JUDGMENT OF THE COURT (Full Court)

30 September 2003 *

In Case C-140/02,

REFERENCE to the Court under Article 234 EC by the House of Lords (United Kingdom) for a preliminary ruling in the proceedings pending before that court between

Regina on the application of **S.P. Anastasiou (Pissouri) Ltd and Others**

and

Minister for Agriculture, Fisheries and Food,

interveners:

Cypfruvex (UK) Ltd

and

Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd,

* Language of the case: English.

on the interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 1977 L 26, p. 20), as amended, *inter alia*, by Council Directive 91/683/EEC of 19 December 1991 (OJ 1991 L 376, p. 29) and Commission Directive 92/103/EEC of 1 December 1992 (OJ 1992 L 363, p. 1), and as subsequently amended, *inter alia*, by Commission Directive 98/2/EC of 8 January 1998 (OJ 1998 L 15, p. 34),

THE COURT (Full Court),

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— S.P. Anastasiou (Pissouri) Ltd and Others, by D. Vaughan QC and M. Hoskins, barrister, instructed by P. Clough, solicitor,

— Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd, by M.J. Beloff QC and R. Millett, barrister, instructed by M. Kramer and S. Sheppard, solicitors,

— the United Kingdom Government, by K. Manji, acting as Agent, P.M. Roth QC and J. Skilbeck, barrister,

— the Greek Government, by K. Samoni-Rantou, N. Dafniou and V. Kontolaimos, acting as Agents,

— the Commission of the European Communities, by M. Niejahr and K. Fitch, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of S.P. Anastasiou (Pissouri) Ltd and Others, Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd, the United Kingdom Government, the Greek Government and the Commission, at the hearing on 8 April 2003,

after hearing the Opinion of the Advocate General at the sitting on 3 June 2003,

gives the following

Judgment

1 By order of 17 December 2001, received at the Court on 16 April 2002, the House of Lords referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 1977 L 26, p. 20), as amended, *inter alia*, by Council Directive 91/683/EEC of 19 December 1991 (OJ 1991 L 376, p. 29) and Commission Directive 92/103/EEC of 1 December 1992 (OJ 1992 L 363, p. 1) (hereinafter 'Directive 77/93'), and as subsequently amended, *inter alia*, by Commission Directive 98/2/EC of 8 January 1998 (OJ 1998 L 15, p. 34).

2 Those questions were raised in proceedings between a number of producers and exporters of citrus fruit, including S.P. Anastasiou (Pissouri) Ltd, established in the part of Cyprus to the south of the United Nations Buffer Zone (hereinafter 'Anastasiou and Others') and the Minister for Agriculture, Fisheries and Food (hereinafter 'the Minister'), concerning the importation into the United Kingdom by Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd (hereinafter together referred to as 'Cypfruvex') of citrus fruit originating in the part of Cyprus to the north of the Buffer Zone (hereinafter 'the northern part of Cyprus'), shipped to the Community after a port call in Turkey and accompanied by phytosanitary certificates issued by the Turkish authorities.

Relevant provisions

3 Directive 77/93, in the version in force at the time of the imports at issue, provides as follows in Article 12(1):

'Member States shall lay down, at least as regards the introduction into their territory of the plants, plant products and other objects listed in Annex V, Part B, and coming from non-member countries:

(a) that these plants, plant products and other objects and their packaging shall be meticulously inspected on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them shall also be inspected meticulously on an official basis in order to make sure as far as can be determined:

— that they are not contaminated by the harmful organisms listed in Annex I, Part A,

— in the case of the plants and plant products listed in Annex II, Part A, that they are not contaminated by the relevant harmful organisms listed in that part of the Annex,

— in the case of the plants, plant products and other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that part of the Annex;

(b) that they must be accompanied by the certificates prescribed in Article 7 or 8 and that a phytosanitary certificate may not be made out more than 14 days before the date on which the plants, plant products or other objects leave the consignor country. The certificates prescribed in Articles 7 or 8... shall be issued by authorities empowered for this purpose under the International Plant Protection Convention, or, in the case of non-contracting countries, on the basis of laws or regulations of the country....

...'

4 Article 12 of Directive 77/93, a provision relating to the import of products from non-member countries, thus refers to Articles 7 and 8 which, like Article 6, concern in principle plants, plant products and other objects originating within the Community.

