JUDGMENT OF THE COURT (Fifth Chamber)

7 December 2000 *

In Case C-482/98,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by E. Traversa, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission Decision 98/617/EC of 21 October 1998 denying authority to Italy to refuse the grant of exemption to certain

* Language of the case: Italian.

products exempt from excise duty under Council Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1998 L 295, p. 43),

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur) and D.A.O. Edward, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 18 May 2000,

after hearing the Opinion of the Advocate General at the sitting on 15 June 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 31 December 1998 the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for the annulment of Commission Decision 98/617/EC of 21 October 1998 denying authority to Italy to refuse the grant of exemption to certain products exempt from excise duty under Council Directive 92/83/EEC on the harmonisation of the structures of the excise duties on alcohol and alcoholic beverages (OJ 1998 L 295, p. 43, hereinafter 'the contested decision').

The Community legislation

Legislation on excise duties

2 Section V of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) is concerned with the taxation of ethyl alcohol.

3 Pursuant to Article 19(1) of Directive 92/83, the levying of excise duty on ethyl alcohol is mandatory and, under Article 21, the duty is to be fixed per hectolitre

of pure alcohol at 20 °C at the same rate, in general, for all products chargeable with that duty.

4 As well as making certain exceptions to that rule, Directive 92/83 provides for certain exemptions inspired in most cases by the wish to neutralise the impact of excise duties on alcohol used as an intermediate product in other commercial or industrial products.

5 In that connection, Article 27(1), (3), (4) and (5) of Directive 92/83 provide:

'1. Member States shall exempt the products covered by this Directive from the harmonised excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse:

(a) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of any Member State, such requirements having been duly notified and accepted in accordance with paragraphs 3 and 4 of this Article. This exemption shall be conditional on the application of the provisions of Directive 92/12/EEC to commercial movements of completely denatured alcohol;

(b) when both denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption;

...

3. Before 1 January 1993 and three months before any intended subsequent change in national law, each Member State shall communicate to the Commission, together with all relevant information, the denaturants which it intends to employ for the purposes of paragraph 1(a). The Commission shall transmit the communications to the other Member States within one month of receipt.

4. If, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised in the Council, the Council shall be deemed to have authorised the denaturing processes notified. If an objection is raised within the time-limit, a decision shall be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

5. If a Member State finds that a product which has been exempted under paragraphs 1(a) or 1(b) above gives rise to evasion, avoidance or abuse, it may refuse to grant exemption or withdraw the relief already granted. The Member State shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A final

decision shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC. Member States shall not be obliged to give retroactive effect to such a decision.'

6 Article 24 of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) provides:

'1. The Commission shall be assisted by a Committee on Excise Duties, hereinafter referred to as the "Committee". The Committee shall be composed of the representatives of the Member States and chaired by a Commission representative. The Committee shall draw up its rules of procedure.

...

3. The Commission representative shall submit to the Commission a draft of the measures to be adopted. The Committee shall deliver its opinion on the draft within a time-limit which the Chairman may lay down according to the urgency of the matter. The Committee shall take its decision by the majority laid down in Article 148(2) of the Treaty. The Chairman shall not vote.

4. (a)The Commission shall adopt the intended measures where they are in accordance with the Committee's opinion.

(b) Where the intended measures are not in accordance with the opinion of the Committee, or in the absence of any opinion, the Commission shall forthwith submit to the Council a proposal relating to the measures to be taken. The Council shall act on a qualified majority.

If, on the expiry of three months from the date on which the matter was referred to it, the Council has not adopted any measures, the Commission shall adopt the proposed measures, save where the Council has decided against the said measures on a simple majority.

...'

7 Article 27(1)(a) of Directive 92/83 provides that the exemption is to be subject to application of the provisions of Directive 92/12. Under Article 7(4) of the latter directive, products subject to excise duties which have already been released for consumption in the Member State of dispatch are to move between the territories of the various Member States under cover of an accompanying document listing the main data from the document referred to in Article 18(1) of Directive 92/12.

