate Par-

liament such as the Parliament of Northern Ireland was entitled to pass or approve measures which might jeopardize the realization of the objectives of the EEC Treaty or interfere with a common organization of the market.

Regulation 4 of the regulations, which prohibits the movement of pigs in Northern Ireland, directly affects the Treaty since its primary object is to prohibit the export of pigs from Northern Ireland to the Republic of Ireland.

Article 4 (3) of Regulation (EEC) No 2759/75 provides for intervention agencies and it follows that the Pigs Marketing Board in Northern Ireland cannot at the same time take intervention measures. The Board, even though it acts only within a part of the territory of the United Kingdom, is a national organization of the market: Northern Ireland is a self-contained area of the United Kingdom separated from the mainland and separately governed. This national organization has been retained in spite of the setting up of a common organization of the market. The legislation applicable in Northern Ireland compels producers to become registered with the Board before they can sell pigs and compels them to enter into contracts with the Board and sell pigs solely to the Board at prices and in numbers fixed by the Board. It is therefore a supplementary measure prohibited, by implication, by the regulations on the common organization of the market in pigmeat.

The legislation applicable in Northern Ireland is also contrary to other provisions of Regulation No 2759/75: Article 10, which deals with prices of live pigs, Article 11, which indicates an intention to have central and not national control, Article 17 (1) which indicates that the rates therein referred to are intended to become part of the Common Customs Tariff, Article 17 (2) which forbids the application of any

quantitative restriction or measure having equivalent effect, Article 18, according to which only the Council can take measures to stop the export of pigs to non-Member countries.

Pig producers in Northern Ireland cannot deal freely with pigs to buy and sell them and export them but must sell them through the Board; in imposing such a system the Northern Ireland legislation constitutes a measure or measures having an effect equivalent to a quantitative restriction on exports and is contrary to Community law.

The Pigs Marketing Board is not entitled to take advantage of the provisions of Article 44 of the Treaty of Accession: it does not constitute a State monopoly within the meaning of Article 37 (1) of the EEC Treaty and in any case under the provisions of Article 37 (2) a Member State must refrain from introducing any new measure which is contrary to the principles laid down in paragraph (1) or which restricts the scope of the articles dealing with the abolition of customs duties and quantitative restrictions between Member States; the latter provision prohibited the introduction in 1972 of legislation such as the Movement of Pigs Regulations.

The Board is in fact subject to the more specific provisions of Title II of the Treaty, in particular those of Article 89 dealing with the common agricultural policy.

In any event, even if the Board were a State monopoly, the United Kingdom was in breach of Article 37 of the Treaty inasmuch as it did not progressively adjust that monopoly but on the contrary fortified it by passing the Movement of Pigs Regulation after the date of signing of the Treaty of Accession.

The Pigs Marketing Board is subject to Article 60 of the Act of Accession: according to paragraph (1) of that provision, the system applicable in the Community in its original composition, in particular as relates to quantitative

restrictions and measures having equivalent effect, applied in the new Member States from 1 February 1973; since that date the common organization of the market in pigmeat has applied to Northern Ireland and the Pigs Marketing Board is incompatible with that organization.

The exercise by the Pigs Marketing Board of its powers with regard to the marketing of pigs constitutes a concerted practice within the meaning of Article 85 of the EEC Treaty.

The Pigs Marketing Scheme imposes unfair purchasing or selling prices inasmuch as they are fixed by a Board in a dominant position within a substantial portion of the Common Market: Northern Ireland, a self-governing and geographically separate part of the United Kingdom, is a substantial part of the United Kingdom. The Scheme therefore conflicts with Article 86 of the EEC Treaty.

The defendant in the main action submits that by enforcing the Pigs Marketing Scheme in Northern Ireland the United Kingdom has also enacted or maintained in force measures contrary to Article 90 of the EEC Treaty.

The *Government of the United Kingdom* points out that the Pigs Marketing Board (Northern Ireland) is one of ten agricultural marketing boards in the United Kingdom; these boards, which vary considerably in their powers, functions and activities, play a very important part in the economy of the country. When the United Kingdom acceded to the Community it became clear that adjustments would have to be made in the rules of some at least of these boards in order to bring them into line with the requirements of Community law; the five milk marketing boards have already been the subject to such an adjustment. Discussions with the Commission have taken place with regard to the Pigs Marketing Board, although there is little doubt that the rules regarding the

movement of pigs is one of the matters which may have to be adjusted.

