

OPINION OF ADVOCATE GENERAL
GEELHOED

delivered on 13 December 2001¹

I — Introduction

1. In this case the Court of Appeal of England and Wales (Civil Division) has submitted a question concerning the interpretation of a provision of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables.²

2. The preliminary question referred to the Court transcends the specific issues of the organisation of the market in fruit and vegetables and is primarily of a legal nature. In essence it is a matter of determining whether and, if so, under what circumstances a person may seek from the civil courts an order that another person should comply with Community law where under public law there is a supervisory authority which sees no reason for bringing an infringement of Community law to an end. More specifically, this case concerns the infringement of a provision of a Community regulation.

3. The question raised essentially concerns the operation of Community law in national law in relation to matters which to a considerable extent still come within the scope of national law, such as the enforcement of regulations and access to the courts. The Court is called upon — the interpretation of Community law being exclusively a matter for it — to specify the requirements which national law must satisfy as a matter of Community law. That means, *inter alia*, that an answer must be given to the question concerning the extent to which national procedural law must afford rights of action to certain persons concerned who have suffered loss as a result of the infringement of Community law by another person.

II — Legal framework

European law

4. Central to the dispute are certain regulations adopted under Articles 36 and 37 EC. Those regulations provide for the

¹ — Original language: Dutch.

² — OJ 1996 L 297, p. 1.

common organisation of the markets in regard to agricultural products, in particular fruit and vegetables. The relevant regulations are in two tiers. A basic regulation has been adopted by the Council whilst the Commission, pursuant to powers conferred on it by the Council Regulation, has made regulations laying down detailed quality standards for specific types of fruit and vegetable. These quality standards specify details of various labelling requirements, including variety names.

5. Under Articles 2(1) and (3) of Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organisation of the market in fruit and vegetables³ common standards, referred to hereafter as 'quality standards' are to apply to specific products intended to be delivered fresh to the consumer, including table grapes.

6. With effect from 1 January 1997 that regulation was repealed by Regulation No 2200/96. The legal basis of the standards laid down for table grapes in Commission Regulation No 1730/87 (see below) has continued to subsist.

7. As the third recital in the preamble to Regulation No 2200/96 states, the system of quality standards is intended by the Community legislature to provide 'a reference framework that encourages fair trading and market transparency and also eliminates products of unsatisfactory quality from the market.' Compliance with these standards thus also helps to improve the profitability of production.⁴

8. Quality standards for table grapes were laid down in Commission Regulation (EEC) No 1730/87 of 22 June 1987 laying down quality standards for table grapes.⁵ Those standards define the quality requirements for table grapes after preparation and packaging. Provisions are made in regard to general quality, sizing, permitted tolerances, presentation and marking. More particularly, paragraph B of part VI of the annex provides that each package of grapes must bear the name of the variety of the grape legibly and indelibly marked and visible from the outside. The annex also contains a list of variety names. Commission Regulation (EEC) No 93/91 of 15 January 1991 amending Regulation (EEC) No 1730/87 laying down quality standards for table grapes as regards the lists of varieties⁶ added the variety 'Superior Seedless' to the list.

9. Subsequently, further amendments relevant to this case were made to Regulation No 1730/87. Commission Regulation

4 — Regulation No 1035/72 contained an analogous rationale for the system of quality standards.

5 — OJ 1987 L 163, p. 25.

6 — OJ 1991 L 11, p. 13.

3 — OJ, English Special Edition 1972 (II), p. 437.

(EEC) No 291/92 of 6 February 1992⁷ amended the list of varieties in such a way that it was thenceforth to be regarded as 'non-exhaustive'. The objective of that amendment is stated in the first recital in the preamble to that regulation as being to make clear that 'those standards apply to all varieties of table grapes intended to be consumed fresh in the Community.' That served to dispel the doubts which had previously existed — when the list was still exhaustive — as to whether grapes of non-listed varieties were outside the ambit of the quality standards altogether. Commission Regulation (EC) No 888/97 of 16 May 1997⁸ amended certain provisions of the standards for fresh fruit and vegetables, in particular as regards identification of the packer/dispatcher and origin of the produce.

in an obvious position on one side of the packaging, either indelibly printed directly on to the package or on a label which is an integral part of or firmly affixed to the package.

...

Article 6

At the retail stage, where products are packaged the information particulars required shall be legible and conspicuous.

10. Articles 5 and 6 of Regulation No 2200/96⁹ provide as follows:

...

Products may be presented unpackaged, provided that the retailer displays with the goods offered for sale a card showing prominently and legibly the information particulars specified in the quality standards relating to:

'1. The information particulars required by the quality standards must be shown legibly

— variety,

7 — OJ 1992 L 31, p. 25.

8 — OJ 1997 L 126, p. 11.

9 — Previously Articles 6 and 7 of Regulation No 1035/72.