8 That provision was implemented by Commission Regulation (EEC) No 3649/92 of 17 December 1992 on a simplified accompanying document for the intra-Community movement of products subject to excise duty which have been released for consumption in the Member State of dispatch (OJ 1992 L 369, p. 17).

9 Under Article 5 of Regulation No 3649/92:

'The simplified accompanying document shall also be used to accompany commercial intra-Community movements of completely denatured alcohol, provided for in Article 27(1)(a) of Council Directive 92/83/EEC.'

10 Under that provision, movements of completely denatured alcohol are not required to be accompanied by the administrative document prescribed by Article 18(1) of Directive 92/12 for movements under duty-suspension arrangements of dutiable products — that is to say, products in respect of which the obligation to pay tax has not been discharged. That document is defined by Commission Regulation (EEC) No 2719/92 of 11 September 1992 on the accompanying administrative document for the movement under duty-suspension arrangements of products subject to excise duty (OJ 1992 L 276, p. 1).

The rules applicable to cosmetics

11 According to Article 5 of Council Directive 80/232/EEC of 15 January 1980 on the approximation of the laws of the Member States relating to the ranges of nominal quantities and nominal capacities permitted for certain prepackaged products (OJ 1980 L 51, p. 1), the aim of the directive is to ensure that the Member States do not 'refuse, prohibit or restrict the placing on the market of prepackages which satisfy the requirements of this Directive, on the grounds of their nominal quantity in the case of prepackages listed in Annex I ...'.

12 On the basis of Article 2, Annex I lays down, for the products referred to in Article 1 of Directive 80/232, the 'range of nominal quantities of the contents of the prepackages'. In Point 7 of Annex I, entitled 'Cosmetics: beauty and toilet preparations', paragraph 4 is concerned with alcohol-based products containing less than 3% by volume of natural or synthetic perfume oil and less than 70% by volume of pure ethyl alcohol: aromatic waters, hair lotions, pre-shave and after-shave lotions.

13 Article 1(1) of 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, in particular, by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32, hereinafter 'Directive 76/768') defines cosmetic products as:

'any substance or preparation intended to be placed in contact with the various external parts of the human body (epidermis, hair system, nails, lips and external genital organs) or with the teeth and the mucous membranes of the oral cavity with a view exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition'.

14 Pursuant to Article 3 of Directive 76/768:

'Member States shall take all necessary measures to ensure that only cosmetic products which conform to the provisions of this Directive and its Annexes may be put on the market.'

15 Article 6(2) of the same directive provides:

'Member States shall take all measures necessary to ensure that in the labelling, presentation for sale and advertising of cosmetic products, the wording, use of names, trade marks, images or other signs, figurative or otherwise, suggesting a characteristic which the products in question do not possess, shall be prohibited.'

16 Article 12(1) of that directive provides:

'If a Member State notes, on the basis of a substantiated justification, that a cosmetic product, although complying with the requirements of the Directive, represents a hazard to health, it may provisionally prohibit the marketing of that product in its territory or subject it to special conditions ...'.

Background to the dispute

The Italian Republic's application for authority to refuse an exemption

17 In June and July 1997 the Italian tax administration notified to the Commission Ministerial Order No 524 of 9 July 1996 (GURI No 237 of 9 October 1996), which made the grant of exemption provided for by Article 27(1)(b) of Directive 92/83 subject to certain conditions in order to prevent abuses to which the exemption might give rise.

18 According to that order, denatured alcohol used for the manufacture of perfumes and other cosmetics must be pure and not of reject quality. In addition, the alcohol content of certain household products, such as liquid detergents, liquid polishes and insecticides should not exceed 40%.