5 By virtue of Article 7(1) of Directive 77/93, a phytosanitary certificate may be issued where it is considered, on the basis of the examination laid down in Article 6(1) and (2), that the conditions laid down in those two paragraphs are fulfilled.

6 According to Article 8(1) of Directive 77/93, Member States shall lay down that the plants, plant products and other objects listed in Annex V, Part A, which are to be introduced into their territory from another Member State must be exempted from a further inspection complying with Article 6 of that directive if they are accompanied by a phytosanitary certificate from a Member State.

7 Article 6(1) of Directive 77/93 provides:

'Member States shall lay down, at least in respect of the introduction into another Member State of the plants, plant products and other objects listed in Annex V, Part A, that the latter and their packaging shall be meticulously examined on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them shall also be officially examined in order to make sure:

(a) that they are not contaminated by the harmful organisms listed in Annex I, Part A;

(b) in the case of the plants and plant products listed in Annex II, Part A, that they are not contaminated by the relevant harmful organisms listed in that part of the Annex;

(c) in the case of the plants, plant products and other objects listed in Annex IV, Part A, that they comply with the relevant special requirements indicated in that part of the Annex.'

8 Article 6(4) of Directive 77/93 adds that the official examinations referred to, *inter alia*, in Article 6(1) are to be made regularly on the producer's premises, preferably at the place of production, and must extend to the plants or plant products grown, produced or used by the producer or otherwise present on his premises as well as to the growing medium used there.

9 Article 9(1) of Directive 77/93 states:

'In the case of plants, plant products or other objects to which special requirements laid down in Annex IV, Part A, apply, the official phytosanitary certificate required pursuant to Article 7 shall have been issued in the country in which the plant, plant products and other objects originate, save:

— in the case of wood, if...

— in other cases, to the extent that the special requirements laid down in Annex IV, Part A, can be fulfilled also at places other than that of origin.'

10 The citrus fruit at issue in the main proceedings, which originates in the northern part of Cyprus, falls within the category of 'fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, originating in third countries'. Those products are among the plants, plant products and other objects originating in third countries listed in Annex V, Part B, to Directive 77/93. As such, they must undergo a phytosanitary inspection. They are also at risk of contamination by harmful organisms listed in Annexes I and II to Directive 77/93.

11 Furthermore, they are referred to in Annex IV, Part A, Section I, to Directive 77/93. Their introduction into, and movement within, the entire territory of the Member States are therefore conditional upon compliance with the relevant special requirements within the meaning of Article 9 of that directive.

12 Those special requirements are set out in items 16.1 to 16.4 of Annex IV, Part A, Section I, to Directive 77/93, of which the version in force at the time of the imports at issue in the main proceedings was laid down by Directive 92/103 (hereinafter 'items 16.1 to 16.4').

13 Item 16.1 provides that fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids originating in third countries must be 'free from peduncles and leaves' and that the packaging must bear 'an appropriate origin mark'.

14 Items 16.2(a), 16.3(a) and 16.4(a) provide that, if those products originate in third countries where the harmful organisms covered by the items are known to occur, they must, in addition, be covered by an 'official statement... that the fruits originate in areas known to be free from [those organisms]'. If that first requirement cannot be met, items 16.2(b) and (c), 16.3(b) and (c) and 16.4(b), (c) and (d) require the products to be covered by an 'official statement' that no symptoms of those organisms have been observed at the place of production or in its immediate vicinity during a defined period or, if that condition cannot be satisfied either, that the fruits have been subjected to appropriate treatment against the relevant organisms.

15 After the time of the facts at issue in the main proceedings, Directive 98/2 amended items 16.1 to 16.3, in particular replacing item 16.3 with two items, 16.3 and 16.3a (hereinafter 'items 16.1 to 16.3a as amended'). An official statement that fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids originating in third countries are free from the harmful organisms referred to in those items is now required prior to all imports into the Community, even where the products originate in a country recognised as being free from those organisms — which is the case with Cyprus by virtue of Commission Decision 98/83/EC of 8 January 1998 recognising certain third

countries and certain areas of third countries as being free of *Xanthomonas campestris* (all strains pathogenic to Citrus), *Cercospora angolensis* Carv. and Mendes and *Guignardia citricarpa* Kiely (all strains pathogenic to Citrus) (OJ 1998 L 15, p. 41).