— origin of the product,

National law

— class.⁷

11. The system of quality standards is applicable to the product at all marketing stages and the holder of the product is responsible for compliance with the standards. Article 3(1) of Regulation No 2200/96 lays down the legal duty which Muñoz is seeking to enforce in the present action in the following terms:

12. In the United Kingdom the authority empowered to carry out the checks mentioned in Article 8 of Regulation No 1035/72 or, in the present case, Article 7 of Regulation No 2200/96, is the Horticultural Marketing Inspectorate,¹¹ which is an inspectorate within the Department for Environment, Food and Rural Affairs. The Horticultural and Agricultural Act 1964 (as amended) imposes penalties in relation to the sale of products in breach of Community quality standards.

III — Facts and procedure

Facts

‘The holder of products covered by the quality standards adopted may not display such products or offer them for sale, or deliver or market them in any other manner within the Community than in conformity with those standards. The holder shall be responsible for observing such conformity.

13. The plaintiffs in the main proceedings, Antonio Muñoz y Cia SA and Superior Fruticola SA, both established in Spain and hereinafter together referred to as ‘Muñoz’, grow and market grapes on a large scale. Since 1987 they have sold their produce in the United Kingdom and elsewhere.

...’¹⁰

14. The defendants in the main proceedings are Frumar Limited and its parent company

¹⁰ — Article 3(1) of Regulation No 1035/72 was in analogous terms.

¹¹ — Inspectorate responsible for overseeing the marketing of horticultural products.

Redbridge Produce Marketing Limited (hereinafter together referred to as 'Frumar'). Frumar imports vegetables and fruit into the United Kingdom and distributes them to large retailers such as Tesco, Asda and Sainsbury.

17. Muñoz made several complaints to the Horticultural Marketing Inspectorate concerning the incorrect marking of those products by Frumar. However, the Inspectorate took no action in that connection.

15. The dispute concerns a particular type of table grape known under the name 'Superior Seedless'. It is one of the most expensive varieties of white seedless grape sold in the United Kingdom. It has enhanced value because it is already available early in the season: the grapes arrive on the market at a time when no other premium seedless grapes are to be had. Muñoz grows and markets this variety.

Main proceedings

18. In 1998 Muñoz commenced proceedings in the High Court of Justice (England and Wales) against Frumar for breaching Regulations Nos 1035/72 and 2200/96.

16. Frumar sells on the British market early-season white seedless grapes under the names 'White Seedless' and 'Sult'. It obtains these grapes from a Spanish company other than Muñoz.¹² It appeared from an expert investigation commissioned by Muñoz that the grapes were in fact of the variety 'Superior Seedless'. Frumar accepted the result of that investigation but only for the purposes of the present proceedings.

19. By a decision dated 26 March 1999 the High Court dismissed the action. It took the view that Muñoz could not claim the right under the relevant EC regulations to sue in civil proceedings for breaches of those regulations, even though Frumar had committed breaches of them.

20. In its appeal to the Court of Appeal of England and Wales (Civil Division) Muñoz is claiming that the decision of the High Court on this point of law is wrong.

¹² — In addition, Frumar sells in the United Kingdom early-season white seedless grapes under the name 'Coryn' which it obtains from yet another Spanish undertaking. Imports of these grapes ceased prior to the main proceedings.

The preliminary question

21. By order of 14 June 2000, received at the Court Registry on 26 June 2000, the Court of Appeal of England and Wales (Civil Division) accordingly referred the following question to the Court for a preliminary ruling:

‘Does Council Regulation (EC) No 2200/96 (and did Council Regulation (EEC) No 1035/72 when it was in force) give rise to a legal duty resting upon persons who trade in a fruit or a vegetable within the Community to comply with the requirements as regards variety name laid down by a quality standard which is applicable to that fruit or vegetable, which a national court should enforce in civil proceedings brought at the suit of a person who is a substantial grower within the Community of the fruit or vegetable concerned?’

IV — Assessment

Preliminary

22. As I stated in the introduction the question raised transcends the specific

issues of the organisation of the market in fruit and vegetables and concerns the operation of Community law in relation to matters which to a considerable extent still come within the scope of national law. In my view the question is threefold, namely:

- Can a person claim under a Community regulation a right to compliance by another person with a provision of that regulation?
- If that question is answered affirmatively, does Community law require that that person should also be able to enforce that right?
- If both those questions are answered affirmatively: to what extent does Community law require the national legal order to provide a right of action?

23. The first stage is closely related to the doctrine of the direct effect of regulations. Under Article 249 EC regulations are binding in their entirety and directly applicable in the Member States. Accordingly, regulations impose on legal and natural

persons directly effective public-law obligations vis-à-vis the authorities and also confer rights on those persons as against the same authorities. This case concerns the extent to which those obligations also apply as between those persons. In other words to what extent does the obligation to the authority also entail an obligation to third parties and to what extent, *vice versa*, can third parties claim a right under a regulation to expect that a person will refrain from breaching the provisions of that regulation?

