its interpretation, so that the Commission merely has the possibility, which is always open to it, of expressing its opinion which is not binding on the national authorities.

2. An action for damages under Articles 178 and the second paragraph of Article 215 of the Treaty in which compensation is sought for the damage caused by the Commission's wrongful adoption of a decision is inadmissible in the absence of such a decision, the Commission having been empowered only to issue a mere opinion addressed to the national authorities, not a measure producing legal effects.

ORDER OF THE COURT
13 June 1991 *

In Case C-50/90,

Sunzest (Europe) BV

and

Sunzest (Netherlands) BV,

having their registered office at 16 Marconistraat, Rotterdam (Netherlands), represented by Jaap Feenstra, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 8 Rue Zithe,

applicants,

v

Commission of the European Communities, represented by Pieter Kuyper, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

supported by

The Hellenic Republic, represented by N. Dafniou, of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val Ste-Croix,

intervener,

APPLICATION for annulment of the decision said to be contained in the Commission's letter of 5 December 1989 concerning imports of produce of Cypriot origin which must be accompanied by the phytosanitary certificate referred to in Council Directive 77/93/EEC of 21 December 1976, and for compensation for the damage caused by that decision,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: J.-G. Giraud,

after hearing the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 6 March 1990, Sunzest (Europe) B. V. and Sunzest (Netherlands) B. V. brought an action (i) under the second paragraph of Article 173 of the EEC Treaty for annulment of the decision of the Commission said to be contained in the letter of 5 December 1989 from the Director-General of DG VI, Agriculture, to the Permanent Representative to the European Communities for Belgium concerning importations of produce of Cypriot origin which must be accompanied by the phytosanitary certificate referred to in 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 (Official Journal 1977 L 26, p. 20) and (ii) under the second paragraph of Article 215 for compensation for the damage caused by that decision.

2 Directive 77/93/EEC provides that plants or plant products originating in a non-member country cannot be introduced into the territory of the Member States unless accompanied by a phytosanitary certificate.

3 Under Article 12(1)(b) of Directive 77/93/EEC as amended by Council Directive 80/392/EEC of 18 March 1980 (Official Journal 1980 L 100, p. 32),

'The certificates shall be issued by authorities empowered for this purpose under the International Plant Protection Convention, or, in the case of non-contracting countries, on the basis of laws or regulations of the country. In accordance with the procedure laid down in Article 16, lists of the authorities empowered by the various non-member countries to issue certificates may be established.'

4 It appears from the documents in the case that for many years the applicant companies imported and marketed within the European Community citrus fruit originating in the northern part of Cyprus under certificates issued by the 'Turkish Federated State of Cyprus' and by the 'Turkish Republic of Northern Cyprus'.

5 On 5 December 1989 a letter signed by Guy Legras, Director-General of DG VI, Agriculture, was sent to the Permanent Representative to the European Communities for Belgium, on the subject of the rules governing the importation from Cyprus of produce which must be accompanied by the phytosanitary certificate referred to in Directive 77/93/EEC, cited above. The author of the letter pointed out, first, that the Commission's staff had received complaints concerning differences in the conditions laid down by the Member States for accepting products originating in Cyprus. He added in particular that 'in view of these complaints I feel I must draw the attention of the competent authorities of all the Member States to the principles governing this matter .... In the case of Cyprus, Article 12(1)(b) should be interpreted as meaning that the only authorities empowered to issue certificates are those so authorized on the basis of the laws or regulations of the Republic of Cyprus. The position of the Community is clear in this regard ..., the only recognized government is that of the Republic of Cyprus. For that reason produce accompanied by a phytosanitary certificate within the meaning of Directive 77/93/EEC originating from the northern part of the island cannot be regarded as complying with the conditions of the directive unless the certificate is issued in the name of the "Republic of Cyprus" by the competent authorities of that Republic.'

6 The applicant companies brought an action for the annulment of the decision said to be contained in that letter and for compensation for the damage resulting from the Commission's unlawful conduct.

