

OPINION OF ADVOCATE GENERAL
STIX-HACKL

delivered on 3 June 2003¹

I — Introduction

1. The present order for reference concerns the import of citrus fruit from the northern part of Cyprus (the so-called ‘Turkish Republic of Northern Cyprus’) into the United Kingdom and is already the third in a series of similar preliminary references² relating to a particular version of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products.³ From a legal point of view the present proceedings are concerned with the system for controlling the health of plants and plant products which are imported from non-member countries into the Community, but politically they are not without importance for the Community’s relationship with Turkey and also with Cyprus which is envisaged to accede to the European Union on 1 May 2004.

1 — Original language: German.

2 — See the judgments of 5 July 1994 in Case C-432/92 *Anastasiou and Others* [1994] ECR I-3087 and 4 July 2000 in Case C-219/98 *Anastasiou and Others* [2000] ECR I-5241.

3 — OJ 1977 L 26, p. 20 (corrigendum at OJ 1979 L 130, p. 32). As regards the relevant version, see the exposition of the legal context.

II — Legal context

2. Directive 77/93 as amended by Council Directive 91/683/EEC of 19 December 1991⁴ and Commission Directive 92/103/EEC of 1 December 1992⁵ constitutes the version of the directive relevant to the present proceedings.

3. Article 12(1) of the directive, in the version applicable to the imports at issue, provides:

‘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

4 — OJ 1991 L 376, p. 29.

5 — OJ 1992 L 363, p. 1.

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:

countries, on the basis of laws or regulations of the country....

...'

- 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 Article 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

4. Article 12(5) provides that the Commission and certain third countries may agree to inspections also being carried out under the authority of the Commission in the third country concerned.

5. Article 12 of the directive refers to Articles 7 and 8 which, like Article 6, concern in principle plants, plant products and other objects originating within the Community.

6. Article 7(1) of the directive provides that 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 therein are fulfilled. Article 8(2) relieves a Member State on whose territory products have been split up or stored or had their packaging changed from carrying out a new examination provided that the products have incurred no phytosanitary risk on its territory. In such cases, the Member State draws up a phytosanitary reformulating certificate which it appends to the original phytosanitary certificate.

7. Article 6(1) of the directive provides that plants, plant products and other objects listed in Annex V, Part A, together with their packaging, are to be meticulously examined on an official basis, either in their entirety or by representative sample, and that, if necessary, the vehicles transporting them are also to 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 the directive adds that the official examinations provided for in the earlier paragraphs of the article are to be made regularly at the premises of the producer, preferably at the place of production, and must extend to the relevant 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. For the purposes of the provisions set out above, the citrus fruit at issue in the main proceedings, which originates in the northern part of Cyprus, falls within the class of plants and plant products listed in Annex V and, as such, is subject to phytosanitary inspection. It is at risk of contamination by the harmful organisms listed in Annexes I and II.

10. In addition, the citrus fruit at issue is referred to in Annex IV, Part A, to Directive 77/93. Therefore Article 9(1) applies, which 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.’

been observed at the place of production or in its immediate vicinity and/or that the fruit is free from the relevant organism. If that condition cannot be met either, an official statement that the fruit has been subjected to appropriate treatment is necessary.

11. The special requirements are set out in items 16.1 to 16.4 of Annex IV, Part A.⁶

12. Item 16.1, in the version applicable here, provides that fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids originating in third countries are, without prejudice to the prohibitions applicable to the fruits in items 2 and 3 of Annex III, Part B, to be free from peduncles and leaves and that the packaging is to bear an appropriate origin mark.

14. Items 16.1 to 16.4 were amended by Commission Directive 98/2/EC of 8 January 1998.⁷ Under this directive, an official statement to the effect that fruits are free from harmful organisms is required even where they originate in countries which are free from the organisms. However, that amendment did not enter into force until after the facts at issue in the main proceedings had arisen.

13. The applicable version of items 16.2, 16.3 and 16.4 essentially provided that fruits of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf. and their hybrids originating in third countries where particular harmful organisms are known to occur require an official statement that the fruit originates in an area known to be free from the relevant organism. If that condition cannot be met, an official statement is required that no symptoms of the relevant organism have

III — The history of the case, the facts and the questions submitted

15. The present proceedings constitute a further stage in the dispute between a number of producers and exporters of citrus fruit, including S.P. Anastasiou (Pis-

⁶ — In the version laid down by Commission Directive 92/103/EEC of 1 December 1992 (OJ 1992 L 363, p. 1).