24. The second stage concerns the enforcement of provisions of regulations. Pursuant to the obligations imposed on them Member States have appointed supervisory authorities and, apart from that, also have to ensure that regulations are observed. Within the limits defined by Community law they are free to determine the penalty in the case of an infringement of Community law and also, in a proper case, to decide not to impose a penalty. To what extent can the intervention of the civil courts at the suit of a person seeking to enforce the regulation by means of private-law remedies be regarded as an acceptable or even necessary adjunct to enforcement by means of the public law?

25. The third stage concerns access to the courts. Access by individuals to the courts is governed primarily by national procedural law. The Court is called upon to state the requirements under Community

law to be met in that regard by procedural law. More specifically, it is a matter of determining under what circumstances interested third parties must be afforded a right of action to enforce compliance with a Community provision of a public-law nature. In that context I shall in any event deal with the question whether the third party must show an actual interest but also whether it must first have availed itself of other possibilities of securing compliance. I am thinking for example of the lodging of a complaint with the supervisory authority of the Member State.

26. None of that means, moreover, that the objective and content of Regulation No 2200/96, and the quality standards based on it, are not significant in connection with the reply to be given to the preliminary question. In the present case it must be established in particular to what extent the quality standards for fruit and vegetables (also) extend to protecting competing undertakings and the extent to which those standards can also actually afford that protection. Objective and content delineate the framework within which the reply to the question raised must be given.

Framework: objective and content of Regulation No 2200/96

27. Regulation No 2200/96 introduces, *inter alia*, a system of common quality

standards for fruit and vegetables. Those standards apply to all table grapes which are delivered fresh to the consumer. A feature of that system is that the fruit and vegetables, in this case grapes, are to be identifiable under their own variety names when marketed. It is also clear from Regulation No 1730/87 that varieties of grapes listed in the annex to that regulation must be marketed under the name mentioned in the annex or under one of the synonyms mentioned therein. As the Commission correctly states in its written observations, those requirements apply as soon as the produce leaves the area of production and continue to apply at all marketing stages. It follows from Article 6 of Regulation No 2200/96 that the requirement to indicate the variety name also applies when grapes are offered unpackaged for sale by a retailer. The holder of the products, in this case Frumar, is responsible for compliance with the standards, as is stated in the fifth recital in the preamble to the regulation.

28. Non-compliance with that marking requirement and also with other requirements under the regulation, such as division according to class of quality, can damage the interests of both consumers and competing undertakings. The main proceedings concern the latter. In its written observations Muñoz gives evidence of its specific interest in compliance by its competitor, in this case Frumar, with the quality standards. Frumar's method of dealing results in the same variety of grape being marketed

under several names which detracts from transparency of the market in table grapes and affects operations in the chain of distribution. It may be presumed that Muñoz suffers damage as a result. The High Court (England and Wales) does not as yet appear to be persuaded of the existence of damage. That court's reasoning is that, in view of the fact that names of grape varieties are not generally known to the public, the offer for sale of the same grape variety under several names would not have an effect on sales. However that may be, it is a situation which in my view is likely in any event to affect distribution and that is a factor capable of occasioning damage to Muñoz.

29. The question then arises as to whether that damage is the consequence of the disregard of an interest which the regulation seeks to protect. In order to answer that question I will first of all consider the objectives of the regulation and subsequently the aim and content of the common agricultural policy and the common organisation of the markets which are an essential component part of that policy.

30. The third recital in the preamble to Regulation No 2200/96 states the objectives of the common quality standards. In its written observations Muñoz infers

therefrom that the system of quality standards for fruit and vegetables serves to protect both dealers in fruit and vegetables and consumers. I concur with the inference thus drawn: of the three objectives mentioned fair trading seeks to protect dealers, elimination of products of unsatisfactory quality seeks to protect the consumer and market transparency is in the interests of both groups.

31. The Commission also mentions the twentieth recital in the preamble to the regulation in which it is stated that 'the rules of the common market organisation should be complied with by all operators to whom they apply, otherwise their impact will be distorted...'. As the Commission rightly states, the system of quality standards is effective only if the standards are applied at all marketing stages.

32. The objective pursued by the regulation must naturally be viewed in light of the objectives of the common agricultural policy stated in Article 33 EC. In itself this catalogue of specific and disparate objectives, both social and economic in nature, provide little guidance for the purposes of the reply to be given to the referring court.

However, I do infer therefrom that consumer protection, which is not mentioned in Article 33 EC, cannot be the only major objective of the organisation of the markets in fruit and vegetables.

