JUDGMENT OF THE COURT
18 March 1992 *

In Case C-29/90,

Commission of the European Communities, represented by Maria Condou Durande, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the Chambers of Roberto Hayder, representing its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Evi Skandalou, Advocate, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that, by requiring that cosmetic products may be marketed only if a declaration is made accompanied by information and supporting documents and if a file is kept containing information which is already printed on the packaging, the Hellenic 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 (Official Journal 1976 L 262, p. 169),

* Language of the case: Greek.

THE COURT,

composed of: O. Due, President, R. Joliet and F. A. Schockweiler (Presidents of Chambers), C. N. Kakouris, G. C. Rodríguez Iglesias, M. Díez de Velasco and J. L. Murray, Judges,

Advocate General: M. Darmon,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing the oral observations of the Hellenic Republic, represented by N. Mavrikas, acting as Agent, at the hearing on 16 January 1992,

after hearing the Opinion of the Advocate General at the sitting on 4 February 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 January 1990 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by requiring that cosmetic products may be marketed only if a declaration is made accompanied by information and supporting documents and if a file is kept containing particulars which are already printed on the packaging, containers or labels of cosmetic products or which are not justified for the purposes of prompt and appropriate medical treatment in the event of difficulties, the Hellenic 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 (Official Journal 1976 L 262, p. 169, hereinafter referred to as 'the directive').

2 Article 6(1) of the directive subjects the marketing of cosmetic products to the condition that their packaging, containers or labels bear in indelible, easily legible and visible lettering, certain information listed therein. Article 7(1) of the directive provides that Member States may not refuse, prohibit or restrict the marketing of any cosmetic products which comply with its requirements. Article 7(3), however, allows Member States to require, for purposes of prompt and appropriate medical treatment in the event of difficulties, that adequate and sufficient information regarding substances contained in cosmetic products is made available to the competent authority.

3 Article 14 of the directive requires Member States to bring into force the provisions needed in order to comply with the directive within a period which, in the case of the Hellenic Republic, expired on 1 January 1981.

4 The Hellenic Republic transposed the directive into its domestic legal system by Presidential Decree No 532 of 23 May 1981. Since it considered that Articles 2(1) and 5 of the Decree were incompatible with the provisions of the directive, the Commission sent the Hellenic Republic a letter of formal notice and, subsequently, a reasoned opinion pursuant to Article 169 of the Treaty. Since the Hellenic Republic did not comply with that reasoned opinion, the Commission brought the present action.

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 The Commission considers that Articles 2(1) and 5 of Presidential Decree No 532/81 imposes obligations in addition to those laid down in the directive and that

the Hellenic Republic is therefore obstructing, prohibiting or restricting the marketing of products which satisfy the conditions laid down by the directive.

7 It should first be observed that, as the Court as already held in its judgment in Case C-150/88 *Komanditgesellschaft in Firma Eau de Cologne & Parfümerie-Fabrik Glockengasse No 4711* v *Provide SRL* [1989] ECR 3891, paragraph 28, the directive provided exhaustively for the harmonization of national rules on the packaging and labelling of cosmetic products with which it was concerned.

8 Article 2(1) of Presidential Decree No 532/81 provides that, in respect of any cosmetic product marketed in Greece, a declaration must be lodged with the KEEPH (the national body responsible for medicinal products) together with information and supporting documents such as the following:

— the name of the product;

— its form;

— its composition in terms of ingredients and their quantities;

— the name and address of the laboratory or the factory where it is made;

— the surname and first name and address of the person responsible for marketing;

— the physical and chemical constants and a description of the product;

— a specimen of the instructions for use;

— a specimen of the wording on the label or on each container.

9 Some of that information and of those supporting documents relate to substances contained in cosmetic products and may therefore be required by any Member State for purposes of prompt and appropriate medical treatment in the event of difficulties pursuant to Article 7(3). The information and documents in question are:

— the name of the product;

— its composition in terms of ingredients and their quantities;

— the physical and chemical constants and the description of the product, and

— a specimen of the instructions for use.

On the other hand, no provision in the directive authorized the Hellenic Republic to require the other information referred to in Article 2(1) of Presidential Decree No 532/81.

10 Furthermore, Article 5 of Presidential Decree No 532/81 requires every manufacturer or person responsible for marketing a cosmetic product to keep at their undertaking's seat in Greece a complete file for each manufactured or imported

product, containing all particulars relating to the ingredients, properties and description of the product, to the formal record of the manufacture and inspection of each batch and to the method adopted for such inspection. There is no provision in the directive enabling a Member State to adopt such a provision.

11 At the hearing the Greek Government stated that Decree No 40, adopted on 28 February 1991, repealed Presidential Decree No 532/81 and brought Greek law into line with the directive.

12 The Court has consistently held (see, most recently, the judgment in Case C-59/89 *Commission* v *Germany* [1991] ECR I-2607, paragraph 35) that the subject-matter of an action brought under Article 169 of the Treaty is determined by the Commission's reasoned opinion and that, even where the default has been remedied after the time-limit prescribed in the second paragraph of that article has expired, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur, as a result of its default towards other Member States, the Community or private parties.

13 It must therefore be held that, by making the marketing of cosmetic products dependent on the lodging with the competent national authorities of a declaration containing information other than that which a Member State may require under Article 7(3) of Council Directive 76/768 of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products and by requiring that any manufacturer or person responsible for the marketing of a cosmetic product should keep at the seat of his undertaking in Greece a file for each product manufactured or imported containing all particulars relating to the composition, properties and description of the product, to the formal record of the manufacture and inspection of each batch and to the method adopted for such inspection, the Hellenic Republic has failed to fulfil its obligations under Directive 76/768.

Costs

14 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Hellenic Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by making the marketing of cosmetic products dependent on the lodging with the competent national authorities of a declaration containing information other than that which a Member State may require under Article 7(3) of Council Directive 76/768/EEC of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetic products and by requiring that any manufacturer or person responsible for the marketing of a cosmetic product should keep at the seat of his undertaking in Greece a file for each product manufactured or imported containing all particulars relating to the composition, properties and description of the product, to the formal record of the manufacture and inspection of each batch and to the method adopted for such inspection, the Hellenic Republic has failed to fulfil its obligations under Directive 76/768/EEC;**

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

Due Joliet Schockweiler

Kakouris Rodríguez Iglesias Díez de Velasco Murray

Delivered in open court in Luxembourg on 18 March 1992.

J.-G. Giraud
Registrar

O. Due
President