16 Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ 2000 L 169, p. 1) has replaced Directive 77/93, essentially consolidating it, without affecting the content of items 16.1 to 16.3 as amended.

The main proceedings and the questions submitted for a preliminary ruling

17 By judgment of 5 July 1994 in Case C-432/92 *Anastasiou and Others* [1994] ECR I-3087, the Court, ruling on questions referred to it by the High Court of Justice of England and Wales (Queen's Bench Division), held that Directive 77/93 precludes acceptance by the national authorities of a Member State, when citrus fruit is imported from the northern part of Cyprus, of phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus.

18 Following that judgment, exporters, who were shipping citrus fruit originating in the northern part of Cyprus to the United Kingdom under cover of phytosanitary certificates issued by officials of the 'Turkish Republic of Northern Cyprus' rather than by the competent authorities of the Republic of Cyprus, concluded an agreement with a company established in Turkey, which provided that citrus fruit originating in the northern part of Cyprus covered by phytosanitary certificates issued by officials of the 'Turkish Republic of Northern Cyprus' would first be shipped to Turkey. Under the agreement, the ship was to put in to a Turkish port

for less than 24 hours and then, without the cargo being unloaded or imported, continue its voyage to the United Kingdom, the cargo covered by a phytosanitary certificate issued by the Turkish authorities following its inspection on board the ship.

19 Anastasiou and Others applied for an order restraining the Minister from allowing into the United Kingdom citrus fruit imported in those circumstances.

20 Following refusal of their application at first instance, by judgment of 23 May 1995, and then on appeal, by order of 2 April 1996, Anastasiou and Others brought a further appeal before the House of Lords, which referred to the Court for a preliminary ruling several questions seeking essentially to establish whether, and if so, under what conditions, Directive 77/93 permits a Member State to accept a phytosanitary certificate drawn up by the authorities of a non-member consignor country which is not the plants' country of origin, where those plants are subject to special requirements by virtue of Annex IV, Part A, Section I, to that directive.

21 By judgment of 4 July 2000 in Case C-219/98 *Anastasiou and Others* [2000] ECR I-5241, the Court ruled that Directive 77/93 permits Member States to admit into their territory plants originating in a non-member country which are subject to the issue of a phytosanitary certificate dealing, *inter alia*, with compliance with special requirements where, in the absence of a certificate issued by the authorities empowered to issue certificates in the plants' country of origin, the plants are accompanied by a certificate issued in a non-member country from which they do not originate, provided that:

— the plants have been imported into the territory of the country where checks have taken place before being exported to the Community;

— the plants have remained in that country for such time and under such conditions as to enable the proper checks to be completed, and

— the plants are not subject to special requirements that can only be satisfied in their place of origin.

22 The Court also held in that judgment that it is not for the Member State concerned to take account of the reasons for which a phytosanitary certificate has not been issued in the country of origin of the plants in determining whether the certificate complies with the requirements of Directive 77/93.

23 When the House of Lords resumed its consideration of the case, Anastasiou and Others argued before it that the citrus fruit at issue in those proceedings was indeed subject to the special requirement, laid down in item 16.1, that its packaging must bear an appropriate origin mark which, in their submission, could be satisfied only in the country of origin, so that the Minister was not entitled to accept the phytosanitary certificate issued by the Turkish authorities. The parties then made submissions concerning the effects on the interpretation of item 16.1 of the amendment of items 16.2 and 16.3 by Directive 98/2.

24 The House of Lords took the view that the judgment in Case C-219/98 *Anastasiou and Others* did not help it to answer the question, decisive for the outcome of the main proceedings, whether the appropriate origin mark referred to in item 16.1 could be affixed at a place other than the plants' place of origin,

while observing that the Advocate General had proposed in his Opinion that the Court should hold that not to be permissible. It therefore decided to stay proceedings once more and to refer the following questions to the Court for a preliminary ruling:

'1. Whether, where citrus fruit originating in one third country has been shipped to another third country, the special requirement that the packaging shall bear an appropriate origin mark pursuant to item 16.1 of [Annex IV, Part A, Section I, to] Directive 77/93/EEC, now Directive 2000/29/EC, can only be fulfilled in the country of origin or whether it may alternatively be fulfilled in such other third country.