19 The notification further stated that those conditions reflected the normal composition of the products in question and were designed to ensure that goods

intentionally prepared in an abnormal way could not benefit unduly from the denaturing formulae and arrangements for movement and storage laid down for certain categories of goods. In particular, in the case of cosmetics, the aim was to avoid a situation, which had already occurred several times, where products marketed as perfumes, but lacking their characteristics, could, since they contained slightly denatured alcohol, in practice be substituted for widely-consumed products which normally contained the completely denatured alcohol referred to in Article 27(1)(a) of Directive 92/83. Completely denatured alcohol offered a greater guarantee against tax evasion by virtue both of the greater extent of the denaturing and of the stricter rules regarding movement and storage.

20 In order to understand the reasoning underlying the Italian rules it is necessary to examine the denaturing process and the risks of tax evasion associated with it.

21 The Italian Government states, in its reply, that denaturing is a process designed to render alcohol toxic so that it cannot be neutralised or re-converted for use in food products.

22 The denaturing formulae require — for the manufacture of detergents — use of the State-approved general denaturant. This is a highly toxic stabiliser which prevents chemical re-conversion of denatured alcohol into potable alcohol.

23 Even though they are likewise exempt from excise duties, perfumes raise a particular problem in that, for them, only special, mild, perfumed denaturing agents can be used. Since reject-quality alcohol is malodorous and contains first runnings and tailings of distillation products — such as aldehydes, ketones and

toxic methanols — that are incompatible with use on the face, epidermis and mucous membranes, good quality alcohol must be used for the manufacture of perfume.

24 Although only lightly denatured and thus easily re-convertible, the alcohol used in perfume would not be re-converted, since that process would be uneconomic in view of the cost of pure alcohol. However, the process would be profitable if the rules allowed reject-quality alcohol to be used for the manufacture of perfume.

25 According to the Italian Government, the obligation to use pure alcohol for the manufacture of perfumes and cosmetics thus provides a means of combating smuggling and tax avoidance.

26 In its application, the Italian administration stated that there had been a case where a product had been manufactured in Italy using slightly perfumed reject-quality alcohol which had been described by the manufacturer as a cosmetic product but was marketed as a product for cleaning objects and thus became a substitute, in practice, for the completely denatured alcohol referred to in Article 27(1)(a) of Directive 92/83 without being subject to the stricter rules on denaturing, movement and storage laid down for the latter product.

27 Consequently, the Italian administration sought authority to refuse the grant of exemption from excise duties for the products referred to in Article 27(1)(b) of that directive which, in so far as they did not display the characteristics indicated above, could, in its view, give rise to tax avoidance, evasion or abuse.

The contested decision

28 Under Article 27(5) of Directive 92/83, the Commission adopted the contested decision rejecting the Italian application.

29 It gave the following reasons for its decision:

'...

(11) As regards the reasons given by Italy for the refusal of exemption to cosmetics (perfumes) containing impure alcohol, the use of cheap impure alcohol to produce goods falling within Article 27(1)(b) cannot be regarded as a cause of evasion, avoidance or abuse in particular since, on the one hand, an impure alcohol presents less danger of improper use and, on the other hand, whether or not cosmetics produced from impure alcohol are cheaper, Article 27(1)(b) is in no way restricted to expensive goods, the disparate goods falling within it varying extremely widely in price. Nor does anything in the Directive require products exempt under Article 27(1)(b) (which are not for human consumption) to be derived from pure alcohol.

(12) Moreover, since Article 27(1)(b) covers not only, or even mainly, cosmetics, but also products used *inter alia* for cleaning purposes, the use of goods described as cosmetics for cleaning purposes cannot affect their classification under Article 27(1)(b) and cannot be regarded as tax evasion, avoidance or abuse. This seems particularly clear in view of the fact that

in some Member States it is not unusual for colognes and the like to be used for non-cosmetic purposes such as cleaning. The fact that the "completely denatured" alcohols of Article 27(1)(a) may also be used for such purposes is not relevant.