⁷ — OJ 1998 L 15, p. 34.

souri) Ltd, established in the part of Cyprus to the south of the United Nations Buffer Zone and the Minister of Agriculture, Fisheries and Food.

16. The first round of the litigation (*Anastasiou I*)⁸ concerned the question whether movement and phytosanitary certificates purporting to be issued in accordance with the Community provisions were valid if issued by officials of the ‘Turkish Republic of Northern Cyprus’.

17. Following the Court’s judgment in *Anastasiou I*⁸ in 1994, the undertakings from the part of Cyprus to the north of the United Nations Buffer Zone began to export citrus fruit to the Community via a Turkish port where phytosanitary certificates were issued by the competent Turkish authorities. That is how the undertakings responded to the Court’s judgment, which held that the authorities of a Member State are not entitled, when citrus fruit is imported from Cyprus, to accept phytosanitary certificates issued by authorities other than the competent authorities of the Republic of Cyprus.

18. The second round of the litigation concerned a question which had not been relevant in the first case, namely whether citrus fruit produced in the ‘Turkish Republic of Northern Cyprus’ may be imported into the United Kingdom with a certificate issued by Turkey. In the judgment of 4 July 2000 (*Anastasiou II*)⁹ the Court held that Member States are permitted 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 from there 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.

⁸ — Judgment in Case C-432/92 (cited in footnote 2).

⁹ — Judgment in Case C-219/98 (cited in footnote 2).

19. In addition, the Court ruled 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 the directive.

20. The third set of proceedings now before the Court relates to two consignments of citrus fruit which originated in the part of Cyprus to the north of the United Nations Buffer Zone. In March 1995 the fruit was shipped to the United Kingdom via a port in Turkey, accompanied by phytosanitary certificates issued by the Turkish authorities. Both importers of the fruit from the northern part of Cyprus, Cypfruvex (UK) Ltd and Cypfruvex Fruit and Vegetable (Cypfruvex) Enterprises Ltd (hereinafter together referred to as 'Cypfruvex'), have intervened in the proceedings which are of direct concern to them.

21. Anastasiou and the other appellants submitted before the House of Lords, again seized of the dispute, that the citrus fruit at issue is subject to special requirements in Annex IV, Part A, which can be fulfilled only at the place of origin, and that it cannot be imported into the United Kingdom without the corresponding certificate.

22. Proceeding on the basis that the judgment in *Anastasiou II* does not settle the matter, the House of Lords, by order of 17 December 2001 received at the Court on 16 April 2002, has requested a preliminary ruling on the following questions:

- ‘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 of 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 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.’

IV — The first question submitted: item 16.1 of Annex IV, Part A, to Directive 77/93

Directive 98/2 merely provides additional protection.

A — *Arguments of the parties*

23. *Anastasiou* contends that the origin marks may be affixed only at the place of origin. That follows *inter alia* from the fact that the special requirements are intended to provide a higher level of protection than a phytosanitary certificate issued by the State of dispatch.
24. Determination of the origin of goods at the place of origin facilitates the tracing back of any diseases to their source and cooperation with the authorities of the non-member country. Also, a person at the place of origin is better placed to establish the true origin.
25. The two special requirements set out in item 16.1 may be subject to entirely different preconditions. The amendment of items 16.2 to 16.4 brought about by
26. *Cypfruvex*, which shares the view of the Minister of Agriculture, points out that *Anastasiou's* view would result in an import ban on fruit from the northern part of Cyprus. The requirement for an origin mark may be satisfied in any non-member country. It can be concluded from Article 9(1) of Directive 77/93 that a supervisory body of a country other than the country of origin may also check an origin mark, including its appropriateness. The manner in which inspections are to be carried out is to be determined by the non-member country which issues the phytosanitary certificate. The supervisory body does not have to verify the origin, oversee the packing or issue a certificate of origin. Nor is the origin mark to be confused with the official statement of origin which serves other purposes, issued by the authorities of the country of origin. It follows from Directive 98/2 that the official statement of origin is additional to the requirement for an origin mark. Fruit from the northern part of Cyprus intended for export is packed and marked in accordance with rules which in substance correspond to those of the Republic of Cyprus. False origin marks are therefore precluded. Furthermore, Cyprus is free from harmful organisms, so equally nobody has an interest in falsifying the place of origin. It is not for the Court of Justice to review the activities of the Turkish authorities, which may cooperate with the authorities of the 'Turkish Republic of Northern Cyprus'.