33. In order to implement the objectives of the common agricultural policy organisation of the markets has been effected in a number of sectors. In the first place that organisation of the markets creates legal relationships between producers of and dealers in agricultural products, on the one hand, and Community and national authorities, on the other. However, these organisations of the market are also concerned with relations between producers and between dealers. The clearest examples of that 'horizontal' effect are to be found in the quota arrangements which form part of the organisation of the markets. Thus, under the organisation of the markets in sugar¹³ the Member States may transfer sugar quota between undertakings. It is self-evident that the transfer of a quota from one undertaking to another directly affects the relationship between both undertakings. The same is true of the transfer of a milk quota¹⁴ where a dairy holding is taken over. The quota available to that holding is transferred together with

13 — See Article 12 of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

14 — See Article 7 of Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector (OJ 1992 L 405, p. 1).

the holding to the producer taking over the holding in the manner determined by the Member States. In my view a system of quality standards also affects the relationship between undertakings. Indeed such a system directly governs competitive conditions in a given sector since the system conditions the market behaviour of parties.

34. Another feature of the market organisations which I consider relevant to the present case is the fact that the market organisations are characterised by detailed rules within which the responsibility of producers and dealers is closely defined. They are able to acquire precise knowledge of the rules which they must observe. Moreover, there are few exceptions to the system which are attributable to matters within the sphere of the producers and dealers themselves. Frequently, only force majeure is accepted as a justificatory ground.

35. In sum, Regulation No 2200/96 and the quality standards for table grapes based on it (also) pursue the objective of protecting fair trading, thus, at the same time regulating relations between producers and between dealers. Moreover, the content of the obligations flowing from the regulation is precisely determined and is not subject to exceptions.

36. It is, then, the case that a dealer has an interest warranted by the regulation in compliance by other dealers with the quality standards. However, the question is whether a dealer, such as Muñoz, is also entitled under the regulation to claim that competitors should comply with the regulation and can seek to enforce that claim against those competitors. The reply to that question forms the central part of this Opinion.

The first stage: direct effect of regulations and the right to secure compliance in situations characterised by horizontal effect

37. The Court has on many occasions and from various perspectives expressed a view on the doctrine of direct effect. The question whether a Community provision has direct effect depends in the first place on the content of the provision whereby the Court naturally takes account of the scope of the provision. In sum, provisions of primary and secondary Community law may have direct effect if they are couched in clear, precise and unconditional terms. Such provisions are by their nature apt to be invoked before the national courts by a natural or legal person without there being any need for further implementing provisions.¹⁵

¹⁵ — See, for example, recent judgment of 18 October 2001 in Case C-441/99 *Gharehveran* [2001] ECR I-7687.

38. In my view it is beyond dispute that, as to its content, Article 3(1) of Regulation No 2200/96 has direct effect. For that provision is unconditional and sufficiently precise and no national implementing measures are needed for it to be effective in regard to persons. Moreover, the Court already expressly held in *Apple and Pear Development Council*¹⁶ that the regulations on the common organisation of the market in fruit and vegetables have direct effect.

39. The doctrine of direct effect applies to legal relations both as between a person and the authorities and as between persons. The question in the present case concerns legal relations between persons. Thus the question touches what is often referred to in academic writings as the horizontal direct effect of Community law. In the case-law horizontal direct effect as a distinguishing criterion in regard to vertical direct effect plays a significant role in the case of directives but not in the case of directly applicable rules (such as regulations).

40. I shall begin by referring to the case-law on directives. The Court has on many occasions expressed a view on the direct effect of directives. The essence of that

case-law is that a directive can give rise to claims against public authorities but not against other persons. The Court's reasoning is as follows:¹⁷ Article 249 EC confers binding effect on a directive but only in regard to each Member State to which it is addressed. The Court's case-law is intended to prevent a Member State from taking advantage of its own failure to comply with Community law. For it would be unacceptable if a State, required by the Community legislature to adopt certain rules intended to govern the State's relations with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefits of those rights. That is precluded by the fact that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. The Court goes on to draw a comparison with regulations. To confer on directives horizontal direct effect 'would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations.'¹⁸

41. The Court is thereby in fact stating that a provision of a regulation has direct effect as between citizens. Already in a judgment

16 — Judgment in Case 222/82 *Apple and Pear Development Council* [1983] ECR 4083.

17 — The standard judgment in this area is in Case C-91/92 *Faccini Dori* [1994] ECR I-3325, paragraphs 20 et seq., reaffirmed in particular in Case C-443/98 *Unilever* [2000] ECR I-7535.