As regards the questions submitted to the Court, it must be noted that the problem which arises in the main action is a comparatively narrow one and that many of the issues raised by the Resident Magistrate do not actually arise from the facts of the case. In fact the only issue is the compatibility with Community law of the Movement of Pigs Regulations (Northern Ireland) 1972, in particular Regulation 4. The answer depends on whether or not the Board is to be regarded as a State monopoly within the meaning of Article 37 of the Treaty. If the Board is not a State monopoly Regulation 4 is a measure having an effect equivalent to a quantitative restriction on exports within the meaning of Article 34 of the Treaty and was accordingly invalid under Article 42 of the Act of Accession at the time of the offence at issue in the main action; if it is a State monopoly the decisive provision is Article 37 of the Treaty and, by virtue of Article 44 of the Act of Accession, the United Kingdom would not have been required to bring the restriction to an end before 31 December 1977.

The questions raised by the Resident Magistrate in his judgment of 19 September 1977 are not questions of interpretation at all but questions of application.

With regard to the questions contained in the letter of 10 March 1978, they are raised only "incidentally" so that they are not validly referred to the Court. No decision on them is therefore necessary in order to enable the national court to give judgment.

More particularly, amongst the provisions referred to in the first question, only Articles 34 and 37 (1) of the Treaty are relevant to the main action. Article 34 is clearly directly applicable, whilst Article 37 (1) has been directly applicable only since the end of 1977.

With regard to the second question it is irrelevant although the direct applicability of the regulations cannot be doubted.

The third question is a question of application not of interpretation and goes far beyond the necessities of the main action.

Subparagraph (a) of the fourth question is a question of interpretation but does not arise from the facts of the case. Subparagraphs (b), (c) and (d) are questions of application which the Court cannot answer in proceedings under Article 177.

The fifth and sixth questions are not matters of interpretation and are not relevant to the proceedings in the main action.

The seventh and last question relates to the interpretation of the Act of Accession; the answer is clearly in the affirmative.

The questions put to the Court raise issues of very great complexity and importance to the United Kingdom and the Community as a whole. The Court should therefore confine itself to supplying the national court with the matter for the interpretation of Article 37 in relation to the Movement of Pigs Regulations.

The *Commission of the European Communities* doubts whether a decision to all the questions put is necessary to enable the national court to give judgment; moreover some of the questions are concerned with the compatibility of national provisions with Community law. In accordance with the purposes of Article 177 the Court should therefore give a ruling on the interpretation, with regard to the measures restricting in Northern Ireland the sale and movement of pigs:

- (a) of the provisions of the EEC Treaty regarding agriculture and, in particular, of Regulation No 2759/75;

- (b) of the provisions of the EEC Treaty regarding the elimination of quantitative restrictions between Member States; and
- (c) of the rules in the EEC Treaty on competition.

As regards the structure and activities of the Pigs Marketing Board it should be noted in particular that the State has delegated to it compulsory powers requiring all producers of the regulated products, in this case bacon pigs, to register with the Board and to market their produce only through or as instructed by the Board. The legal definition of "bacon pigs" results in an obligation for producers to market virtually all pigs destined for slaughter through the Board. As well as being the monopoly purchaser of bacon pigs from producers, the Board has considerable processing interests and in fact controls almost half of the bacon factories in Northern Ireland. The income of the Board is derived from the amounts deducted from the sale price of pigs marketed. The Board operates a "special account" to which surpluses may be credited and out of which payments may be made to producers to stabilize prices when they fall below a given level. Producer prices are based on market returns. The Board fixes prices payable to producers on the basis of estimates of its annual net income from sales of pigs. The prices are differentiated in accordance with various quality criteria; bonuses are paid for pigs marketed during a specified period. The Board gives a delivery bonus designed to stabilize the level of marketings and reward committed producers who deliver pigs with reasonable regularity of numbers. The difference between contract and non-contract prices is to be noted as is the Board's right to limit the producer's contract number. Sales by the Board to curers are governed by a quota scheme designed to ensure a fair division amongst the curers; these quotas are

fixed by the Ministry. Prices are fixed by agreement between the Board and the Ulster Curer's Association. The Ministry of Agriculture is involved in the Board's activities in various ways: it appoints three of the 11 members of the Board; the various committees include at least one of the members appointed by the Minister and a quorum of the Board must include at least one of the members appointed by him; the minutes of the meetings are sent to the Minister; the appointment and terms of employment of senior officers of the Board are subject to the approval of the Minister; remuneration of Board members is fixed by the Minister; investments made by the Board above a certain amount are subject to ministerial approval and managed by a company two of whose directors are appointed by the Minister; contributions paid by producers to the Board for the operation of the scheme are subject to the approval of the Ministry; Ministry officials may be used to control the operation of the scheme.