The Member States in turn are to cooperate only with the Turkish authorities.

of origin may also be made by a third country. The origin mark may also be affixed by a country other than the one which certifies that such a mark has been affixed. Furthermore, the Community rules have not been so strict since 1993.

27. The *Greek Government* points out that the purpose of the origin mark is to safeguard trade and provide phytosanitary protection. It must be affixed by the authorities of the country of origin, because they are best placed to ensure observance of the objectives and are officially authorised bodies. The 'Turkish Republic of Northern Cyprus' is in any event not a non-member country which may issue the necessary certificates. It follows from the judgment in *Anastasiou I* that only the authorities of the Republic of Cyprus may affix the origin mark. The Turkish authorities may act only in relation to those products from Cyprus which bear an origin mark affixed by the Cypriot authorities.

29. The origin mark serves two purposes: the first, to ensure that fruit is excluded from certain zones, ceased to apply in 1999; the second, to enable fruit to be traced back, is limited because no information is required to be placed on the packaging as to the identity of the exporter. Since the origin mark has less significance than a phytosanitary certificate, it is not to be subject to stricter conditions than the statement of the country of origin made in the phytosanitary certificate, which may also be issued by a country other than the country of origin.

28. The *United Kingdom Government* points out that phytosanitary certificates derive from the International Plant Protection Convention of 1951 and that since then all phytosanitary certificates have had to include an official statement as to the place of origin. That requirement therefore applies not only to the products set out in Annex IV, Part A, to Directive 77/93. It follows from the judgment in *Anastasiou II* that an official certification as to the place

30. The Commission has to cooperate only with those authorities whose actions are to be recognised by the Member States. However, Commission cooperation with the 'Turkish Republic of Northern Cyprus' is also possible. Finally, citrus fruit from the northern part of Cyprus has never given rise to problems with harmful organisms. The amendments made by Directive 98/2 are not relevant to the interpretation of item 16.1.

31. The *Commission* submits that, before the amendment made by Directive 98/2, the origin mark was the only means of verifying whether products came from a disease-free country. Since the amendment, it is rather the conditions under items 16.2 to 16.3a that have been important. As is made clear by Article 9(1) of Directive 77/93, issue of a phytosanitary certificate is central to the controls because it constitutes official confirmation that the required conditions are met. This control is meaningful only if the person issuing the certificate is actually in a position to provide such confirmation.

32. Where the conditions relate to particular characteristics of the place where the fruit is grown, the certificate may be issued only by a person who is able to confirm from personal knowledge that the fruit originates from a specific place. Checks as to the conditions laid down in items 16.1 to 16.4 can accordingly be carried out only by a person present in the relevant country who has knowledge of where the fruit originates from. Since Cyprus is free from the harmful organisms covered by those provisions, the question is merely whether the official confirmation may be issued only by the recognised Cypriot authorities.

33. In this respect, the Commission concurs with the view of Advocate General Fennelly in *Anastasiou II*. Invoking the intention of the Community legislature when it adopted Directive 98/2, the Commission maintains that the origin mark should always serve the purpose of establishing the origin of fruit and ensuring that it either comes from an area free from harmful organisms or is accompanied by the requisite certification. The certificate can only ever be issued by a person in the country of origin.

34. The Commission therefore concludes that the special requirements in items 16.1 to 16.4 can be fulfilled only in the country of origin.

B — *Assessment*

35. Item 16.1 of Annex IV, Part A, to Directive 77/93 lays down two special requirements: (i) the fruits are to be free from peduncles and leaves and (ii) the packaging is to bear an origin mark. The first question submitted for a preliminary ruling concerns solely the second of the two conditions.

36. While the first condition, namely that the fruits are to be free from peduncles and leaves, can be checked at any time and anywhere, and moreover does not require any particular specialised knowledge, the legal position with regard to the second condition is not so clear.