18 — Paragraph 24 of the judgment in *Faccini Dori* (cited at footnote 17).

of 14 December 1971¹⁹ the Court stated as follows: 'By reason of their nature and their function in the system of the sources of Community law, all regulations have direct effect and are, as such, capable of creating individual rights which national courts must protect.'

ming from a condition laid down by an individual employer on the recruitment of staff. Nor does the fact that some Treaty provisions are formally addressed to the Member States preclude rights from being conferred on individuals who have an interest in seeking to ensure compliance with the obligations thus laid down.

42. As to that, Muñoz is right when it states in its written observations as follows: by adopting a regulation rather than a directive the Community legislature intends to impose obligations directly on traders not to act in such a way as to distort trade. The main intention is thus not to require Member States to set up inspectorates.

43. Any possible doubt as to the effect of a regulation as between citizens is dispelled by the case-law on the directly effective provisions in the EC Treaty itself. In particular I refer in this connection to the judgment in *Angonese*²⁰ in which the Court concluded that the prohibition contained in Article 39 EC of discrimination on the basis of nationality is also applicable to individuals. The Court based this conclusion, *inter alia*, on the consideration that the non-discrimination principle is couched in general terms and is not specifically addressed to the Member States. That case was one of possible discrimination stem-

44. *Angonese* builds on earlier case-law of the Court in the matter of working conditions. In *Walrave*²¹ and *Bosman*²² the Court stated as follows: 'Since working conditions in the different Member States are governed sometimes by provisions laid down by law or regulation and sometimes by agreements and other acts concluded or adopted by private persons, limiting application of the prohibition of discrimination based on nationality to acts of a public authority risks creating inequality in its application.'²³ An unequivocal statement on direct effect is also to be found in *Dansk Supermarked* in the following terms: 'It is impossible in any circumstances for agreements between individuals to derogate from the mandatory provisions of the

19 — Case 43/71 *Politti v Italy* [1971] ECR 1039.

20 — Case C-281/98 *Angonese* [2000] ECR I-4139.

21 — Case 36/74 *Walrave* [1974] ECR 1405, paragraph 19.

22 — Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 84.

23 — *Verbatim* from *Angonese* (cited at footnote 20).

Treaty on the free movement of goods.’²⁴ By means of this case-law the Court has established that, even where provisions of competition law are not involved, EC law directly impinges on private legal relations.

45. Thus, a directly applicable provision of Community law normally has effect as between citizens. At the same time it is clear to me — except in the case of directives — that the distinction between horizontal and vertical effect is not a meaningful one. I would go one step further: the question is whether the concept of direct effect is still in fact relevant in the case of binding provisions of regulations, such as in this case Article 3(1) of Regulation No 2200/96. Such provisions form part of the national legal order and thus also apply to legal relationships between persons.²⁵

46. The question then arises as to the significance to be attached to this statement in distinguishing between provisions of regulations. As the Commission correctly states in its written observations, the foregoing does not mean that every provision of a regulation confers on individuals rights on which they can rely before the national courts.²⁶

47. It must be examined on a case-by-case basis whether a provision of a regulation confers rights on individuals. In that connection it is immaterial whether the person concerned is relying on that right in proceedings against the authorities or against another person. Regard must always be had to whether the provision by its content and purport affords protection to the interests which he is invoking in law. There must be a link between the interest on which the person concerned is relying and the protection afforded by a provision of a regulation. In that connection I take the view that the requirements to be satisfied substantively by that link do not need to be too stringent. First, a provision of a regulation often protects several interests. That is true, for example, of Article 3(1) of Regulation No 2200/96 which extends protection to both fair trading and the consumer. Secondly, too strict a test would be detrimental to the direct effect of regulations.

48. If I apply the foregoing considerations to the action brought by Muñoz in the main proceedings, then it is plain to me that it can rely on the direct effect of Article 3(1) of Regulation No 2200/96. As I already stated at paragraph 36 of my Opinion it has an interest, protected by the regulation, in compliance by a competitor with the regulation. In terms of the civil law, non-compliance by Frumar with the regulation can result in an unlawful act adversely affecting Muñoz.

49. My conclusion is this: Regulation No 2200/96 seeks, *inter alia*, to promote

24 — Case 58/80 *Dansk Supermarked* [1981] ECR 181, paragraph 17.

25 — In her article ‘Does direct effect still matter?’ (*Common Market Law Review* 37, 2000, pp. 1049-1069) S. Prechal states that such provisions have become the ‘law of the land’ and are applicable as such.

26 — The Commission founds its view of the matter on the analysis by Advocate General Warner in his Opinion in Case 131/79 *Santillo* [1980] ECR 1585.

fair trading and to protect the rights of competing undertakings if they suffer loss as a result of an infringement of the regulation. As to content Article 3(1) of the regulation is unconditional and sufficiently precise. The provision forms part of the national legal order and has effect as between citizens. In those circumstances a person has the right under Community law to compliance by another with a provision of the regulation. None the less, there must be a link between the interest invoked by the person concerned and the protection afforded by the provision of a regulation.

such enforcement, having regard to the parameters set by Community law. Those parameters, which I shall mention below, are conditioned by the requirement of the efficacy of Community law: effective enforcement in the Member States is a precondition of the operation of Community law.