2. Whether the official statement required by items 16.2 to 16.4 of [Annex IV, Part A, Section I, to] Directive 2000/29/EC as to the country of origin must be made by an official in the country of origin or whether it may be made by an official in such other third country.'

Consideration of the questions referred for a preliminary ruling

25 By the questions submitted, which it is appropriate to consider together, the national court seeks to ascertain, first, whether Directive 77/93 may be interpreted as allowing a phytosanitary certificate to be issued by the authorities of a non-member country which is not the plants' country of origin when the plants are subject to the special requirement that their packaging is to bear an appropriate origin mark, in accordance with item 16.1, and second, whether the amendments made to items 16.2 and 16.3 of Directive 77/93 by Directive 98/2 affect that interpretation.

Observations submitted to the Court

26 Anastasiou and Others, the Greek Government and the Commission submit that the special requirement that the plants' packaging is to bear an appropriate origin mark, just as the special requirement prescribing an official statement as to their origin, is intended to provide a greater degree of protection than that resulting from the mere issue of a phytosanitary certificate by the authorities of the non-member country from which the plants are dispatched by making it possible to trace contamination back to its source and facilitating cooperation between the importing Member State and the non-member country of origin. Those requirements can therefore be satisfied only if the formalities which they prescribe are carried out by the official authorities of the products' country of origin, and not by authorities of another non-member country, which would rely solely on invoices or transport documents.

27 Anastasiou and Others, the Greek Government and the Commission argue that, even after Directive 98/2 amended items 16.2 and 16.3 and thereby widened the cases in which an 'official statement' is required, the special requirement prescribing an official statement as to the products' origin, laid down by items 16.2 to 16.3a as amended, does not duplicate the special requirement relating to an origin mark, laid down by item 16.1 as amended. That widening provides additional protection by ensuring that the phytosanitary certificate accompanying the plants provides a permanent record of their origin, whereas the origin mark affixed to the packaging may be lost if the packaging is damaged. Therefore, it is not possible to conclude from the amendments made by Directive 98/2, in effect by contrary inference, that the requirement laid down in item 16.1 may be satisfied at a place other than that of origin.

28 The Greek Government points out that, in any event, the Court held in paragraph 40 of the judgment in Case C-432/92 *Anastasiou and Others* that

administrative cooperation was excluded with the authorities of an entity such as that established in the northern part of Cyprus, which is recognised neither by the Community nor by the Member States. In those circumstances, phytosanitary certificates issued by the authorities of that entity cannot be accepted by the Member States.

29 Cypfruvex and the United Kingdom Government contend, on the other hand, that the special requirements referred to in the questions submitted for a preliminary ruling may be satisfied in any non-originating third country, as the Court held in Case C-219/98 *Anastasiou and Others*.

30 That is quite common in international trade, in accordance with an established practice which, moreover, conforms with Article 12(1)(b) of Directive 77/93. Under that provision, where plants have left the country of origin more than 14 days before they leave the consignor country, the phytosanitary certificate must be issued by the authorities of the consignor country.

31 In the submission of Cypfruvex and the United Kingdom Government, the words 'can be fulfilled' in Article 9(1) of Directive 77/93 should be interpreted as meaning that an inspector in a non-member country other than the country of origin must be able to carry out the required checks. There is no doubt that such an inspector is capable of verifying that a consignment bears an origin mark. The check is carried out under the same conditions as for the other special requirement referred to in item 16.1, relating to the absence of peduncles and leaves.

32 It is for the authorities of the non-member country issuing the phytosanitary certificate to determine how that check is to be carried out and to determine whether or not a mark is appropriate. While the Member States admittedly may not rely directly on the involvement of the authorities of the 'Turkish Republic of Northern Cyprus' in the phytosanitary procedure, they may, on the other hand, cooperate with the Turkish authorities which, for their part, can certify in point of fact that the special requirements have been satisfied in the northern part of Cyprus.

33 The fact that no official involvement of the inspector in the affixing of the mark is necessary is reinforced by the new requirements introduced by Directive 98/2, which has laid down that an 'official statement' as to the origin of the products must, in all cases, be provided, in addition to the requirement set out in item 16.1, whose wording was not changed. The alteration made by that new directive confirms that the two special requirements, origin mark and official statement, serve different purposes.