The common organization of the market for pigmeat for its part involves essentially a price system for the internal market and, for trade between the Community and non-Member countries, a system of protection and regulation based on levies and refunds.

The Community encourages the formation of producer groups and associations where this is felt necessary in order to strengthen the position on the market of producers in certain products or in certain regions of the Community. In this respect it should be noted that the Community concept of a producer group excludes governmental participation in its management or legislative enforcement of its rules; producers have the right to withdraw from the group.

With regard to the provisions of Community law the marketing system for pigs in Northern Ireland, essentially managed by the Board, by virtue of powers defined by law and supplemented

by penal provisions, must be considered as a national organization of the market which is in principle incompatible with the common organization of the market in pigmeat.

According to the definition of a national organization of the market given by the Court, such a system is constituted by "a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority"; according to the Court, an organization operating in only part of a Member State can nevertheless constitute a national organization of the market. It was therefore for the Community authority alone to decide upon the provisional maintenance of any national system of organization, intervention or supervision; for pigmeat the Community has in no way decided to maintain, even provisionally, the existing system in Northern Ireland.

The Court has also ruled that, "once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it".

The common organization of the market in pigmeat, like the other common organizations, is based upon the concept of a market, open in all respects, to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization. The Pigs Marketing Scheme, in conjunction with the Movement of Pigs Regulations, denies independent access to any internal or external outlet for the producer; he may not export directly, nor apparently may he even sell into intervention in the event of the Community authorities' deciding upon buying in by intervention agencies. As regards prices, market prices in the Community may be rendered

meaningless for the producer whose prices are determined by the Board on the basis of its estimates of its annual net income from sale of pigs. Price fluctuations to the producer are ironed out by the operation of the "special account"; the operation of the "two-tier price" system is capable of being used to limit production if it is considered excessive. Whatever the point of view from which they are considered, these mechanisms are to be regarded as a supplementary system of control and price support which derogates from the common organization and which, far from springing from a purely voluntary association of producers, originates in and is enforced by measures adopted by the national authorities.

Even if it were possible to recognize the Board as a trade organization within the meaning of Article 2 of Regulation No 2759/75, the system which it applies is nevertheless purely national and does not result from Community provisions or encouragement.

The system of restricting sales of pigs by producers moreover amounts to a measure having an effect equivalent to a quantitative restriction on exports, prohibited between Member States by Article 34 of the EEC Treaty. Although the Board is free to seek export markets and does in fact export, the producer himself cannot export except through the agency of the Board. This obligation not to sell otherwise than through the Board amounts to a formal prohibition on direct exports by producers.

Governmental influence on the Board, coupled with the Board's extensive interests in curing and processing, mean that the Board will tend to act in such a way as to protect employment in the processing industry in Northern Ireland by restricting exports of live animals at a time when its registered producers might receive better prices from such exports.

Under Article 42 of the Act of Accession measures having an effect equivalent to

quantitative restrictions were to be abolished by 1 January 1975 at the latest.

In view of the particular problem which has to be solved by the national court and of the incompatibility of the measures in question with the common organization of the market in pigmeat and with Article 34 of the Treaty there is no need to reply to the other questions.

In these circumstances the following answer should be given to the questions submitted by the Resident Magistrate, County Armagh:

Both Article 34 of the EEC Treaty and Regulation No 2759/75 imply the abolition of an obligation imposed on producers of pigs to sell only to or through the agency of a national marketing board and consequently all provisions of national legislation enforcing such an obligation are inapplicable.

III — Oral procedure

At the hearing on 4 October 1978 the Pigs Marketing Board (Northern Ireland), the complainant in the main action, represented by Christopher Bellamy of the English Bar and of the Bar of Northern Ireland, Raymond Redmond, the defendant in the main action, represented by R. C. Hill, Q. C., of the Irish Bar and of the Bar of Northern Ireland, the Government of the United Kingdom, represented by Peter Denys Scott, and the Commission of the European Communities, represented by its Legal Adviser, Richard Wainwright, presented oral argument and their answers to questions put by the Court.

The Advocate General delivered his opinion at the hearing on 7 November 1978.

