OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 4 December 2001 [1]

1. In an action before the Court of Justice, lodged on 3 October 2000, the Commission is seeking a declaration that the Italian Republic has failed to fulfil its obligations under the Treaty by adopting and maintaining in force Article 28 of Law No 128/1998, [2] which requires that the labels of cosmetic products state whether the fragrances or perfume essences contained in them are of natural or artificial origin.

The applicant claims that, by so doing, the Member State has failed to fulfil its obligations under Directive 76/768/EEC, [3] as amended by Directive 93/35/EEC, [4] and, in particular, under the third subparagraph of Article 6(1)(g) thereof.

I — Directive 76/768

2. One of the objectives of Directive 76/768 was to harmonise national legislation on cosmetic products, as undertakings situated within the Community were obliged to vary their products according to the Member State where they were to be sent. This hindered trade in such products and had a direct effect on the establishment and functioning of the common market.

3. To that end, the third subparagraph of Article 6(1)(g) provides that perfume and aromatic compositions and their raw materials are to be referred to by the words 'perfume' or 'flavour'. Under Article 7(1), Member States may not, for reasons related to the requirements laid down in the directive and its annexes, refuse, prohibit or restrict the marketing of any cosmetic

1 — Original language: Spanish.

2 — Law No 128 of 24 April 1998, Legge Comunitaria 1995-1997.

3 — Council Directive of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products (OJ 1976 L 262, p. 169).

4 — Council Directive of 14 June 1993 (OJ 1993 L 151, p. 32).

products which comply with the requirements of the directive and its annexes. Under Article 3(2) of Directive 93/35, Member States are obliged to communicate the texts of the provisions of the domestic law they have adopted in the field of cosmetic products to the Commission.

II — The national legislation in issue

4. Italy informed the Commission that it had promulgated Law No 128/1998 in order to bring its national legislation into compliance with amendments made to Directive 76/768 by Directive 93/35.

The Commission observed that, under Article 28 of Law No 128/1998, those operating in the sector were obliged to state expressly on the labels of cosmetic products whether the fragrances or perfume essences contained in them were of natural or artificial origin, a requirement not contemplated by the Directive.

III — The pre-litigation procedure

5. By letter of 16 October 1998, the Commission called upon Italy to submit observations to it in this regard, which it did by letter of 23 December 1998 from its Permanent Representative. In that letter, the Italian authorities acknowledged that Article 28 of Law No 128/1998 was contrary to Community law on cosmetics and undertook to resolve the problem by adopting new legislation which was at the draft stage.

6. As that statement of intent was not followed by notification of the new legislation which had been announced, the Commission issued a reasoned opinion, pursuant to Article 226(1) EC, granting Italy two months within which to take the measures necessary to comply with Directive 76/768. In November 1999, several months after the time-limit had expired, the Italian authorities, in a memorandum sent to the Commission, once again expressed their intention to bring the infringement to an end by amending the legislation in force.

IV — The action

7. The Commission has brought this action because, by September 2000, the Italian Republic had still not transposed Directive 76/768 into domestic law. The Commission, in its application, requests the Court to find that Italy has failed to fulfilled its obligations and to order it to pay costs.

8. In its defence, the Italian Government acknowledges its infringement stating, however, that it has not been able to bring it to an end. It claims that it intends to introduce a provision in the 2001 draft Community Law 2001 repealing Article 28 of Law No 128 of 24 April 1998.

9. According to the case-law, the directive has completely harmonised national law regarding the packaging and labelling of cosmetic products to which it refers. [5] Therefore, the list of information that, under Article 6 of the Directive, must be in indelible, easily legible and visible lettering on the containers and packaging of cosmetic products, to ensure that these may be marketed, is exhaustive, and a Member State may not impose requirements relating to other quantitative or qualitative data about the substances set out in the packaging of cosmetic products which are not expressly provided for by the Directive. [6]

10. Since it has been established that Italy has failed to fulfil its obligation to transpose Directive 76/768 into domestic law, the Commission's application must be upheld and Italy must be ordered to pay the costs.

5 — Case C-29/90 *Commission* v *Greece* [1992] ECR I-1971, paragraph 7, and Case C-246/91 *Commission* v *France* [1993] ECR I-2289, paragraph 7.

6 — Case 150/88 *Provide* [1989] ECR 3891, paragraph 17.

V — Conclusion

11. In view of the foregoing considerations, I propose that the Court:

(1) declare that Italy, by adopting and maintaining in force Article 28 of Law No 128 of 24 April 1998, which requires that the labels of cosmetic products state whether the fragrances or perfume essences contained in them are of natural or artificial origin, 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) order Italy to pay the costs.