(13) The above considerations apply equally to the particular case raised by Italy of goods which on arrival at their destination are declared to be denatured in accordance with Italian rules but do not meet the requirement that they be pure. In addition:

(i) movements under Article 27(1)(b) should be entirely free of formalities, and require no declarations;

(ii) compliance with the requirements of any Member State is sufficient, and

(iii) since the methods of denaturing products covered by Article 27(1)(b) are not laid down at Community level, the fact that the goods have been released — for free movement throughout the Community — in the Member State of origin is evidence that they have fulfilled that Member State's requirements.

(14) The above considerations apply equally to the case of perfumes exempt under Article 27(1)(b) and denatured according to the rules of other Member States but which do not meet Italy's condition that they be derived from pure alcohol. Moreover, Italy has stated that no such cases have been recorded.

(15) Similar considerations apply to Italy's refusal of exemption to certain household products, where Italy has simply pointed out that its reasons for refusing exemption are similar to those concerning cosmetics, in that no complaints have been received and normal trade is not affected by its condition for exemption.

(16) In addition, Italy has not shown that any of the products subject to its refusal of exemption have in fact given rise to any actual evasion, avoidance or abuse. Nor has any other Member State — most of which have much higher duty rates than Italy — reported any problems of evasion, avoidance or abuse arising from the exemption of these products.

...'

The action for annulment

30 The Italian Republic alleges infringement and misapplication of Article 27(1)(a) and (b) and (5) of Directive 92/83, of Article 1 of Directive 76/768 and of point 7.4 of Annex I to Directive 80/232. It also alleges 'erroneous conditions', lack of logic and an inadequate statement of the reasons for the contested decision.

31 First, the Italian Republic contends that the various rules laid down in Article 27(1)(a) and (b) of Directive 92/83 are closely linked to the various types of products, in that the denaturing formulae were developed with regard to the specific use of each product. Each product should be precisely classified in a manner consistent with its composition and use so as to ensure that it cannot be

improperly removed from the stricter control regime to which it should normally be subject. In the absence of such classification, public revenues could be adversely affected and economic operators could be exposed to distortions of competition.

32 Second, the Italian Republic maintains that any attempt improperly to benefit from a more favourable control regime than that normally applicable constitutes an abuse within the meaning of Article 27(1) and (5) of Directive 92/83, against which the Member States are entitled to take action.

33 Any other approach would be liable, in breach of the principle of effectiveness, to reduce the concept of abuse to the evasion and avoidance referred to in that provision of Directive 92/83, which apply only to conduct directed towards non-payment of charges due on goods.

34 Third, the adoption by Member States of measures to prevent evasion, avoidance or abuse is not dependent upon prior discovery thereof. The mere possibility of such conduct is sufficient.

35 The Italian Republic contends that the Italian version of Article 27 of Directive 92/83 lays down, in paragraph 1, the requirement of the 'prevention' of any evasion, avoidance or abuse and, in paragraph 5, refers to the 'possibility' of evasion, avoidance or abuse. In response to the Commission's objection that those terms appear only in the Italian version of the directive, the Italian Government states that that version is the authentic one. In any event, it submits, those terms merely reflect the sense of the provisions of Article 27(1), which empower the Member States to lay down conditions for the prevention of evasion, avoidance or abuse.

36 Fourth, the Italian Republic contends that the Commission has infringed Directive 76/768 by stating, in point 12 of the contested decision, that the use of cosmetics for cleaning purposes cannot affect their classification under Article 27(1) of Directive 92/83. It is clear from Article 1 of Directive 76/768 that cosmetics are applied solely or mainly to the body.

37 It adds that, by withholding authority to prohibit the exemption provided for in Article 27(1)(b) of Directive 92/83 for products presented as 'perfumes' but manufactured using reject-quality alcohol, the Commission has disregarded the fact that Directive 80/232, in particular point 7 of Annex I, requires pure alcohol to be used, at least for the manufacture of certain categories of cosmetics.

38 Fifth, the Italian Republic maintains that movements of completely denatured alcohols referred to in Article 27(1)(a) of Directive 92/83 must be covered by the simplified accompanying document provided for by Regulation No 3649/92, whereas those of alcohols denatured by a method approved by a Member State mentioned in Article 27(1)(b) must be covered by the accompanying document prescribed for movements of products under duty-suspension arrangements by Regulation No 2719/92. In its view, in the absence of such documents, the right to exemption is forfeited.

39 The Italian Republic contends that the exemption provided for in Article 27(1)(b) relates to denatured alcohol already used for the manufacture of a product not intended for human consumption. If it has not yet been used, alcohol denatured in that way cannot qualify for that exemption and must be regarded as a product subject to duty-suspension arrangements.

Findings of the Court

The first four allegations

40 It must be observed at the outset that it is clear from the wording of Article 27(1)(a) and (b) of Directive 92/83 that the grant or refusal of an exemption is dependent on the denaturing method.

41 If that method has been approved at Community level, the alcohol is exempted from excise duties under Article 27(1)(a). If, on the other hand, the alcohol contained in a product not intended for human consumption has been denatured in accordance with a method approved in a Member State, the exemption provided for by Article 27(1)(b) should be applied. Moreover, if the denaturing method is not one of those approved either by the Community rules or by national laws then the product cannot be exempted.

42 Consequently, it would be contrary to Directive 92/83 to withhold exemption for a product which meets the conditions laid down in Article 27(1)(b) solely because it has been found that the use for which it is really intended does not correspond with the name assigned to it by the trader. Neither the use of pure alcohol nor the maximum alcohol content was considered by the Community legislature as a criterion for application of the exemption.

43 Whilst it is true that, as far as cosmetics are concerned, point 7.4 of Annex I to Directive 80/232 refers only to pure ethyl alcohol, a product presented as a cosmetic which contains impure alcohol cannot and must not be denied an exemption provided that it meets the conditions laid down in Article 27(1) of Directive 92/83.

44 In such circumstances, a Member State's refusal to exempt a product from excise duties under Article 27(1) of Directive 92/83 as a penalty for infringing national provisions enacted in implementation of a directive concerning cosmetic products, such as Directive 76/768, is serving a purpose alien to that of Directive 92/83 (see, to that effect, Case C-111/92 *Lange* v *Finanzamt Fürstenfeldbruck* [1993] ECR I-4677, paragraph 22).

45 On the other hand, the Member State concerned may, in accordance with the Community directives on cosmetics, prohibit the marketing of a product of the kind referred to in paragraph 42 of this judgment and, if appropriate, impose financial or even criminal penalties under domestic law. The same applies to the other condition imposed by the Italian rules in relation to the maximum alcohol content of household products.

46 As regards the conditions under which a Member State is empowered, under Article 27(5) of Directive 92/83, to combat evasion, avoidance or abuse in the application of exemptions, it must be observed that certain language versions appear to require a prior finding of such conduct.

47 That is true of the French version ('Si un État membre estime qu'un produit qui a fait l'objet d'une exonération en vertu du paragraphe 1 points a) ou b) est à l'origine d'une fraude, d'une évasion ou d'un abus, il peut refuser d'accorder l'exonération déjà accordée'), the English version ('If a Member State finds that a product which has been exempted under paragraphs 1(a) or 1(b) above gives rise to evasion, avoidance or abuse, it may refuse to grant exemption or withdraw the relief already granted'), the German version ('Stellt ein Mitgliedstaat fest, daß ein gemäß Absatz 1 Buchstabe a) oder b) befreites Erzeugnis zu Steuerflucht, Steuerhinterziehung oder Mißbrauch führt, so kann er die Befreiung versagen oder die bereits gewährte Befreiung zurückziehen') and the Spanish version ('Si un Estado miembro considera que un producto exento con arreglo a la letra a) o b) del apartado 1 del presente artículo origina fraudes, evasiones o abusos, podrá negarse a conceder una exención o anular la ya concedida e informará inmediatament de ello a la Comisión').