34 With regard to the special requirement prescribing an official statement as to the products' origin, Cypfruvex and the United Kingdom Government state that Cyprus, as a geographical and not a political entity, is a country recognised as being free from the diseases referred to in Directive 77/93 and that accordingly only items 16.2(a), 16.3(a) and 16.4(a) are to be examined for the purposes of the question referred. Those items, unlike items 16.2(b) and (c), 16.3(b) and (c) and 16.4(b) to (d), do not require the official statement to be made in the country of origin. They merely require that the country to which the official statement relates be one which is recognised as being disease-free. Such a statement may therefore be made in a non-member country other than the country of origin, and that can be done all the more easily because, since 1998, the Commission has been formally declaring certain areas to be recognised as free from diseases or harmful organisms.

35 The United Kingdom Government submits that the answer to the second question should therefore be that the official statement referred to in items 16.2 to 16.4 may be made by authorities of a non-member country other than the country of origin where the country of origin has been declared free from the pests or diseases referred to in those items by a Commission decision adopted in accordance with Article 16a of Directive 77/93.

The request that the oral procedure be reopened

36 By letter of 20 June 2003, Cypfruvex asked for the oral procedure to be reopened, stating that, if the Court were to follow the Opinion of the Advocate General, the case would be dealt with on the basis of an argument not debated between the parties. Cypfruvex submits in particular that in considering, at points 46 to 52 of her Opinion, that the most appropriate place for verification of the special requirements applicable to the citrus fruit at issue in the main proceedings was its place of production, the Advocate General failed to deal with the question whether that verification may be carried out at places other than that of origin, the sole question debated by the parties.

37 The Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, order that the oral procedure be reopened, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see Joined Cases C-270/97 and C-271/97 *Deutsche Post* [2000] ECR I-929, paragraph 30, and Case C-299/99 *Philips* [2002] ECR I-5475, paragraph 20).

38 That is not the position here. The question whether the special requirements applicable to the citrus fruit at issue in the main proceedings may be satisfied at places other than their place of origin was fully debated between the parties during both the written procedure and the oral procedure.

39 In those circumstances, the Court, after hearing the Advocate General, finds that Cypfruvex's request discloses no reason rendering it appropriate or necessary to reopen the oral procedure. The request must accordingly be rejected.

The Court's answer

40 The Court held in Case C-219/98 *Anastasiou and Others* that Directive 77/93 permits Member States to admit into their territory plants originating in a non-member country which are subject to the issue of a phytosanitary certificate dealing, *inter alia*, with compliance with special requirements where, in the absence of a certificate issued by the authorities empowered to issue certificates in the plants' country of origin, the plants are accompanied by a certificate issued in a non-member country from which they do not originate, provided, in particular, that the plants are not subject to special requirements that can only be satisfied in their place of origin.

41 In so deciding, the Court did not rule on the question whether the special requirements applicable to the citrus fruit at issue in the main proceedings, that is

to say those laid down in item 16.1, could be fulfilled at places other than the fruit's place of origin.

42 The questions referred for a preliminary ruling by the House of Lords in the present case, stated by it to require answering in order for it to dispose of the main proceedings, are therefore new for the Court and should accordingly be examined.

43 First, the questions submitted must be analysed in the light of the objectives pursued by Directive 77/93 and the importance which it attributes to the issue of phytosanitary certificates when plants subject to that formal requirement come from non-member countries.

44 It is stated in the first three recitals in the preamble to Directive 77/93 that 'plant production is very important to the Community', that 'plant production yields are consistently reduced through the effects of harmful organisms' and that 'the protection of plants against such organisms is absolutely necessary'. The 10th recital in the preamble adds that 'the presence of some of these harmful organisms, when plants or plant products are introduced from countries in which these organisms occur, cannot be effectively checked [and that] it is therefore necessary... to provide for special checks to be made in the producer countries'. The 16th to 20th recitals state that plant-health checks carried out in the Member State of destination must be gradually limited so far as concerns plants from other

Member States, whereas the introduction of plants from non-member countries will have to remain subject to plant-health checks.