Decision

- 1 By a judgment of 19 September 1977 enclosed with a covering letter of 10 March 1978 and received at the Court on 16 March the Resident Magistrate, Armagh, referred to the Court in pursuance of Article 177 of the Treaty a number of questions concerning the interpretation of Regulation No 2759/75 of the Council of 29 October 1975 on the common organization of the market in pigmeat (Official Journal No L 282, p. 1) and a number of provisions of the Treaty relating to the abolition of quantitative restrictions (Article 30 et seq.) to the common agricultural policy (in particular Article 40), to the provisions relating to State monopolies and undertakings having special or exclusive rights (Articles 37 and 90) as well as to the rules of competition (Articles 85 and 86) and to Regulation No 26 of the Council of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (Official Journal, English Special Edition 1959-1962, p. 129).
- 2 These questions were raised in the context of the prosecution of a pig producer for offences against local legislation in force in Northern Ireland

relating to the marketing of pigmeat, setting up the Pigs Marketing Scheme, administered by the Pigs Marketing Board (hereinafter referred to as "the Board") created by the same legislation, which is composed partly of producers and partly of representatives of the Department of Agriculture and supervised by the Department.

- 3 It appears from the information contained in the judgment referring the matter to the Court of Justice that this scheme applies to fat pigs, known as "bacon pigs", defined by the relevant legislation as being pigs weighing over 77 kg live weight.
- 4 Such pigs may be sold by producers only to or through the agency of the Board.
- 5 The Board has the sole right to market bacon pigs and the power to determine prices payable to producers and all other conditions of sale.
- 6 For this purpose the relevant legislation forbids the sale of such pigs — subject to certain exceptions — by persons other than producers registered with the Board and prohibits all sales by such producers otherwise than to or through the agency of the Board.
- 7 These provisions were supplemented by the Movement of Pigs Regulations 1972, which forbid the transportation of bacon pigs unless to a purchasing centre of the Board and covered by a transport authorization issued by the Board.
- 8 Offences against the provisions referred to above are punishable by a fine and/or imprisonment and/or the forfeiture of the pigs in question.
- 9 It appears from the judgment referring the matter to the Court that the defendant in the main proceedings, who on 12 January 1977 transported 75 bacon pigs without being covered by an authorization from the Board, is being prosecuted following a complaint by the Board to the Resident Magistrate, Armagh, for a breach of Regulation 4 (1) of the Movement of Pigs Regulations (Northern Ireland) 1972 and of Section 17 (4 A) of the Agricultural Marketing Act (Northern Ireland) 1964, as subsequently amended.

- 10 At the same time the Board claimed the forfeiture of the goods but subsequently withdrew the claim as the defendant had for his part agreed to plead guilty.
- 11 The defendant argued in his defence before the Resident Magistrate that the provisions of the Pigs Marketing Scheme and the Movement of Pigs Regulations under which he was charged were incompatible with the provisions of Community law, in particular with the regulations on the common organization of the market in pigmeat and the provisions of the Treaty with regard to competition.
- 12 The Board claimed that the Pigs Marketing Scheme was compatible with the Common Market and referred to Article 37 of the EEC Treaty dealing with State monopolies of a commercial character and to Article 44 of the Act of Accession which prescribes a period expiring on 31 December 1977 for the adjustment of such monopolies to the requirements of the Common Market.
- 13 In view of this conflict of arguments the Resident Magistrate took the view that as the complaint was brought before him on the basis of criminal legislation the application of which might involve for the defendant a fine or imprisonment or both it was important to know whether or not such a conviction would be compatible with Community law.
- 14 With a view to clarifying this question the Resident Magistrate, in a judgment of 19 September 1977, decided to refer the matter to the Court of Justice in pursuance of Article 177 of the EEC Treaty for a ruling as to whether the conviction of the defendant in accordance with the legislation applicable in Northern Ireland would be compatible with Community law.
- 15 In the body of the judgment the Resident Magistrate set out the following questions:

“Is the Pigs Marketing Board (Northern Ireland) ‘an undertaking’? It is 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 e.g. 'A producer who is neither a registered producer nor a person exempt from registration shall not sell any pigs.' But even if the Board falls within the meaning and intention of Article 2 of Regulation No 26, no evidence has been produced, nor has research on my part been able to throw up any decision of the Common Market Commission relating to the exemption of the Board from the operation of Article 85 of the Treaty of Rome.
- (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?