7 In support of their application for annulment, the applicants claim that by requiring phytosanitary certificates issued by the Republic of Cyprus the Commission is ignoring the fact that, by refusing to issue such certificates for produce originating in the northern part of the island, the Government of Cyprus is itself infringing Article 5 of the Association Agreement between the Community and Cyprus, which provides that the rules governing trade between the Contracting Parties may not give rise to any discrimination between the Member States, or between nationals or companies of these States, nor nationals or companies of Cyprus. The applicants further consider that the Commission's interpretation of Directive 77/93/EEC is not based on considerations of plant health protection but is inspired by its policy with regard to the situation in Cyprus.

8 In support of their application for compensation, the applicants claim that by virtue of the second paragraph of Article 215 the Commission is bound to make good the economic damage inflicted upon them by the unlawful decision. That decision is said to prevent any importation into the Community of citrus fruit originating from the northern part of Cyprus and will thus force the applicants to consider other destinations in the future.

9 By a separate document the Commission lodged an objection of inadmissibility on 15 June 1990 pursuant to Article 91(1) of the Rules of Procedure and requested the Court to rule on the objection without examining the substance of the case.

10 In support of its objection of inadmissibility concerning the application for annulment the Commission claims that the letter of 5 December does not constitute a decision but is simply transmitting the advice of the Commission's departments.

11 The applicants maintain, however, that that letter must be regarded as an act of the Commission within the meaning of Article 173 of the EEC Treaty.

12 In order to determine whether the contested act constitutes a decision against which an action may be brought pursuant to the second paragraph of Article 173 of the EEC Treaty, it should be recalled that the Court has consistently held that it is necessary to look at the substance of the act in question. In particular, only measures producing binding legal effects of such a kind as to affect the applicant's interests by clearly altering his legal position constitute acts or decisions open to challenge by an application for annulment (see inter alia the judgment of 11 November 1981 in Case 60/81 *IBM* v *Commission* [1981] ECR 2639).

13 That is not the case as regards the contested letter, as is clear both from its content and its context. The letter is not capable of producing legal effects, since the application of the Community provisions in respect of protective measures against the introduction into the Member States of organisms harmful to plants or plant products is a matter solely for the national bodies designated for that purpose and

no provision in Directive 77/93/EEC confers on the Commission power to adopt decisions on its interpretation, so that the Commission merely has the possibility, which is always open to it, of expressing an opinion which is not binding on the national authorities (judgment of 10 March 1978 in Case 132/77 *Société pour l'Exportation des Sucres SA* v *Commission* [1978] ECR 1061; judgment of 27 March 1980 in Case 133/79 *Sucrimex SA and Westzucker GmbH* v *Commission* [1980] ECR 1299; judgment of 10 June 1982 in Case 217/89 *Compagnie Interagra SA* v *Commission* [1982] ECR 2233; order of 17 May 1989 in Case 151/88 *Italy* v *Commission* [1989] ECR 1255).

14 It follows from the above findings that the letter in question does not constitute an act against which an action for annulment may be brought. In consequence the application must be dismissed as inadmissible inasmuch as it is founded on the second paragraph of Article 173 of the Treaty.

15 In support of its objection of inadmissibility with regard to the application for compensation the Commission claims that the views expressed in the contested letter cannot be described as conduct on the basis of which proceedings may be brought before the Court under the second paragraph of Article 215 of the Treaty.

16 The applicants, however, consider that the letter in question does satisfy the conditions for bringing an action before the Court laid down in that article.

17 In order to establish the existence of a wrongful act for which the Community is liable the applicant companies confine themselves to relying on the illegality of the decision said to be contained in the letter of 5 December 1989.

18 As has been held above, that letter contains not a decision but merely an opinion of the Commission's staff, with no effect in law.

19 The applicant companies are not therefore entitled to rely on the illegality of that letter in support of their claim for compensation. The application based on the second paragraph of Article 215 of the Treaty must therefore also be dismissed.

20 Accordingly, Article 92(1) of the Rules of Procedure must be applied and the application declared inadmissible.

Costs

21 Under Article 69(2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs. Since the applicants have failed in their submissions they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible.

(2) The applicants must bear the costs.

Luxembourg, 13 June 1991.

J.-G. Giraud
Registrar

O. Due
President