JUDGMENT OF THE COURT (Fourth Chamber)
7 March 2002 *

In Case C-365/00,

Commission of the European Communities, represented by R.B. Wainwright and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by I.M. Braguglia, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by having enacted and maintained in force Article 28 of Law No 128 of 24 April 1998 making provision for the implementation of obligations resulting from Italy's membership of the European

* Language of the case: Italian.

Communities — Community Law 1995-1997, which makes it a requirement that the labels of cosmetic products state whether the perfume essences or fragrances contained in them are of natural or artificial origin, the Italian Republic has failed to fulfil its obligations under Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169), as amended by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32), and, in particular, under the third subparagraph of Article 6(1)(g) thereof,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward (Rapporteur) and A. La Pergola, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 4 December 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 2 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by having enacted and maintained in force Article 28 of Law No 128 of 24 April 1998 making provision for the implementation of obligations resulting from Italy's membership of the European Communities — Community Law 1995-1997 (hereinafter 'Law No 128/98'), which makes it a requirement that the labels of cosmetic products state whether the perfume essences or fragrances contained in them are of natural or artificial origin, the Italian Republic has failed to fulfil its obligations under Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169), as amended by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32; hereinafter 'Directive 76/768'), and, in particular, under the third subparagraph of Article 6(1)(g) thereof.

Legal context

The Community legislation

2 Article 6 of Directive 76/768 is intended to ensure uniformity as regards the information that must be given on the containers and packaging of cosmetic products.

3 The third paragraph of Article 6(1)(g) provides that '[p]erfume and aromatic compositions and their raw materials shall be referred to by the word "perfume" or "flavour"', but does not refer to any other compulsory information.

The Italian legislation

4 Article 28 of Law No 128/98 makes it an express requirement that the labels of cosmetic products state whether the perfume essences or fragrances contained in them are of natural or artificial origin.

The pre-litigation procedure

5 In accordance with the procedure laid down in the first paragraph of Article 226 EC, the Commission, having given the Italian Republic an opportunity to submit its observations, sent that Member State a reasoned opinion by letter of 14 July 1999, calling on it to take the measures necessary to comply with its obligations under the third subparagraph of Article 6(1)(g) of Directive 76/768 within two months of notification of that opinion.

6 The Italian Government replied to the Commission by letter of 3 November 1999, mentioning the proposed enactment of a draft provision which would abolish the requirement in Article 28 of Law No 128/98.

7 Since it did not subsequently receive any information from the Italian Government enabling it to conclude that such a provision had been definitively enacted and had entered into force, the Commission decided to bring this action.

The action

8 The Commission claims that, by preventing the free marketing within Italian territory of a cosmetic product not bearing any indication of whether the perfume essences or fragrances contained in it are of natural or artificial origin, Article 28 of Law No 128/98 introduces an additional requirement, not provided for by Directive 76/768 and thus prohibited by it.

9 In its defence the Italian Government indicates that it does not contest the charge made against it by the Commission and that a provision designed to abolish the requirement in Article 28 of Law No 128/98 is to be included in the draft Community Law for 2001.

10 In those circumstances, it must be held that, by having enacted and maintained in force Article 28 of Law No 128/98, the Italian Republic has failed to fulfil its obligations under the third subparagraph of Article 6(1)(g) of Directive 76/768.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. **Declares that, by having enacted and maintained in force Article 28 of Law No 128 of 24 April 1998 making provision for the implementation of obligations resulting from Italy's membership of the European Communities — Community Law 1995-1997, which makes it a requirement that the labels of cosmetic products state whether the perfume essences or**

fragrances contained in them are of natural or artificial origin, the Italian Republic has failed to fulfil its obligations under the third subparagraph of Article 6(1)(g) of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products, as amended by Council Directive 93/35/EEC of 14 June 1993;

2. Orders the Italian Republic to pay the costs.

von Bahr Edward La Pergola

Delivered in open court in Luxembourg on 7 March 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber