The exception in paragraph (2) (c) of Article 14a cannot be extended to transport operations which, either because of the unusual size of the farm concerned or because the production of several farms is pooled, necessitate the use of markets further away than the nearest market normally serving farms in the area.

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT
delivered on 12 February 1985 *

Mr President,
Members of the Court,

1. Introduction

In the two joined cases on which I give my Opinion today, the leading parts are played by a sheep-dealing company, which also owns an abattoir and a farm (Sydney Hackett Ltd), and a pig-breeder (Perman Dovey). The question is whether or not the protagonists are required, when transporting sheep and pigs from their farms to a market 150 miles away (in Hackett's case) and 95 miles away (in Dovey's case), to use the equipment prescribed for controlling the observance of the driving and rest periods laid down in Regulation (EEC) No 543/69 of the Council (Official Journal, English Special Edition 1969 (I), p. 170), as amended by Regulation EEC No 515/72 (Official Journal, English Special Edition 1972 (I), p. 515) and No 2827/77 (Official Journal 1977, L 334, p. 1). The answer to that question depends on the interpretation of Article 14a (2) (c) of Regulation No 543/69, as since amended. Under that provision, Member States may, *inter alia*, after consulting the Commission, grant exemptions from the regulation for the 'transport of live animals from farms to local markets and vice-versa'. Regulation (EEC) No 1463/70, on the introduction of recording equipment in road transport (the tachograph), provides for a similar possibility in Article 3 (2). Such exemptions have been granted by United Kingdom legislation but those national provisions are not directly relevant to these proceedings. The national court has in fact submitted questions to the Court solely on the meaning of Article 14a (2) (c) of Regulation No 543/69 of the Council, as amended by Council Regulation No 2827/77.

Those questions read as follows:

'Is a "local market" within the meaning of Article 14 a (2) (c) of Council Regulation (EEC) No 543/69, as amended by Council Regulation (EEC) No 2827/77:

* Translated from the Dutch.

(1) a market (regardless of type) reasonably close to the farm in question?

or

(2) a market (regardless of type) reasonably close to the farm, having regard to local geographical circumstances?

or

(3) a market reasonably close to the farm in question (and/or reasonably close having regard to local geographical circumstances), having regard to the class or breed of animal in question bought or sold thereat — and if so, at what point (if any) does such a market cease to be "local"?

or

(4) a market reasonably close to the farm in question (and/or reasonably close having regard to the local geographical circumstances), at which the class or breed of animal in question can be bought or sold on commercially advantageous terms having regard to the quantity of animals involved, and if so:

(a) how is 'advantageous', in this context, to be interpreted?

and

(b) at what point (if any) does such a market cease to be 'local"?

or

(5) a market within four hours driving distance (or the maximum hours permissible without a rest by the legislation subsisting at the time) of the farm from which the animals have come?'

It is clear from the questions themselves and from the observations on them submitted by the two protagonists, by the Commission and by the United Kingdom, which were expanded at the hearing that, in theory, many answers to the question of interpretation are conceivable. For example, in answering the question, the main emphasis may be placed on local geographical circumstances, on the language and on social and other aims of the regulations laying down driving and rest periods, or just on the commercial interests of the farmers concerned. Of course, the farmers (especially if they are buying or supplying large numbers of live animals, as in these cases) will prefer to buy or sell on a market at which demand and supply are such that, if they are buying, prices are as low as possible and, if they are selling, as high as possible. The drivers of the sheep-dealing company, Hackett, the first protagonist, therefore regularly drive northwards across half of England because it is only there, 150 miles from its farm and abbatoir, that there is a sufficiently large market supply in sheep. At cattle-markets nearby the required numbers of sheep (300 to 400) of the quality sought after cannot be obtained. On the other hand, Dovey, the second protagonist, cannot dispose of his weekly supply of about 60 pigs (some of which are his brother's and occasionally other local pig-farmers') at the nearest markets in Salisbury and Winchester; at any rate he cannot do so without causing a slump in prices at those markets. He therefore sells his pigs (and his brother's) at Banbury Market 95 miles west from his farm (which, according to him, is

about two hours' drive away). Clearly, because of their commercial interests, both Hackett and Dovey advocate a wide interpretaion of the exemption provision. The court of first instance (the Magistrates Court) adopted that commercial approach to the expression 'local market' and acquitted them. In the case of Dovey, the pig-breeder, however, the court took into account the fact that the maximum period for driving without a rest laid down in the regulation had not been exceeded. Incidentally, the prescribed recording equipment was fitted in both of their goods vehicles but it was not used. It was after appeals had been lodged at the instigation of the Department of Transport that the High Court of Justice, Queen's Bench Division, Divisional Court, submitted the questions set forth above.