- 16 The Board appealed by way of case stated against this judgment to the Northern Ireland Court of Appeal, Belfast, asking whether the Magistrate's Court was legally entitled to refer the matter to the Court of Justice of the European Communities and whether a question regarding the interpretation of the Treaty had in fact arisen in the proceedings before the Magistrate's Court; if the answer was in the affirmative, whether a decision on that point was necessary to enable the Magistrate to give judgment; and finally whether the Magistrate's Court had properly exercised its discretion to refer the matter to the Court of Justice.
- 17 The Court of Appeal, after setting out the grounds which led the Resident Magistrate to make use of the procedure for a preliminary ruling under Article 177, and taking the view that it was within the Magistrate's discretion to clarify the legal questions relating to the exercise of his own jurisdiction, refused, by judgment of 8 March 1978, to entertain the Board's case stated.
- 18 On 10 March 1978 the Resident Magistrate sent his judgment of 19 September 1977 to the Court of Justice under cover of a letter in which it was stated that "a point has arisen . . . as to whether the domestic court has jurisdiction to proceed under certain Northern Ireland legislation" and that the facts of the case and the questions arising in the judgment of 19 September 1977 "also, incidentally, raise the following questions:
1. Are Articles 30, 31, 32, 34, 37, 40, 41, 42, 43, 85, 86 and 90 of the Treaty establishing the European Economic Community directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom?
 2. Are 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 directly applicable so as to confer on individuals rights enforceable by them in the courts of the United Kingdom?
 3. Is the Pigs Marketing Scheme in Northern Ireland, upon the proper interpretation of the articles and regulations alone, or any relevant Community law, in contravention of the rules of Community law?
 4. Under the above articles, regulation or any relevant Community law can a Member State be authorized:
 - (a) to continue a national organization of the market at a time when the common organization of the market is in force?

- (b) to compel producers within its jurisdiction to become registered producers with the Pigs Marketing Board (Northern Ireland) before they can sell pigs?
 - (c) 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?
 - (d) to permit the Board by way of an express or implied intervention measure to buy every pig regulated by the Scheme?
5. 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 effect equivalent to a quantitative restriction 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?
6. 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?
7. Was the United Kingdom Government entitled to introduce the Movement of Pigs Regulations (Northern Ireland) 1972 in the month of May 1972?"
- 19 The United Kingdom Government has put forward, both in its written observations and in its oral statements before the Court, a number of considerations regarding the questions raised by the Resident Magistrate.
- 20 It claims that, on the one hand, the questions included in the judgment of 19 September 1977 are for the most part not just questions of interpretation but questions relating to the application of Community law and that as such they cannot be decided by the Court of Justice.
- 21 On the other hand, the questions formulated in the covering letter of 10 March 1978, which are described by the Magistrate himself as having arisen only "incidentally", cannot be considered as having been validly conferred to the Court.

- 22 In the face of the large number of questions raised and having regard to the complexity and the importance of the case the United Kingdom Government states that it has difficulty in identifying the legal problems arising in the context of the proceedings pending before the Resident Magistrate.
- 23 For this reason the Government has asked the Court, in order to permit it to work out its position for the oral hearing, to indicate before hand the questions which it regards as relevant.
- 24 At this stage, only an examination of Articles 34 and 37 of the Treaty, relating respectively to quantitative restrictions on export and the system of State monopolies, appears to the Government to be necessary for the solution of the problems raised before the national court.
- 25 As regards the division of jurisdiction between national courts and the Court of Justice under Article 177 of the Treaty the national court, which is alone in having a direct knowledge of the facts of the case and of the arguments put forward by the parties, and which will have to give judgment in the case, is in the best position to appreciate, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.
- 26 However, in the event of questions' having been improperly formulated or going beyond the scope of the powers conferred on the Court of Justice by Article 177, the Court is free to extract from all the factors provided by the national court and in particular from the statement of grounds contained in the reference, the elements of Community law requiring an interpretation — or, as the case may be, an assessment of validity — having regard to the subject-matter of the dispute.
- 27 In this respect it may be noted that the Resident Magistrate has brought out clearly in his judgment of 19 September 1977 the doubts which he felt as to the classification of the scheme in question, having regard to the provisions of Community law, and he has shown that the solution of this preliminary question must depend upon the choice to be made between the various provisions which have been relied upon by the parties.
- 28 The questions contained in the letter of 10 March 1978 were clearly inspired by the Board's contention before the Court of Appeal, Belfast, that the

Resident Magistrate has not properly exercised his discretion with regard to the legal questions raised and the necessity of referring them to the Court of Justice.

- 29 In any event a comparison with the judgment of 19 September 1977 shows that the purpose of the supplementary questions is merely to explain and render more precise the questions previously submitted.
- 30 It is thus appropriate to read the two series of questions together so as to extract the problems of interpretation raised in the context of the prosecution before the Resident Magistrate.
- 31 As regards the difficulty mentioned by the United Kingdom Government of identifying within the broad complex of questions raised by the Resident Magistrate those which are to be considered as decisive, it has not seemed possible to the Court to give a prior indication at the request of one of the parties to these proceedings without incurring the risk of seeming to commit itself to a definite position in advance of a final judgment and, what is more, without compromising the other parties' opportunities to put their case.