37. The present proceedings concern not merely the question as to where it may be established whether packaging bears a certain mark, but — as is apparent from the wording of the question submitted for a preliminary ruling and the facts of the main proceedings — whether that special requirement may be fulfilled only in the country of origin. The focus is thereby placed on the condition laid down in the second indent of Article 9(1) of Directive 77/93.

38. Advocate General Fennelly has already pointed out in *Anastasiou II* that certain obstacles stand in the way of authorities of one non-member country proving that goods originate in another non-member country. It is thus questionable what reliable documentation may be used for this purpose — shipping documents cannot be in any event.¹⁰

39. Also, the view of Advocate General Fennelly¹¹ that the judgment in *Huygen*

and *Others*¹² cannot be transposed to the context at issue is to be followed, albeit on different grounds. That case concerned the interpretation of a provision of a free trade agreement in accordance with which an importing State could under certain conditions review the documents of the exporting State and accept other evidence as to the origin of the goods. However Directive 77/93 contains no comparable provision.

40. It is to be noted first of all in the present case that Article 9(1) of Directive 77/93 establishes the principle that, in the case of plants to which special requirements laid down in Annex IV, Part A, apply, the official phytosanitary certificate is to have been issued in the country in which the plant originates.

41. The second indent of Article 9(1) merely lays down an exception to that principle. The difficulty of interpretation arises from the fact that this exception, applicable in the present case, contained in the second indent at first sight has the same substantive scope, that is to say it applies to all the special requirements in Annex IV, Part A. However, since the Community

10 — Opinion in Case C-219/98 (cited in footnote 2), paragraph 49.

11 — Opinion in Case C-219/98 (cited in footnote 2), paragraph 50.

12 — Judgment in Case C-12/92 [1993] ECR I-6381 (paragraphs 15 and 25 et seq.), relating to the determination of the origin of goods under a free trade agreement.

legislature is not to be taken to adopt superfluous provisions, the exception must be understood as applying only to certain special requirements. It may be deduced from the second indent's wording, the central concern of which is that 'the special requirements... can be fulfilled also at places other than that of origin', that the exception is applicable only to those plants which satisfy that condition. If that is not the case, the general rule in Article 9(1) applies, that is to say the phytosanitary certificate must be issued in the country of origin.

42. It is admittedly indisputable that one element of the legislation — establishing whether packaging bears a mark — can be satisfied anywhere. The very affixing of a mark can take place anywhere.

43. However, once it is realised that a mark is involved which relates to origin and must perform that function appropriately, strict conditions for fulfilment of the special requirements must be imposed.

44. The fact that the exception in the second indent of Article 9(1) is to be interpreted narrowly is shown by a further

element of the legislation. The exception calls for fulfilment of the special requirements even where the phytosanitary certificate is to be issued merely at another *place* of origin. Strictly speaking that therefore also applies to other places in the same *country* of origin. If another country is in fact involved, even higher requirements are to be imposed for fulfilment.

45. This circumstance underlines the significance of the condition laid down in Article 9(1) of Directive 77/93 according to which the phytosanitary certificate must be one under Article 7. Under Article 7(1) in the version applicable here, in order for a certificate to be issued it must be 'considered, on the basis of the examination laid down in Article 6..., that the conditions therein are fulfilled'.

46. The conditions specified in Article 6 of Directive 77/93 in turn include the condition laid down in Article 6(4)(b) that the official examinations are to be made 'on the premises, preferably at the place of production'.

47. It must therefore now be examined whether that condition in Article 6(4)(b) of

Directive 77/93 applies only to Community products or also to products from non-member countries.

power to restrict its field of application, in Directive 94/13/EC.¹⁴ However, the Community legislature has not enacted an exception for products from non-member countries.

48. The Court found in *Anastasiou II* that, in the eighth recital in the preamble to Directive 91/683, ‘the conclusion drawn... that “these checks must therefore be made mandatory at the place of production”... is only “in respect of Community products”’.¹³

51. The requirement, stressed by the Court in *Anastasiou II*, to avoid being ‘less exacting with regard to plants originating outside the Community’¹⁵ is, however, to be noted.

49. In this connection it is to be observed, first, that the wording of Article 6(4)(b) of Directive 77/93 does not recognise such a distinction. Second, nor does the eighth recital in the preamble to Directive 91/683 limit to Community products the condition according to which ‘the most appropriate place... is the place of production’.