45 Directive 77/93 is thus designed, in particular, to ensure a high level of phytosanitary protection against the bringing into the Community of harmful organisms in produce imported from non-member countries. The common system of protection established in this regard by Directive 77/93 is based essentially on a system of checks which are carried out by experts lawfully empowered for that purpose by the government of the exporting country and guaranteed by the issue of the appropriate phytosanitary certificate. Checks carried out by importing Member States at the border have significant limitations and, in any event, cannot take the place of phytosanitary certification (see Case C-432/92 *Anastasiou and Others*, paragraphs 61 and 62, and Case C-219/98 *Anastasiou and Others*, paragraph 22).

46 The issue of phytosanitary certificates, which is prescribed by Article 12(1) of Directive 77/93 for the bringing into the Community of plants listed in Annex V, Part B, to that directive coming from non-member countries, thus constitutes the fundamental procedural requirement enabling the objectives of the directive to be met with regard to those products.

47 Since that procedural requirement is fundamental in nature, the Member States may accept phytosanitary certificates issued by a non-member country which is not the products' country of origin under certain conditions only (Case C-219/98 *Anastasiou and Others*, paragraphs 36 and 37). Those conditions, compliance with which can be checked by the importing Member State by reference to the shipping documents, have the effect of restricting the possibilities for issue of phytosanitary certificates by non-member countries other than the country of

origin, and ensure cooperation between the exporting State and the importing Member State (Case C-219/98 *Anastasiou and Others*, paragraph 37).

48 It follows from those initial considerations that phytosanitary certificates issued by a non-member country other than the country of origin do not benefit from a presumption of accuracy comparable to that attaching to certificates issued in the plants' country of origin.

49 Second, it is apparent from the provisions of Article 9(1) of Directive 77/93, which are applicable to the citrus fruit at issue in the main proceedings, that that directive seeks to secure an additional level of protection, identical throughout the territory of the Member States, for certain categories of plants potentially affected by harmful organisms.

50 Article 9(1) of Directive 77/93 imposes specific requirements for the categories of plants listed in Annex IV, Part A to that directive, seeking to ensure, in their regard, a level of protection additional to that resulting from Article 12(1) of the directive.

51 Directive 92/103, which enacted the version of Annex IV to Directive 77/93 in force at the time of the facts of the main proceedings, thus states in the third recital in its preamble that that annex lists 'special requirements which are to be met in order to have better guarantees of freedom from the abovementioned harmful organisms'.

52 In contrast to Article 12(1) of Directive 77/93, which allows a non-member country other than the country of origin to issue a phytosanitary certificate, Article 9(1) of that directive provides that phytosanitary certificates required for plants listed in Annex IV, Part A, to the directive must in principle be issued in the plants' country of origin.

53 Article 9(1) of Directive 77/93 does not constitute an exception to a general rule laid down in Article 12(1), but a separate rule, applicable to certain plant categories listed in an annex other than Annex V, Part B, to the directive. This rule is intended to ensure that the special requirements prescribed in Annex IV, Part A, will be checked and fulfilled, at the time of issue of the phytosanitary certificate, in the country of origin of the plants concerned. A restrictive interpretation of Article 9(1) of Directive 77/93 and of the special requirements in Annex IV, Part A, to which it refers would therefore be contrary to that objective.

54 On the other hand, the provision of Article 9(1) of Directive 77/93 stating that the official phytosanitary certificate required must be issued in the country of origin 'save... to the extent that the special requirements laid down in Annex IV, Part A, can be fulfilled also at places other than that of origin' constitutes an exception to the rule requiring the certificate to be issued in the country of origin. It must therefore be interpreted restrictively.

55 It follows from this second set of considerations that the only special requirements that may be fulfilled at places other than that of origin, within the meaning of the foregoing provision of Article 9(1) of Directive 77/93, are

requirements which may be met under conditions for ensuring plant health as satisfactory as those at the plants' place of origin.

56 Third, analysis of items 16.1 to 16.4, which relate to the special requirements applicable to citrus fruit originating in non-member countries, highlights the special importance of the requirement to affix an appropriate origin mark to the packaging of products where they come from a country known to be free from the harmful organisms specified.

57 It is clear from the documents before the Court and not in dispute that, even before Directive 98/2 entered into force, Cyprus was a non-member country known to be free from the harmful organisms referred to in items 16.2 to 16.4 liable to contaminate that fruit. Consequently, the only special requirements applicable to the citrus fruit as issue in the main proceedings are those, laid down in item 16.1, that it be 'free from peduncles and leaves' and that an 'appropriate origin mark' be affixed to its packaging.