52. The regulation provides primarily for a system of enforcement under public law by or under the responsibility of the Member States. In that connection I would point in particular to the following articles of the regulation:

Second stage: enforcement

50. Now that it has been established that a person has such a right under Community law, the question arises as to the extent to which the person concerned must be enabled to assert that right. In other words the question is whether Community law also requires the Member States to enable persons concerned to seek to have the provisions of the regulation enforced in civil proceedings.

— Article 7 of the regulation requires the Member States to appoint authorities with responsibility for carrying out checks;

— Under Article 38 the Member States are obliged to carry out checks;

51. Enforcement of Regulation No 2200/96 is left to the Member States. National law determines the detailed rules governing

— Article 50 of the regulation imposes on Member States the obligation to take all appropriate measures to penalize infringements of the provisions of the regulation and to forestall and bring to an end any fraud.

In the United Kingdom enforcement is a matter for the Horticultural Marketing Inspectorate which is the appointed supervisory authority.

53. The obligation to secure enforcement of regulations — and not only pursuant to the abovementioned provisions — stems from the structure of Community law. Legislation is enacted at Community level which it is then for the Member States to implement and enforce. The Community institutions are not equipped with sufficiently comprehensive administrative machinery. Moreover, competences in procedural administrative law and criminal law have still only to a limited degree been transferred to the European Union. Under Article 10 EC the Member States are obliged to secure implementation and enforcement.

54. The Member States enjoy a margin of discretion in carrying out those tasks. On the one hand, that discretion is circumscribed by the terms of the abovementioned provisions of the regulation and, on the other, by the requirements of Community law in regard to enforcement of regulations. According to settled case-law,²⁷ the latter are as follows: infringements of

Community law are to be penalised under conditions, both procedural and substantive, which are analogous to those applicable to comparable infringements of like seriousness of national law. In that connection the choice of penalties remains within the Member States' discretion but the penalties must be effective and have deterrent effect but must also be proportionate. The latter requirement is to ensure that penalties are not so disproportionately heavy as to disrupt the market. Under certain circumstances Member States must also be able to decide not to impose penalties.

55. It is not to be inferred from the regulation itself, as the Commission also stated in its written observations, that enforcement by the authorities of the Member States has to be the sole method of supervision. In other words, the regulation grants no monopoly in regard to enforcement. Nor is any such monopoly to be inferred from the context of Regulation No 2200/96. Nor is that altered by the fact that the regulation itself solely makes provision for enforcement by means of public law. Community law does not operate on the notion that enforcement by means of private law is precluded where provision is made *expressis verbis* solely for enforcement under public law. In that connection Community law appears to differ from English law which — save for exceptions — does not permit civil proceedings to be brought in a case where breach of a national legislative provision attracts a criminal sanction.²⁸

27 — See for example Case C-326/88 *Hansen* [1990] ECR I-2911, paragraph 17.

28 — I refer here to 'breach of a statutory duty'. In the case of an infringement of directly effective Community law that prohibition is not applied consistently in the United Kingdom. See, for example, the judgment in *The Scotch Whisky Association v J.D. Vintners* [1997] ELR 446, at p. 448.

56. The obligations imposed on persons by Article 3(1) of the regulation lend themselves well to enforcement in civil proceedings. For the content of those obligations is precisely determined and not subject to exceptions. Even if an authority of a Member State, such as in this case the Horticultural Marketing Inspectorate, decides for whatever reason not to take action that does not give a producer or dealer in fruit and vegetables the right to infringe the rule and thereby occasion loss to a third party. In that connection I do not agree with the reasoning of the High Court of Justice (England and Wales) in its judgment at first instance. That court places the emphasis on the expertise and neutrality of the Horticultural Marketing Inspectorate. It is not one of its tasks to favour the interests of one dealer at the expense of another's. In the view of the High Court the provisions of regulations are not enforceable in civil proceedings.

57. I come back now to the question formulated earlier of whether it is a *requirement* of Community law that the Member States should enable persons concerned to seek enforcement of the provisions of the regulation in civil proceedings.

58. In its written observations the Commission draws an analogy with competition law. Within the framework of Articles 81

and 82 EC persons may sue other persons (mostly undertakings) before the national courts for non-compliance with those articles. Such private enforcement is regarded as a useful and necessary adjunct to the activities of the Commission and the Member States. Enforcement of the quality standards for fruit and vegetables, as in the present case, is no different. Enforcement by a private person must, in the Commission's view, be directed to a breach which is to the detriment of that person, for example where it creates unfair competition.