2. Answering the questions

2.1. *The nature of the activities concerned*

As already made clear by the questions put to the parties by the Court, the questions of the national court must be answered with reference *inter alia* to the purpose of the aforesaid exemption provision. In the case of Hackett, the farm plays only a very minor part in its business. After the sheep have been bought a long distance away and then transported to the farm, they stay there for only a few days before being transported to Hackett's abattoir. Every week the defendant in the other case, Dovey, transports not only his own pigs but mostly those of his brother and occasionally those of third parties. To that extent he acts more like a haulier than a farmer who transports only his own farm products to the market. Moreover, the batches of pigs are produced on such a large scale that (as in Hackett's case) the transport in question can no longer be carried out exclusively to a 'local market' in the ordinary meaning of those words. I therefore consider that the question put to the parties by the Court as to whether such transport operations may be regarded as typical instances of the sort of transport covered by the exemption provision is indeed very important as far as the answer to the preliminary questions is concerned. If the Court's question ought to be answered in the affirmative, it would undoubtedly be a strong argument in support of Hackett's and Dovey's submission that the expression 'local market' must be construed widely. The exemption provision would then have to be construed so widely that a local market would have to be regarded as the nearest market at which the class of live animal in question could advantageously be bought or sold in the quantities involved without disturbing reasonable price relationships.

As far as the Court's question is concerned, all the parties in the first place agreed that the exemption provision applied without distinction to cases in which the farmer used his own means of transport and cases in which a third party did the transporting. Besides referring to the wording of the exemption provision in question, the representative of the United Kingdom also relied in this regard on the identical wording of Article 14a (3) (b) of the regulation, which, in the case of the transport of milk from the farm to the dairy, clearly covers *inter alia* transport by third parties (undoubtedly there the normal case). In the second place, in the view of the United Kingdom and Commission representatives, the scale of the operations should have no decisive influence on the interpretation of the expression 'local market'. However, at

the hearing the representative of the pig-breeder, Mr Dovey, took the opposite view. He based that view in particular on the importance of transporting live animals quickly (the health factor) and the interests of the group of persons concerned by the exception (which play a decisive part in the case of many exceptions and, as far as farmers' interests are concerned, generally exert much influence, in his opinion, on Community policies). The activity of the pig-breeder was a normal farming activity and if the exception was made in the interests of farmers the expression 'local market' must therefore, in accordance with their interests, be interpreted widely to cover the nearest market at which the number of pigs involved can be sold without disturbing the market. The representative of the pig-breeder saw a third possible argument for his view in the fact that Mr Dovey's transport operations are not contrary to the aim of the regulation, which is to prevent long driving periods without a break. With a two-hour drive to the market, a stop there for a few hours and a two-hour drive back, his client was well beneath the prescribed maximum driving time. In view of the influence which he assumes farmers have as a pressure group within the Community, he suspected, however, that ultimately the reasons for the exception lay, above all else, in the interests of the farmers concerned. Indeed, even 50, 60 or even 100 years ago, markets situated some considerable distance away were regarded as 'local markets'. That the Council did not have any distance in mind might also be inferred from the fact that, unlike in some other exemption provisions, the Council did not define any specific distance in this provision. Each case should therefore be dealt with by the local court on its own merits, having regard to what is usual or customary in the particular area. A local market must therefore be regarded as a market which the relevant court, with its local knowledge, considers to be local.

At the hearing the Commission representative developed the argument put forward by the Commission and the United Kingdom to the effect that commercial considerations should not predominate when the term 'local market' is defined. Contrary to the pleadings of Hackett and Dovey, its argument, if accepted, did not mean that they would no longer have access to the commercially most advantageous markets; it simply meant that they too would have to use the tachograph fitted in their vehicles and in general comply with the social regulations. That could not be regarded as a hardship. A local market did not in any case lose its 'market' character if prices fell on a particular market day owing to the supply of a large number of animals. Nor did the frequentation by a farmer of a particular market situated a long way off suffice to make it a 'local' market.

As far as the question put by the Court was concerned, the Commission took the view that it was clear from the history of the exemption provision that it put no limitation on the kind of person it might benefit. Persons transporting for their own account, professional hauliers and also cattle dealers, and thus not only small farmers, could rely

on the provision. However, like the United Kingdom, the Commission doubted whether the sheep-dealer could be regarded as transporting live animals to a farm, since the farm was only a short transit stop between the market and the slaughter-house. Even so, the Commission concluded from decisions of the Court (in Case 85/77 *Sant'Anna Azienda Avicola* v *INPS* [1978] ECR 527 and Case 139/77 *Denkavit* v *Finanzamt Warendort* [1978] ECR 1317) that even large undertakings such as those involved in these cases could be regarded as agricultural producers owning farms such as envisaged by the exemption provision. As regards the reasons for the adoption of the exemption provision, it was not adopted in the interests of a particular group, but because the transporting of animals to and from a true local market in the ordinary sense of the word could not lead to infringements of the rules governing driving and rest periods.

2.2. *The preliminary questions submitted by the national court*

At first sight the questions submitted to this Court by the national court, which I recited earlier, seem like a multiple-choice test in which the Court has to indicate one of the given alternatives as the correct answer. However, I think that this first impression is wrong and that a different interpretation of the questions requiring a separate answer from the Court to each of the alternatives put forward, would not reflect the national court's intention either: a more reasonable interpretation of the questions in view of the aim of Article 177 of the EEC Treaty would be that, in choosing the form of its reference, the national court wished to indicate the most important aspects of the main question which emerged during the argument so as to obtain from the Court a sufficiently clear answer for resolving the specific points which arise.

So, unlike some parties in their written and oral observations, I shall not consider in detail each of the alternatives specified by the national court. I shall not do so for the further reason that, in my view, none of the alternatives provide a really satisfactory answer.

The fifth alternative (maximum driving time without a break; picked, understandably, by Mr Dovey) was rejected, rightly in my view, by the Commission and the United Kingdom. As such, it has nothing to do with the term 'local market'. Besides, it would, in certain circumstances, lead to a race against the clock, which would not be compatible with the regulation's aim to promote safety in road transport. It is therefore understandable that the other defendant, whose operations involve much greater distances, has not suggested this alternative answer and, if anything, appears to contemplate an answer along the lines of alternative (4), provided that it is formulated so as to cover its case. I shall come back to that alternative later.

It seems clear to me, too, that alternatives (1) and (2) do not in any event contain a reasonable answer to the questions raised. A fruit, vegetable, or flower market, for example, or a market for household articles, which has no infrastructure for handling sheep, pigs or cattle in general, cannot reasonably be regarded as a relevant market.

Alternatives (3) and (4), on the other hand, clearly indicate the problems facing the national court and the Court of Justice in these cases:

(1) To what extent must local geographical circumstances be taken into account?

(2) To what extent must the class and breed of live animals (regularly) bought or sold on the market in question be taken into account?

(3) To what extent must the numbers of animals bought and sold on the market also be taken into account?

(4) In what way should the distance between farm and market act as a limit in defining the term 'local market' in these two alternatives?

As regards the first point, I take the view, like all the parties, that local geographical circumstances (*inter alia* the population density, the distribution of farms and the markets available in the surrounding area) must be taken into account.

As regards the second point, as stated before, I share the view, taken by all the parties, that a reasonable interpretation of the exemption provision necessarily means that only a market at which the classes of live animals involved are regularly bought and sold can be regarded a a local market. At the hearing the Commission amplified and also defined that criterion, correctly in my view, by suggesting that a suitable infrastructure for regular trade should also exist locally.

However, on the third point, the opinions of the parties begin to diverge. *Hackett* takes the view that a local market is 'a market or market of the day nearest to the farm or farms where the class or breed of animal of the required weight and quality can be bought or sold in the required quantity'. On the other hand, the *United Kingdom* takes the view that such an interpretation (subscribing to alternative (4)) does not give sufficient weight to the word 'local'. In its view, the market must not be too far away from the farm to be regarded as 'local'. Since regard must also be had to the geographical characteristics of the area, the ease of communications and the density and distribution of population, farms and markets, it considers that it is obviously not possible to give a very precise answer to the questions submitted. As to the relevance of the number of animals to be bought or sold, it dealt with that point at the hearing only in so far as it suggested that the extent to which large numbers of animals are taken into account will necessarily be limited by the requirement that the relevant market must be 'local' within a linguistically acceptable meaning of the word. As I have pointed out, the United Kingdom was, however, unable to formulate very precise criteria for defining 'local'. To that extent, its position did not appear so far removed from the suggestion made by Mr Dovey's representative that the formulation of such criteria should be left to the local competent tribunal.