The classification of the Pigs Marketing Scheme under the provisions, of the Treaty and secondary legislation

- 32 As a preliminary the Resident Magistrate wishes to obtain all necessary factors which may enable him to interpret Community law and to classify the Pigs Marketing Scheme under the provisions of the Treaty and secondary legislation with a view to identifying those provisions which will enable him to deliver a judgment as regards the compatibility of the Scheme with Community law.
- 33 Three possibilities are envisaged in this respect, first that the Pigs Marketing Scheme and its administering body, the Board, are to be considered as a "State monopoly of a commercial character" within the meaning of Article 37 of the Treaty — so that its activities would be exempted, at least until 31 December 1977, by virtue of Article 44 of the Act of Accession from the application of the provisions of the Treaty with regard to quantitative restrictions — or secondly as an "undertaking" with the consequence that the provisions of the Treaty with regard to competition are applicable subject, however, to any special privileges which might arise from Article 90, or, finally, that it is a "national market organization", which would raise the

problem of the compatibility of such an organization with the common organization of the market existing in the sector in question.

- 34 An answer to this question of classification must be deduced from the general structure of the EEC Treaty and from the function in that structure of the provisions relating to agriculture.
- 35 On this point it must be stated first that the Pigs Marketing Scheme concerns a sector of economic activity, namely the production and marketing of a specific category of pigs, coming under a common organization of the market governed at the time of the accession of the United Kingdom by Regulation No 121/67 of 13 June 1967 (Official Journal, English Special Edition 1967, p. 46) and at the material time by Regulation No 2759/75 of 29 October 1975, which is still in force at present.
- 36 It is common ground that this common organization of the market was applicable on the whole of the territory of the United Kingdom, by virtue of the general provisions of the Act of Accession and of the specific rule contained in Article 60 (1) of the Act, as from 1 February 1973.
- 37 It follows from Article 38 (2) of the EEC Treaty that the provisions of the Treaty relating to the common agricultural policy have precedence, in case of any discrepancy, over the other rules relating to the establishment of the Common Market.
- 38 The specific provisions creating a common organization of the market therefore have precedence in the sector in question over the system laid down in Article 37 in favour of State monopolies of a commercial character.
- 39 Consequently the special time-limit laid down by Article 44 of the Act of Accession cannot be relied on so as to cover national rules and the action of a national body such as the Board, relating to a sector for which a common organization of the market exists.
- 40 It is therefore irrelevant whether the Pigs Marketing Scheme and the Board have the character of a "State monopoly" within the meaning of Article 37, as the application of that provision was in any case excluded as from 1 February 1973 by the effect of the extension to the United Kingdom of the common organization of the market in pigmeat.

- 41 In its observations submitted to the Court the Board maintained that it considers itself, having regard both to the nature of its activities and to the powers conferred upon it by Northern Ireland legislation, as being an undertaking which has "special or exclusive rights" within the meaning of Article 90 of the Treaty.
- 42 It claims that the provisions, read in conjunction with Article 37 relating to State monopolies, has the effect of exempting its activities from the application of the general rules relating to the common organization of the market in pigmeat.
- 43 In this respect it must be pointed out, in addition to what has been stated above on the subject of Article 37, that Article 90 (1) provides expressly that the Member States, as regards the undertakings in question, "shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty".
- 44 The classification of the Board as an undertaking having special or exclusive rights within the meaning of Article 90 would not therefore have the effect of exempting its activities from the provisions of Community law or in particular from those relating to the free movement of goods and the common organization of the agricultural market.
- 45 Finally the question has been raised whether the activities of the Board may be recognized as a special scheme inasmuch as the Pigs Marketing Scheme constitutes a "national market organization".
- 46 In the proceedings before the Resident Magistrate, this concept seems to have been drawn particularly from Article 2 of Regulation No 26 applying certain rules of competition to production of and trade in agricultural products.
- 47 As the Court had occasion to emphasize in its judgment of 10 December 1974 in Case 48/74, *Charmasson* ([1974] ECR 1383), national market organizations were only accepted provisionally and the intention is to replace them, in accordance with Article 43 (3), by the institution of common organizations of the market.