58 As all the parties to the main proceedings and the national court have pointed out, the first of those requirements can be satisfied on the basis of a visual inspection which may be carried out in a non-member country other than that from which the products originate under the same conditions as in the country of origin.

59 Thus, the only way of establishing that the citrus fruit in fact comes from a country or area known to be free from the harmful organisms referred to in items 16.2 to 16.4 is to check that the second requirement, relating to the affixing of an appropriate origin mark to the packaging, has been fulfilled. This special requirement constitutes the only guarantee, for the Member State importing the plants, that they are *a priori* free from those harmful organisms and that they may accordingly be exempted from the requirements for an official statement in the

country of origin, laid down in items 16.2 to 16.4. It therefore does not have the same objective or import as the special requirement relating to the absence of peduncles and leaves and consequently cannot be interpreted like the latter on the sole ground that they are both laid down in the same item (16.1).

60 In so far as the affixing of an appropriate origin mark enables exporters to be exempted from the requirements for an official statement in the country of origin, laid down in items 16.2 to 16.4, it would be paradoxical if such a mark, which is intended to certify the origin of products, could be issued outside the country of origin, after the plants have been exported. The simple fact that item 16.1 requires the mark to be affixed to the packaging confirms that that requirement must be fulfilled at the time of the initial packaging of the products with a view to their dispatch, necessarily before they are transported to a non-member country other than the country of origin.

61 Furthermore, the fact that the affixing of the mark exempts exporters from the requirements for an official statement laid down in items 16.2 to 16.4 precludes the mark from being affixed by the producer of the plants alone, without any possible involvement of the authorities empowered to make those official statements. This interpretation is borne out by Article 9(1) of Directive 77/93, in so far as it establishes a link between issue of the 'official' phytosanitary certificate and fulfilment of the special requirements laid down in Annex IV, Part A, to that directive.

62 The arguments of the United Kingdom Government and Cypfruvex that the special requirement relating to an appropriate origin mark could be fulfilled in a non-member country other than the country of origin, on the basis of a check as to the mark's validity by the inspector empowered in that other country to draw up the phytosanitary certificate, cannot be upheld.

63 First, such an analysis of item 16.1, interpreting it as requiring merely a subsequent check that the packaging bears an appropriate origin mark, is contrary to the purpose of that item, which requires actual performance of that marking requirement. Second, the inspector responsible for issuing the phytosanitary certificate in that other country is not in the same situation as his counterpart in the country of origin for the purpose of detecting any falsification of the origin mark designed to derive improper advantage from a satisfactory phytosanitary finding as to the country of origin, inasmuch as he will be able to act on the basis only of invoices or transport or dispatch documents. Finally, the cooperation which the competent authorities of the importing Member State build up with those of a non-member country other than the country from which the imported plants originate cannot establish itself under conditions as satisfactory as in the case of direct cooperation with the competent authorities of the country of origin. Effective cooperation with the latter authorities is especially important, particularly in the case of contamination (see, to this effect, Case C-432/92 *Anastasiou and Others*, paragraph 63).

64 Those arguments of the United Kingdom and Cypfruvex are therefore not compatible with the strict interpretation required for exceptions to Article 9(1) of Directive 77/93 and do not allow compliance with the objective pursued by the certification of origin envisaged in item 16.1.

65 Accordingly, the requirement to affix an 'appropriate' origin mark, which alone is capable of reliably certifying the products' origin and exempting the exporter from the special requirements laid down in items 16.2 to 16.4, can be fulfilled only in the products' country of origin, by, or under the supervision of, the authorities empowered to issue the phytosanitary certificates required by Directive 77/93. The question of the quality of the cooperation which may be established by the authorities of the importing Member States and those, in the present case, of Turkey therefore does not have to be raised.

66 This interpretation of item 16.1 is not invalidated, by contrary inference, by the amendments which Directive 98/2 made to items 16.2 and 16.3.

67 As stated in the first recital in its preamble, the aim of that directive is 'to have a better protection for the Community against [the] harmful organisms which are already listed in Council Directive 77/93/EEC'. The amendments which it introduced were designed to render mandatory in every case the requirements for an official statement set out in items 16.2 to 16.3a as amended, including where the non-member country of origin is recognised as free from the harmful organisms in question.