In answer to a question which I asked at the hearing, the *Commission* made it clear with regard to the third point that the number of animals to be bought or sold should play *no* part in defining the expression 'local market'.

On the fourth point — the use of a criterion of distance — all the parties agreed that it is not possible to work with a precisely defined maximum distance. The Commission also correctly pointed out in this regard that, unlike Article 14a (1) and Article 5 (7), the exemption provision in

question contains no criterion of distance. In certain geographical circumstances it would indeed be unreasonable. The Commission in fact takes the view that the limit (a radius of 50 km) laid down in the aforesaid articles could be used as guidance in so far as all markets within that radius could automatically be treated as 'local markets'. In the other provisions which I mentioned the Community legislature has always indicated that, in the case of transport operations within that radius, there is hardly any risk of the maximum driving time being exceeded. If a market situated beyond that radius is chosen, this should be for the reason that there is no market nearby or for some other valid reason. Commercial considerations (based in particular on the number of animals to be bought or sold) or the criterion of the maximum driving time without a break should, however, be disregarded. At the hearing the Commission defined its position on this point by suggesting that, beyond the 50 km radius, only the nearest market which satisfied the aforementioned criteria of regular trade in the relevant classes of animals and of a suitable infrastructure for dealing with them might be considered a 'local market'. That view seems rather wider than the view taken by the United Kingdom, since the United Kingdom, having regard to all the circumstances which it mentions, still wishes to apply the restriction that the nearest market must not do violence to the words 'local market'.

regard in particular to the aims of the relevant regulation (social protection of drivers, road safety, preventing distortion of competition, whether or not those aims are expressly stated in the preamble), to the desired legal certainty, to the respects, mentioned by the parties, in which there are very different geographical circumstances (which prevent a completely uniform application of the provision in all the Member States), to the classes of animals to be bought or sold and to the expression 'local market' considered in terms of the linguistic meaning of those words (it may also be defined with reference to other exemption provisions). Furthermore, I agree with the Commission and the United Kingdom that neither the uninterrupted driving period nor the commercial interests of the farmers concerned (particularly in relation to the numbers of animals involved) should be a decisive element in the Court's answer: according to the explanations provided by the Commission at the hearing, another reason why commercial considerations should be left out of account is that farmers who want to transport large numbers of animals regularly, as in these cases, may be considered quite able to install and use a tachograph in their vehicle without any inconvenience. It is significant in this regard that, as I have already pointed out, the goods vehicles used in both these cases were in fact fitted with tachographs, but they were not used for the long distance transport operations in question.

3. Conclusion

From my foregoing observations I would conclude that the Court's answer must have

I take the further view that, in a proper definition of the basic expression 'local market', as suggested by the Commission, the supervisory authorities and competent courts should not be given such a wide margin of appraisal as that suggested by the Government of the United Kingdom and

still more by the pig-breeder, Mr Dovey. On the other hand, I agree with the Commission that the objection put forward by the United Kingdom that (in my view, only in very exceptional circumstances) the nearest local market will nevertheless still be a considerable distance from the farm must be accepted. Should the Court nevertheless wish to introduce a maximum limit here because for certain classes of animals (e.g. horses) or in certain Member States few markets may be available, I would suggest an absolute maximum distance of 150 km by road. Even then, the maximum permissible driving time without a break will not normally be exceeded.

In view of those considerations I suggest that the questions submitted by the national court should be answered as follows:

'A "local market" within the meaning of Article 14a (2) (c) of Regulation (EEC) No 543/69 of the Council, as amended by Council Regulation (EEC) No 2827/77, should be regarded as:

any market lying within a radius of 50 km of the relevant farm or, if within that radius there is no market at which animals of the relevant class or breed are regularly bought and sold (at least once a week) and for which a suitable infrastructure exists, the nearest market which satisfies those conditions' (to which it may be necessary to add 'provided that such a market is situated not more than 150 km by road from the relevant farm').