52. Even under that less strict standard the fact none the less remains that, for products from non-member countries too, the *most appropriate* place for the check is the place of production. That is all the more true in the case of a special requirement which has a geographical reference point, that is to say the origin mark.

50. Third, the Community legislature could also have subsequently restricted the field of application of Article 6(4) of Directive 77/93 to Community products. Indeed the Community legislature has made use of the

53. Furthermore, item 16.1 does not prescribe any kind of origin mark but an ‘appropriate’ one.¹⁶ Whether an origin

13 — Judgment in Case C-219/98 (cited in footnote 2), paragraph 31.

14 — Council Directive 94/13/EC of 29 March 1994 amending Directive 77/93/EEC 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 1994 L 92, p. 27).

15 — Judgment in Case C-219/98 (cited in footnote 2), paragraph 32.

16 — That is admittedly not apparent from the German language version, but it is apparent from the other language versions.

mark is appropriate depends, first, on its content (text, symbols and so forth) and, second, on the manner of its application in order, in particular, to ensure its durability.

54. The argument that no scope remains for applying the exception laid down in Article 9(1) of Directive 77/93 if the phytosanitary certificate must be issued in the country of origin may be countered by stating that the exception is applicable to item 16.1 also, namely with regard to the condition that the fruits be free from peduncles and leaves.

55. It is likewise necessary to reject the argument that it follows from Article 12(1)(b) of Directive 77/93, according to which a phytosanitary certificate may not be made out more than 14 days before the date on which the goods leave the consignor country, that certificates of the consignor country are to be recognised in the present case. This rule merely accords with the possibility — which is to be classified as an exception — that a certificate of a non-member country other than the non-member country of origin is also to be recognised. However, that exception applies only under certain conditions which are not at issue in the present proceedings.

56. It has also been argued — by the United Kingdom Government — that one purpose of the origin mark, namely to prove that fruit comes from certain zones, ceased to apply in 1999. Suffice it to state that the facts of the main proceedings are to be ruled upon under the old legal position which obtained prior to 1999.

57. It has further been submitted that the amendment brought about by Directive 98/2 affects the interpretation of item 16.1 in so far as the tightening up of items 16.2 to 16.4 diminished the importance of the origin mark. That may admittedly be correct with regard to the new legal position, but the old legal position applies to the facts of the main proceedings. Moreover, it may rather be inferred, conversely, from the amendment of items 16.2 to 16.4 that previously, and therefore also in the present case, the origin mark was all the more important.

58. It is also necessary to deal with the argument put forward by several parties according to which phytosanitary certifi-

cates are generally to be accorded a greater value than origin marks. This overlooks the fact that a special regime applies to citrus fruit. Under that regime citrus fruit does not require a plant passport. It follows, however, as the Commission has correctly submitted, that the origin mark is of particularly great value precisely for such fruit. That is particularly true with regard to the issue, fundamental to the present proceedings, of freedom from harmful organisms. For that criterion, the geographical reference (origin from a particular country or place) is of crucial importance.

60. The judgment in *Anastasiou II* did not simply lay down the principle that the Member States may import plants which are accompanied by a phytosanitary certificate issued in a non-member country other than the non-member country in which the plants originated, but laid down an exception subject to three preconditions. The condition as to an origin mark set out in item 16.1 is caught by the third precondition specified in the judgment in *Anastasiou II*, concerning special requirements which can be fulfilled only in the place in which the plants originate.

59. Finally, it is necessary to consider the argument that the origin is also to be entered in Box 5 of the phytosanitary certificate and that condition together with the requirement for an origin mark would lead to a multiple burden. In this connection, it is to be observed, first, that it is almost part of the essence of Community law concerning importation to enter information on several forms. The introduction of any simplification of import formalities falls within the competence of the Community legislature. Second, a difference, unfortunately not relied on in argument in the present proceedings, between the origin mark and the entry in the phytosanitary certificate should be noted. While the origin mark refers to the *country* of origin, the phytosanitary certificate refers to the *place* of origin.