68 As Anastasiou and Others, the Greek Government and the Commission correctly submit, those new provisions ensure that the phytosanitary certificate accompanying the plants can provide a permanent record of their origin, whereas the origin mark affixed to the packaging may be lost if the packaging is damaged. Those amendments are also intended to lay down in more express terms that certification of the plants' origin by official authorities is required in all circumstances.

69 It would be contrary to the objective thereby pursued of strengthening phytosanitary safeguards to construe the official statements required by items 16.2 to 16.3a as amended as capable of being made in a non-member country other than the products' country of origin, when those new provisions are designed to extend the requirements for certification of origin laid down by Directive 77/93. The wording of each of those items, which have in common that they require an 'official statement', before indicating, in subparagraph (a), (b) (c) or (d), the various situations to which the statement relates, confirms that that requirement must, in all events, be fulfilled in the plants' country of origin.

70 The fact that Directive 98/2 also introduced, in items 16.2(a), 16.3(a) and 16.3a(a) as amended, the provision that the country of origin is to be recognised as being free from the harmful organisms in question 'in accordance with the procedure laid down in Article 16a' of Directive 77/93 does not alter this conclusion in the slightest. That new provision is designed to limit the possibility of relying on items 16.2(a), 16.3(a) and 16.3a(a) as amended solely to cases where the Community has declared a country free from the harmful organisms. It therefore has neither the aim nor the effect of allowing a non-member country other than the country of origin of the products to declare that they in fact originate in such-and-such a country and does not affect the requirement that the official statement be made in the country of origin.

71 It follows from the foregoing that while Directive 98/2, from its entry into force, deprives the requirement for an appropriate origin mark of much of its practical significance, it does not provide arguments supporting a different legal interpretation of that requirement.

72 Nor can the other arguments relied upon by the United Kingdom Government and Cypfruvex invalidate the analysis that the affixing of an appropriate origin mark and the official statement are requirements whose fulfilment is a matter for the competent authorities of the products' country of origin.

73 First, Article 12(1) of Directive 77/93, which in certain cases allows a consignor country other than the country of origin to issue a phytosanitary certificate, by providing that 'a phytosanitary certificate may not be made out more than 14 days before the date on which the plants... leave the consignor country', is

intended solely to shape the conditions governing issue of a phytosanitary certificate by the authorities of the consignor country and does not have the effect of enabling those authorities to derogate from the special requirements prescribed by Article 9(1) of that directive.

74 Second, the examples cited of trade practices relating to the importation of wood, allegedly showing that an origin mark may validly be affixed by authorities other than those of the country of origin, are not relevant. Article 9(1) of Directive 77/93 lays down for products of that type special requirements other than those before the Court for interpretation.

75 It follows from all the foregoing considerations that the answer to the questions asked by the national court should be that, on a proper interpretation of Directive 77/93, the special requirement that an appropriate origin mark be affixed to the plants' packaging, laid down in item 16.1, can be fulfilled only in the country of origin of the plants concerned. The amendments which Directive 98/2 made to items 16.2 and 16.3 of Directive 77/93 do not affect that interpretation. The phytosanitary certificate required in order to bring those plants into the Community must, therefore, be issued in their country of origin by, or under the supervision of, the competent authorities of that country.

Costs

76 The costs incurred by the United Kingdom and Greek Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in

the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Full Court),

in answer to the questions referred to it by the House of Lords by order of 17 December 2001, hereby rules:

On a proper interpretation of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community, as amended, *inter alia*, by Council Directive 91/683/EEC of 19 December 1991 and Commission Directive 92/103/EEC of 1 December 1992, the special requirement that an appropriate origin mark be affixed to the plants' packaging, laid down in item 16.1 of Annex IV, Part A, Section I, to that directive, can be fulfilled only in the country of origin of the plants concerned. The amendments which Commission Directive 98/2/EC of 8 January 1998 made to items 16.2 and 16.3 do not affect that interpretation. The phytosanitary certificate required in order to bring those plants into the Community must,

therefore, be issued in their country of origin by, or under the supervision of, the competent authorities of that country.

Rodríguez Iglesias	Puissochet	Wathelet
Schintgen	Timmermans	Gulmann
Edward	La Pergola	Jann
Skouris	Macken	Colneric
von Bahr	Cunha Rodrigues	Rosas

Delivered in open court in Luxembourg on 30 September 2003.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President