59. Like the Commission I see a parallel with Articles 81 and 82 EC. It is established that the national courts are competent to apply Article 81(1) and Article 82 EC in civil proceedings between competing undertakings. The national courts are even empowered to make the declarations of nullity provided for in Article 81(2) EC. These competences stand alongside the enforcement functions performed by the Commission (and by the national antitrust authorities).²⁹

60. I do not see why an undertaking should not be able to institute civil proceedings if it alleges that it has suffered loss as a result of the infringement of Article 3(1) by a

²⁹ — See for example Opinion of Advocate General Van Gerven in Case C-234/89 *Delimitis* [1991] ECR I-935.

competing undertaking. Article 3(1) lends itself well to being applied independently by the national courts. For, as I stated at paragraph 49 the content of Article 3(1) of Regulation No 2200/96 is precisely determined and failure by the supervisory authority to enforce the regulation does not give a producer or dealer the right to infringe the rule. In that way enforcement by the civil courts, just as in the case of competition law, forms a useful and necessary adjunct to enforcement, in this case, by the national supervisory authority. For it cannot be the case that a private person on whom rights are conferred under a provision should be wholly dependent for the vindication of those rights on the readiness of a supervisory authority to take enforcement action.

regulation must have the opportunity of securing enforcement of that provision in the civil courts provided of course that the interest of the person concerned which is affected is one which Community law seeks to protect. Only then is the full effectiveness of Community law ensured. Enforcement by the civil courts forms a useful and necessary adjunct to enforcement by the authorities of the Member State.

Third stage: right of action under the national legal order

61. There is even less reason for reticence in the present case since Regulation No 2200/96 does not provide for a wide margin of discretion for the administration in granting exemption, as in the case of the Commission's competence in competition law.

64. The question as to the extent to which private persons may apply to national courts in order to obtain an order for cessation of a breach by another person of a rule of public law is determined in the first place by national procedural law. That is no different where such a rule of law forms part of a Community regulation. For under Article 249 EC a regulation is directly applicable in the Member States and forms part of the national legal order.

62. Finally, I would make the observation set out below.

63. In sum, it is a consequence of Community law that a person who suffers loss as a result of an infringement of a provision of a

65. In the first stage I treated the question raised by the referring court from the perspective of direct effect and the significance in that regard of horizontal direct effect. I stated that a private person may derive rights from a provision of a regulation which the person concerned must be able to invoke in law provided that the provision is, as to its content, unconditional and sufficiently precise. Certainly there

must be a link between the interest relied on and the protection afforded under a provision of a regulation. It may already be inferred from this that it is a matter of importance from the point of view of Community law that there should be a legal right of action under the national legal order.

66. The second stage in this Opinion concerned enforcement. I stated that enforcement by the civil courts forms a useful and necessary adjunct to enforcement by the authorities of the Member State. Civil enforcement ensures the full effectiveness of Community law. Viewed from this perspective also Community law requires there to be a right of action under the national legal order.

67. In the present case the Court will have to form a view as to the Community-law requirements to be satisfied in this connection by national procedural law. For in accordance with settled case-law national procedural law must provide all remedies in order to facilitate the full effectiveness of Community law. This again is a matter of the efficacy of Community law. An effective right of action in favour of a private person contributes to that efficacy. That is the case first of all where a private person uses a right of action in order to bring an infringement of Community law to an end. Yet the existence of an effective right of

action can also have a preventive effect and can promote compliance with Community law.

68. The requirements concerning access to the national courts by an interested third party which have, as a matter of Community law, to be met may to a large extent be inferred from the conditions governing access to the Community judicature itself. I will first of all examine this aspect.³⁰

69. By its very nature the Court's case law predominantly concerns decisions. For the fourth paragraph of Article 230 EC confers on a natural or legal person the right to institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

70. The Community judicature acknowledges no general right in favour of interested third parties to proceed in law against infringements of Community law. The Court does not recognise the *actio popularis* or class action. In the *Greenpeace* judgment the Court reaffirmed that 'it had consistently been held that an association formed for the protection of the collective

30 — By its nature these are invariably actions brought by third parties against a decision of a — Community — authority. For present purposes these actions do not essentially differ from proceedings between private persons.

interests of a category of persons could not be considered to be directly and individually concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty [now Article 230 EC], by a measure affecting the general interests of that category, and was therefore not entitled to bring an action for annulment where its members could not do so individually.’³¹

71. Interested third parties have *locus standi* only where a ‘decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person addressed.’³² The effect of this decision is that an organisation such as Greenpeace, which is concerned with general environmental issues, does not have *locus standi*. The same is true, for example, of trade unions or employers’ organisations, even though they are founded on the premise that those whom they represent are individually concerned by the contested decision.

