OPINION OF ADVOCATE GENERAL TESAURO

delivered on 12 January 1993 *

Mr President,
Members of the Court,

1. In its application to the Court the Commission seeks a declaration that by requiring a product file to be compiled, lodged and kept up to date, outside the framework laid down in Article 7(3) of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of Member States relating to cosmetic products, [1] the French Republic has failed to fulfil its obligations under that directive.

2. Referring to the Report of the Judge-Rapporteur for the details, I will confine myself here to pointing out that the contested French legislation [2] requires that a product file be compiled which, apart from the information which a Member State may lawfully require in accordance with Article 7(3) of the Cosmetics Directive 'for purposes of prompt and appropriate medical treatment in the event of difficulties', also must contain an amount of additional information, part of which must already appear on the packaging, container or label of the product in accordance with the cosmetic directive (Article 6(1)), and part of which is not at all required by the Directive.

The French Government, whilst it does not deny the Commission's assertion that only the commununication of the full formula of the product falls within the information required under Article 7(3) of the Cosmetics Directive, justifies the requirement of a file containing additional information on the ground of protection of health and also points out that there is at present before the Council a proposal for the amendment of the Directive in question with a view to introducing, at Community level, the requirement of a file similar to that required under the French legislation in question.

3. As regards the appropriateness of bringing the present proceedings, given the proposal to amend the Directive now before the Council, suffice it to point out, without there being any need to consider whether the adoption of such a proposal would be such as to eliminate the infringement, that the Court has already had occasion to state that 'the mere fact that a proposal for a legislative measure, which if adopted and transposed into national law would terminate the infringements alleged by the Commission, has already been submitted to the Council does not prevent the Commission from bringing such an action'. [3]

* Original language: Italian.

1 — OJ 1976 L 262, p. 169.

2 — Article L.658-3 of the Code de la santé publique (Public Health Code).

3 — Case 205/84 *Commission* v *Germany* [1986] ECR 3755, paragraph 7.

That said, I would observe that the Court has already stated, in its judgment in *Provide*, [4] that the Cosmetics Directive 'has provided exhaustively for the harmonization of national laws on packaging and labelling of cosmetic products', so that a Member State may not make the movement of cosmetic products subject to conditions other than those imposed by the Directive. In a more recent judgment, of 18 March 1992, [5] the Court has furthermore declared that Greek legislation requiring the compilation of a file containing information similar to that specified in the French legislation at issue but not required by the Directive was incompatible with the Cosmetics Directive.

4. It is specifically with reference to the judgment just cited that the French Government, in a letter of 30 November 1992, made it known that it was taking note of the Court's interpretation of the Cosmetics Directive and gave assurances that it would draw the necessary conclusions with respect to the national legislation in point. The French Government has therefore, in effect, acknowledged the breach of obligations with which it is charged.

5. I therefore propose that the application be granted and that the defendant be ordered to pay the costs.

4 — Case 150/88 *Parfümerie-Fabrik 4711* v *Provide* [1989] ECR 3891.

5 — Case 29/90 *Commission* v *Greece* [1992] ECR I-1981, paragraph 13.