61. Non-acceptance of phytosanitary certificates issued by the Turkish authorities does not affect Turkey in particular but all non-member countries which are not at the same time the country of origin. If fruit originates for instance not in the northern part of Cyprus but in Turkey, a certificate may correspondingly be issued only in Turkey and not in another non-member country from which the fruit is transported into the Community. Just as every non-member country determines its phytosanitary law, the Community too may arrange its legal order in such a way that it can lay down appropriate provisions and verify their observance. This is of course to be distinguished from the recognition of the equivalence of phytosanitary measures of

non-member countries, a matter subject to specific regulation.¹⁷

62. The answer to the first question submitted for a preliminary ruling should therefore be that, on a proper construction of Article 9(1) of Directive 77/93, where citrus fruit originating in one non-member country is shipped to another non-member country, the special requirement pursuant to item 16.1 of Annex IV, Part A, that the packaging is to bear an appropriate origin mark cannot be fulfilled outside the place of origin.

V — The second question submitted: items 16.2 to 16.4 of Annex IV, Part A, to Directive 77/93

A — Arguments of the parties

63. *Anastasiou* submits that the official statement in respect of the special requirements under items 16.2 to 16.4 must be made by the authorities of the country of

origin because those requirements can be effectively scrutinised only there. That also corresponds to the objective of Directive 98/2. If official statements could also be made in a country other than the country of origin, that country could also issue the phytosanitary certificate. However, the higher level of protection sought by Directive 98/2 would not thereby be ensured.

64. *Cypruvex* argues that the official statement under items 16.2 to 16.4 may be made in any non-member country. Since the whole of Cyprus is free from diseases for the purpose of Directive 77/93, only paragraph (a) of each of items 16.2, 16.3 and 16.4 would anyhow be applicable. Those paragraphs do not lay down, however, that the official statement may be made only in the country of origin. Since the phytosanitary certificate contains sections for both the country of origin and the country in which the certificate is issued, they simply do not have to be the same country.

65. The *Greek Government* takes the view with regard to the second question submitted for a preliminary ruling that the requirement for an official statement is additional to that for an origin mark. The checks necessary for the statement can be carried out only by the authorities of the country of origin. Citrus fruit from the

¹⁷ — See in this regard the recently adopted Council Directive 2002/89/EC of 28 November 2002 amending Directive 2000/29/EC 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 2002 L 355, p. 45).

northern part of Cyprus will not, however, be subject to any checks by Cypriot authorities. Nor can such checks be replaced by checks undertaken upon import into the Community. The fact that Cyprus is free from diseases constitutes no guarantee for the future. Besides, the Commission's finding of freedom from diseases relates only to the recognised Cypriot State.

B — Assessment

68. The second question submitted for a preliminary ruling expressly refers only to 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.¹⁸ However, since that directive, which consolidated Directive 77/93, did not enter into force until 10 July 2000, it is not applicable to the present proceedings.

66. The *United Kingdom Government* submits that only paragraph (a) of each of items 16.2, 16.3 and 16.4 is relevant. Those provisions merely require, however, that the country of origin be free from diseases. Such a declaration may also be made in another country. Official statements under items 16.2 to 16.4 may therefore also be made by a country other than the country of origin where the latter has been declared by the Commission to be free from harmful organisms or diseases.

69. As is apparent from the third recital in the preamble to Directive 92/103 which is applicable in the present case, the special requirements laid down in items 16.2 to 16.4 of Annex IV, Part A, are intended to provide better guarantees of freedom from harmful organisms.

70. It is that very body of special requirements that gives expression to the intention of the Community legislature and the objective of the directive to ensure a high level of protection.

71. Official statements under items 16.2 to 16.4 must satisfy two conditions.

67. The *Commission* does not consider separately the second question submitted for a preliminary ruling but discusses the special requirements together with the first question. In so doing it reaches the conclusion that the requirements in items 16.2 to 16.4 can likewise be fulfilled only in the country of origin.

72. First, in accordance with the judgment in *Anastasiou I* the authorities of the Member States are to accept only those

¹⁸ — OJ 2000 L 169, p. 1.

statements which originate from an authority of a recognised State. Statements made by authorities of the ‘Turkish Republic of Northern Cyprus’ are thus precluded.

73. Second, the statements must satisfy the condition laid down in Article 9(1) according to which the special requirements have to be fulfilled.

74. Under the exception laid down in the second indent of Article 9(1), the phytosanitary certificate may be issued outside the place of origin only if the special requirements are thereby fulfilled.