48 On the other hand, other versions may be interpreted as meaning that the mere possibility of evasion, avoidance or abuse is sufficient to allow them to adopt the appropriate measures. That is true of the Portuguese version ('Se um Estado-membro considerar que um produto isento ao abrigo das alíneas a) e b) do no 1 pode suscitar uma eventual fraude, evasão ou utilização indevida, poderá recusar a isenção ou retirar a redução já concedida') and, to some extent, the Italian version ('Se uno Stato membro viene a sapere que un prodotto che è stato esentato ai sensi del paragrafo 1, lettera a) or b) dà luogo ad eventuale evasione, frode or abuso, tale Stato può rifiutare di concedere l'esenzione o revocare lo sgravio già concesso. Lo Stato membro ne informa immediatament la Commissione').

49 According to settled case-law of the Court, where there is divergence between the various language versions of a Community text, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part (see, in particular, Case C-434/97 *Commission* v *France* [2000] ECR I-1129, paragraph 22).

50 Exemption of products covered by Article 27(1)(a) and (b) of Directive 92/83 is the rule and refusal is the exception. The power granted to Member States by Article 27(1) of Directive 92/83 to lay down conditions 'for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse' cannot detract from the unconditional nature of the obligation imposed by that provision to grant exemption (see, to that effect, Case C-346/97 *Braathens* [1999] ECR I-3419, paragraph 31).

51 It must also be borne in mind that measures adopted unilaterally by Member States in order to combat evasion, avoidance or abuse are subject to monitoring by the other Member States and the Community institutions pursuant to the combined provisions of Article 27(5) of Directive 92/83 and Article 24 of Directive 92/12.

52 In those circumstances, the general scheme of the rules at issue implies that the Member State concerned must put forward, at the very least, concrete evidence of a serious risk of evasion, avoidance or abuse.

53 In this case there is nothing in the documents before the Court to indicate that the Commission, assisted by the Committee on Excise Duties, exceeded its powers in appraising the evidence placed before it by the Italian Republic.

54 It follows that the Italian Republic's first four allegations must be rejected.

The fifth and sixth allegations

55 As to whether movements of the completely denatured alcohols referred to in Article 27(1)(a) of Directive 92/83 must be covered by the simplified accompanying document provided for in Article 5 of Regulation No 3649/92, whereas those of alcohols denatured by a method approved by a Member State mentioned in Article 27(1)(b) must be covered by the accompanying document prescribed for movements of products under duty-suspension arrangements by Regulation No 2719/92, that is a matter which falls outside the scope of these proceedings.

56 The Italian Republic did not here seek authority to refuse the grant of exemption for products subject to excise duties that are not covered by an accompanying document. That is why the Committee did not consider that situation, which is mentioned only in passing in point 13(i) of the contested decision, in relation to the specific case of 'abuse' which had been mentioned by the Italian Government in its application.

57 Accordingly, it is inappropriate for the Court to make any pronouncement on that point in the present proceedings for annulment.

58 For the same reason, the Court cannot consider whether the exemption provided for in Article 27(1)(b) of Directive 92/83 applies only to alcohol which has been denatured under the rules of a Member State and has already been used for the manufacture of a product not intended for human consumption. The application submitted to the Commission by the Italian Republic related to the composition of products incorporating alcohol. Consequently, the Commission, assisted by the Committee, was under no duty to give a decision on the tax rules for denatured alcohol not yet used in the manufacture of a product not intended for human consumption. The Court cannot, in proceedings for annulment, examine the lawfulness of a decision concerning a matter which has not previously been submitted for consideration by the institution which took that decision.

59 The fifth and sixth allegations must therefore be rejected.

60 The application must therefore be dismissed in its entirety as unfounded.

Costs

61 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 (Fifth Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the Italian Republic to pay the costs.**

La Pergola Wathelet Edward

Delivered in open court in Luxembourg on 7 December 2000.

R. Grass
Registrar

A. La Pergola
President of the Fifth Chamber