- 48 Except for the products in respect of which there is a reservation under Article 60 (2) of the Act of Accession, this replacement took effect for the United Kingdom by virtue of the same act on 1 February 1973, as has been indicated above.
- 49 As regards the reference to national market organizations in Regulation No 26, it should be pointed out that the provisions of that regulation, which is dated 4 April 1962, take account of the conditions prevailing during the transitional period and that in the fifth recital in the preamble to that regulation the position as regards the subsequent development of a common agricultural policy is fully safeguarded.
- 50 Accordingly the question whether the Pigs Marketing Scheme (Northern Ireland) might be classified as a "national market organization" is equally irrelevant.

The position of the Pigs Marketing Scheme *vis-à-vis* the common organization of the market in pigmeat

- 51 It follows from the foregoing that the decisive questions for the solution of the case before the Resident Magistrate concern the compatibility with the provisions relating to the free movement of goods and the common organization of the market in pigmeat of a market system laid down by the legislation of a Member State and managed by a body which has power, thanks to the compulsory powers vested in it, to control the sector of the market in question by measures such as subjecting the marketing of the goods to a requirement that the producer shall be registered with the body in question, the prohibition of any sale otherwise than to that body or through its agency, on the conditions determined by it, and the prohibition of any unauthorized transport of the goods in question.
- 52 With a view to answering these questions it is necessary to clarify first the relationship existing on the one hand between the regulations mentioned by the Resident Magistrate, namely Regulations Nos 121/67 and 2759/75 and, on the other hand, the provisions of the Treaty relating to the abolition of quantitative restrictions and more particularly Articles 30 and 34 of the Treaty.
- 53 Regulation No 121/67, which was applicable at the time of the accession of the United Kingdom, contains in Article 19 express provisions relating to the abolition of customs duties and quantitative restrictions.

- 54 The fact that these provisions were not re-adopted in Regulation No 2759/75, the purpose of which was to consolidate the whole of the existing provisions on this subject, is due, as has been explained by the Commission, to the fact that it is current practice not to insert in the consolidated text of agricultural regulations any provisions which merely re-enact the provisions of the Treaty itself.
- 55 It follows that, having regard to the structure of Regulation No 2759/75, which is now in force, the provisions of the Treaty relating to the abolition of tariff and commercial barriers to intra-Community trade and in particular Articles 30 and 34 on the abolition of quantitative restrictions and of all measures having equivalent effect on imports and exports are to be regarded as an integral part of the common organization of the market.
- 56 As the Court has stated in its judgment of 18 May 1977 in Case 111/75 *Officier van Justitie v Van den Hazel* ([1977] ECR at p. 909) once the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.
- 57 With a view to applying that statement in the case of the Pigs Marketing Scheme it should be borne in mind that the common organization of the market in pigmeat, like the other common organizations, is based on the concept of an open market to which every producer has free access and the functioning of which is regulated solely by the instruments provided for by that organization.
- 58 Hence any provisions or national practices which might alter the pattern of imports or exports or influence the formation of market prices by preventing producers from buying and selling freely within the State in which they are established, or in any other Member State, in conditions laid down by Community rules and from taking advantage directly of intervention measures or any other measures for regulating the market laid down by the common organization are incompatible with the principles of such organization of the market.
- 59 Any action of this type, which is brought to bear upon the market by a body set up by a Member State and which does not come within the arrangements made by Community rules cannot be justified by the pursuit of special

objectives of economic policy, national or regional; the common organization of the market, as emerges from the third recital in the preamble to Regulation No 2759/75, is intended precisely to attain such objectives on the Community scale in conditions acceptable for the whole of the Community and taking account of the needs of all its regions.

- 60 Any intervention by a Member State or by its regional or subordinate authorities in the market machinery apart from such intervention as may be specifically laid down by the Community regulation runs the risk of obstructing the functioning of the common organization of the market and of creating unjustified advantages for certain groups of producers or consumers to the prejudice of the economy of other Member States or of other economic groups within the Community.
- 61 In this respect it is impossible to accept the Board's argument to the effect that its price policy is dependent upon market trends and accordingly does not perturb the formation of prices according to the regulation.
- 62 Indeed this situation by no means excludes the fact that the national provisions in dispute have the effect of placing producers in a position of complete dependence on the Board and forbidding them access to the market in the conditions laid down by the Treaty and the common organization set up by virtue of the Treaty.
- 63 In this respect account be taken of Article 2 of Regulation No 2759/75 which lays down a series of measures intended to encourage action by trade and joint trade organizations to facilitate the adjustment of supply to market requirements by reason in particular of a better organization of production, processing or marketing of the products in question.
- 64 However, that provision makes possible the institution of such measures only within the framework of a Community procedure intended to guarantee that the general interests of the Community are safeguarded and that the objectives laid down by Article 39 of the Treaty are observed.
- 65 The questions referred to the Court by the Resident Magistrate should therefore be answered to the effect that a marketing system on a national or regional scale set up by the legislation of a Member State and administered by a body which, by means of compulsory powers vested in it, is empowered

to control the sector of the market in question or a part of it by measures such as subjecting the marketing of the goods to a requirement that the producer shall be registered with the body in question, the prohibition of any sale otherwise than to that body or through its agency on the conditions determined by it, and the prohibition of all transport of the goods in question otherwise than subject to the authorization of the body in question are to be considered as incompatible with the requirements of Articles 30 and 34 of the EEC Treaty and of Regulation No 2759/75 on the common organization of the market in pigmeat.

- 66 It should further be stated in reply to the questions raised by the Resident Magistrate that all the provisions quoted are directly applicable and that as such they confer on individuals rights which the courts of Member States must protect.
- 67 This result flows on the one hand from the very nature of Articles 30 and 34 of the Treaty and on the other hand from Article 189 in the terms of which regulations are "directly applicable in all Member States".
- 68 As will be clear from the foregoing, the effects described above applied, according to the terms of the Act of Accession and in particular of Articles 2, 42 and 60 (1) thereof, to the whole of the territory of the United Kingdom as from 1 February 1973.
- 69 In this respect the fact that one of the features of the Pigs Marketing Scheme — namely the Movement of Pigs Regulations — was introduced in 1972 subsequently to the date of the signature of the Treaty of Accession does not alter this situation since the precedence of Community law over the provisions of national law applies without regard to the respective dates of the provisions in question.
- 70 The Resident Magistrate raises a further special question, with regard to the restrictions resulting as regards transport of pigs from the application of the Movement of Pigs Regulations, as to whether such restrictions might possibly be justified by reason of the control facilities which they offer with regard to large-scale smuggling which apparently takes place on the frontier between Northern Ireland and the Republic of Ireland by reason of the disparity in the rates for the "green pound" and the payment of the monetary compensatory amounts resulting therefrom.

- 71 The Board, for its part, also emphasizes the connexion existing between this aspect of the Pigs Marketing Scheme and the suppression of smuggling.
- 72 It is not possible to accept that a prohibition on transport which is incompatible both with freedom of trade between Member States and with the common organization of the market in pigmeat is justified by reason of the fact that such a restriction might incidentally facilitate frontier controls and the campaign against certain fraudulent operations.
- 73 Such abuses, if not abolished by the removal of their monetary cause, can only be dealt with by means compatible with the normal functioning of the Common Market.
- 74 Considerations affecting the repression of fraud cannot therefore be relied upon to justify the scheme which is the subject of the proceedings before the Resident Magistrate.
- 75 In view of the foregoing it does not appear necessary to reply to the questions by the Resident Magistrate regarding the interpretation of Articles 85 and 86 of the Treaty and the relationship of those provisions with Article 37.

Costs

- 76 The costs incurred by the United Kingdom Government and the Commission of the European Communities which have submitted observations to the Court are not recoverable.
- 77 As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the prosecution pending before the national court, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Resident Magistrate, Armagh, by judgment of 19 September 1977 and by letter of 10 March 1978, hereby rules:

1. A marketing system on a national or regional scale set up by the legislation of a Member State and administered by a body which, by means of compulsory powers vested in it, is empowered to control the sector of the market in question or a part of it by measures such as subjecting the marketing of the goods to a requirement that the producer shall be registered with the body in question, the prohibition of any sale otherwise than to that body or through its agency on the conditions determined by it, and the prohibition of all transport of the goods in question otherwise than subject to the authorization of the body in question are to be considered as incompatible with the requirements of Articles 30 and 34 of the EEC Treaty and of Regulation No 2759/75 on the common organization of the market in pigmeat.
2. The provisions of Articles 30 and 34 of the EEC Treaty and of Regulation No 2759/75 are directly applicable and confer on individuals rights which the courts of Member States must protect.
3. The effects described above applied, according to the terms of the Act of Accession and in particular of Articles 2, 42 and 60 (1) thereof, to the whole of the territory of the United Kingdom as from 1 February 1973.

Kutscher

Mackenzie Stuart

Donner

Pescatore

Sørensen

O'Keeffe

Bosco

Delivered in open court in Luxembourg on 29 November 1978.

A. Van Houtte

H. Kutscher

Registrar

President