75. The official statement under paragraph (a) of each of items 16.2, 16.3 and 16.4 is concerned with whether the fruit originates in an area known to be free from the relevant organism.

76. Such a statement therefore presupposes knowledge of different kinds: first, concerning the origin of the fruit and, second, concerning conditions in the relevant area of origin. It is apparent that under the version of items 16.2 to 16.4 applicable

here, that is to say the version prior to the amendments made by Directive 98/2, it is the *area* that is material and not the country. Paragraph (a) of each of items 16.2, 16.3 and 16.4 is thus, from a geographical point of view, wider than the second indent of Article 9(1) of Directive 77/93, which is directed towards the place of origin, but narrower than the basic rule in Article 9(1), which is directed towards the *country* of origin. It follows that the official statement can be made only by authorities which possess the appropriate factual knowledge.

77. It may be inferred from the fact that under the second indent of Article 9(1) fulfilment of the special requirements must be guaranteed and the need for a high level of protection in a matter as delicate as health that an official statement concerning the conditions specified in paragraph (a) of each of items 16.2, 16.3 and 16.4 must in principle be made at the place of origin.

78. It could admittedly also be contended that such a statement might also be made outside the place of origin but within the area of origin, but the related uncertainties

are too great. Furthermore, it seems natural for the statement of origin under paragraph (a) to be made at the place where the origin mark is affixed.

guaranteeing the required high level of protection.

79. Paragraph (b) of each of items 16.2, 16.3 and 16.4 provides for an official statement that an appropriate official check has established that no symptoms of organisms have been observed 'at the place of production and in its immediate vicinity'. Such checks can be carried out only at the place of production and in its immediate vicinity. In order for fulfilment of this special requirement to be ensured, the statement should be made by authorities in proximity to the authorities which have carried out the check.

82. Finally, it remains to deal with the argument put forward by Cypfruvex according to which the fact that the phytosanitary certificate contains sections for both the country of origin and the country in which the certificate is issued means that they do not have to be the same country. Suffice it to state that this merely accords with the exception laid down in Article 9(1) of Directive 77/93 that a phytosanitary certificate may also be issued in a non-member country other than the country of origin. In the present instance, however, the conditions for that exception are not met.

80. The same is true of the leaf samples provided for in paragraph (b) of item 16.2 and the examination of harvested fruit provided for in paragraph (b) of items 16.2, 16.3 and 16.4 and paragraph (c) of items 16.2 and 16.4. Fulfilment of these special requirements can really be ensured only at the place of origin.

83. The requirement that the official statement is to be made in the *country* of origin means that, in cases where a check is to be carried out at the *place* of origin, under Community law the authorities of the Republic of Cyprus would also have competence in respect of checks in the northern part of Cyprus.

81. The statement under paragraph (c) of items 16.2 and 16.3 and paragraph (d) of item 16.4 relates to appropriate treatment of fruit. In order that fulfilment of this special requirement may be ensured, the authority which makes the statement must satisfy itself as to the precise details of the treatment in question. A statement at the place of origin is the easiest means of

84. If compliance with the Community legislative requirements, as construed here, does not constitute the more advantageous solution for the northern part of Cyprus,

that is a matter which results from the special circumstances on the island of Cyprus and for which the Community legislature does not have to answer.

lation applicable to other non-member countries also applied to Cyprus.

85. The Community legislature is certainly free to adopt special legislation for specific cases. However, the Council has hitherto made no use of this possibility. Thus, at the material time in the present case, the legis-

86. The answer to the second question submitted for a preliminary ruling should therefore be that, on a proper construction of items 16.2 to 16.4 of Annex IV, Part A, to Directive 77/93, the official statement as to the country of origin is to be made by an official in the country of origin.

VI — Conclusion

87. I accordingly propose that the Court should answer the questions submitted for a preliminary ruling as follows:

- (1) On a proper construction of Article 9(1) of Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Member States of organisms harmful to plants or plant products, where citrus fruit originating in one non-member country is shipped to another non-member country, the special requirement pursuant to item 16.1 of Annex IV, Part A, to Directive 77/93/EEC that the packaging is to bear an appropriate origin mark cannot be fulfilled outside the place of origin.
- (2) On a proper construction of items 16.2 to 16.4 of Annex IV, Part A, to Directive 77/93/EEC, the official statement as to the country of origin is to be made by an official in the country of origin.