72. It is otherwise if an interested third party can show an actual (economic) interest. In various judgments the Court has elucidated the position of interested third parties in regard to Commission decisions

on State aid.³³ It has held that, in addition to the undertaking in receipt of aid, competing undertakings are also individually concerned by a Commission decision terminating a procedure initiated under Article 88(2) of the Treaty with regard to individual aid, where those undertakings have played a significant role in that procedure, provided that their position on the market is significantly affected by the aid which is the subject of the decision at issue. Moreover, certain associations of economic operators which have played a significant role in the procedure under Article 88(2) of the Treaty have been recognised as individually concerned by such a decision, inasmuch as they are affected in their capacity as negotiators. The conditions laid down by the Court in these judgments are twofold. First, there must be an actual economic interest; secondly, the third party concerned must already at an earlier pre-litigious stage have availed itself of its opportunities for influencing the decision-making procedure. I would also point out that in that specific situation an action by an employers’ organisation would be admissible.

73. Even in the case of regulations an action brought by a private person may be admissible. In that connection a certain amount of elucidation may be obtained from the judgment in *Timex*³⁴, an anti-dumping case. That case concerned an action for annulment of a regulation imposing antidumping duties on mechanical

31 — Case C-321/95 P *Greenpeace and Others v Commission* [1998] ECR I-1651, paragraph 14.

32 — Paragraph 7 of the judgment in *Greenpeace* (cited at footnote 31).

33 — See in particular Case 169/84 *Cofaz* [1986] ECR 391, Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy* [1988] ECR 219 and Case 106/98 P *Comité d’entreprise de la Société française de production and Others* [2000] ECR I-3659, paragraphs 40 et seq.

34 — Case 264/82 *Timex* [1985] ECR 849.

wrist-watches originating in the Soviet Union. The regulation at issue particularly affected Timex because, as the Court stated, Timex was the leading manufacturer of mechanical wrist-watches in the Community and the only remaining manufacturer in the United Kingdom. A further factor in that case was that Timex had lodged a complaint at an earlier stage of the decision-making process.

74. The special interest of a third party which differentiates that party from others is, it is true, construed narrowly in the case-law. A good example is afforded by the recent judgment of the Court of First Instance in *Sociedade Agrícola dos Arinhos and Others v Commission*.³⁵ In that case a number of Portuguese breeders of fighting bulls brought an action against the export ban on bulls which had been imposed by the Commission in connection with the BSE problem. The action was declared inadmissible since the breeders of fighting bulls could not be differentiated from other economic operators in the same field. Those breeders had also lodged a complaint during the preceding decision-making process.

75. I draw the following inferences from this recapitulation of the case-law. A third party has access to the Community judiciary if that party can show an actual economic interest which, moreover, differentiates him from other economic operators. A further requirement is that the person concerned has first made use of

other remedies, such as in a proper case, the right to lodge a complaint.

76. In my view, under those circumstances national law must also afford a right of action to an interested third party who has suffered loss as a result of the infringement of a provision of a Community regulation. In that connection the condition must apply that the interest demonstrated is an interest protected by the regulation. It may likewise be inferred from Community law that a person initiating proceedings may not be discriminated against in regard to a person bringing proceedings in a comparable but purely national dispute. National procedural law may require the person concerned to demonstrate an actual economic interest which is protected by a regulation and differentiates that person from other economic operators. National procedural law may also require the interested third party to avail itself first of other rights of recourse.

77. If national procedural law does not satisfy the requirements mentioned in the preceding paragraph, it is liable to be set aside by Community law.

78. Under the circumstances of the main proceedings which I have outlined earlier in this Opinion, that means that national law must afford to a party such as Muñoz access to the court for the purposes of civil proceedings against a competitor for infringement of Article 3(1) of Regulation No 2200/96.

³⁵ — Cases T-38/99 to T-50/99 *Sociedade Agrícola dos Arinhos and Others v Commission* [2001] ECR II-585.

V — Conclusion

79. On the basis of the foregoing considerations I propose that the Court should reply as follows to the question submitted by the Court of Appeal of England and Wales (Civil Division):

Article 3(1) of Council Regulation (EC) No 2200/96 on the common organisation of the market in fruit and vegetables (OJ 1996 L 297, p. 1) forms part of the national legal order and has effect as between citizens. A private person may claim a right under this provision to compliance by another with that provision. There must be a link between the interest which the person concerned is invoking and the protection afforded by a provision in a regulation. It is a consequence of Community law that a person who suffers loss as a result of an infringement of a provision in a regulation must have the possibility of seeking enforcement of that provision in the civil courts. In that connection a Member State is required to grant an interested third party access to the national courts. National procedural law may require the person concerned to show an actual economic interest which, moreover, differentiates that person from other economic operators. National procedural law may also require the interested third party to avail itself first of other rights of recourse. The legal protection afforded by national procedural law may not be less than exists for proceedings in the context of a purely national dispute.