

JUDGMENT OF THE COURT (Fifth Chamber)

15 January 2002 *

In Case C-439/99,

Commission of the European Communities, represented by E. Traversa and M. Patakia, acting as Agents, assisted by A. Cevese, *Avvocato*, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by D. Del Gaizo, *Avvocato dello Stato*, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that

- by retaining the following provisions:
 - Article 2, first paragraph, and Article 7 of Royal Decree-Law No 454 of 29 January 1934;
 - Article 2, first paragraph, of Presidential Decree No 7 of 15 January 1972;
 - Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390 of 18 April 1994;
 - Article 4 of Regional Law No 40 of Liguria of 14 July 1978;
 - Article 6, paragraph 1(e), (f), (g) and (h), Article 6, paragraph 4, and Article 7 of Regional Law No 35 of Veneto of 2 August 1988;
 - Article 2, sixth paragraph, Article 4, first indent, Article 6, third and fourth paragraphs and Article 10, third paragraph, (a), of Regional Law No 16 of the Marches of 12 March 1979;

- Article 4, Article 5, sixth paragraph, (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;

- Article 4, paragraph 1(c), Article 4, paragraph 2, and Article 15, paragraph 3, of Regional Law No 45 of Lombardy of 29 April 1980;

- Article 3, Article 4 and Article 8, last paragraph, of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

- Article 2, last paragraph, and Article 6 of Regional Law No 75 of Abruzzo of 13 November 1980, and

- Article 3, Article 5, Article 6, third and fourth paragraphs, Article 12 and Article 19, first paragraph, of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 60 of the EC Treaty (now Article 50 EC), Articles 61, 63 and 64 of the EC Treaty (now, after amendment, Articles 51 EC, 52 EC and 53 EC) and Articles 65 and 66 of the EC Treaty (now Articles 54 EC and 55 EC), and that

- by retaining the following provisions:
 - Article 3 of Presidential Decree No 7 of 15 January 1972;
 - Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12 of Liguria of 3 November 1972;
 - Article 8, paragraph 1(d) of Regional Law No 35 of Veneto of 2 August 1988;
 - Article 6, third paragraph, points 3 and 4, Article 7, Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;
 - Article 5, paragraphs 2 and 5, Article 10, paragraph 4, Article 11, paragraphs 2 and 3, and Article 15, paragraph 1, of Regional Law No 45 of Lombardy of 29 April 1980;
 - Article 5, Article 13, Article 14 and Article 15, first paragraph, (a), of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

- Article 7 of Regional Law No 75 of Abruzzo of 13 November 1980, and

- Articles 6, 7 and 23 of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 of the EC Treaty (now, after amendment, Articles 43 EC and 44 EC), Article 55 of the EC Treaty (now Article 45 EC), Articles 56 and 57 of the EC Treaty (now, after amendment, Articles 46 EC and 47 EC) and Article 58 of the EC Treaty (now Article 48 EC),

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, S. von Bahr (Rapporteur), A. La Pergola, L. Sevón and M. Wathelet, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 May 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 November 1999 the Commission of the European Communities brought an action under Article 226 EC for a declaration that

— by retaining the following provisions:

— Article 2, first paragraph, and Article 7 of Royal Decree-Law No 454 of 29 January 1934;

— Article 2, first paragraph, of Presidential Decree No 7 of 15 January 1972;

— Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390 of 18 April 1994;

— Article 4 of Regional Law No 40 of Liguria of 14 July 1978;

— Article 6, paragraph 1(e), (f), (g) and (h), Article 6, paragraph 4, and Article 7 of Regional Law No 35 of Veneto of 2 August 1988;

- Article 2, sixth paragraph, Article 4, first indent, Article 6, third and fourth paragraphs and Article 10, third paragraph, (a), of Regional Law No 16 of the Marches of 12 March 1979;

- Article 4, Article 5, sixth paragraph, (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;

- Article 4, paragraph 1(c), Article 4, paragraph 2, and Article 15, paragraph 3, of Regional Law No 45 of Lombardy of 29 April 1980;

- Article 3, Article 4 and Article 8, last paragraph, of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

- Article 2, last paragraph, and Article 6 of Regional Law No 75 of Abruzzo of 13 November 1980, and

- Article 3, Article 5, Article 6, third and fourth paragraphs, Article 12 and Article 19, first paragraph, of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 60 of the EC Treaty (now Article 50 EC), Articles 61, 63 and 64 of the EC Treaty (now, after amendment, Articles 51 EC, 52 EC and 53 EC) and Articles 65 and 66 of the EC Treaty (now Articles 54 EC and 55 EC), and that

- by retaining the following provisions:
 - Article 3 of Presidential Decree No 7 of 15 January 1972;
 - Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12 of Liguria of 3 November 1972;
 - Article 8, paragraph (1)(d) of Regional Law No 35 of Veneto of 2 August 1988;
 - Article 6, third paragraph, points 3 and 4, Article 7, Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;
 - Article 5, paragraphs 2 and 5, Article 10, paragraph 4, Article 11, paragraphs 2 and 3, and Article 15, paragraph 1, of Regional Law No 45 of Lombardy of 29 April 1980;
 - Article 5, Article 13, Article 14 and Article 15, first paragraph, (a), of Regional Law No 10 of Friuli Venezia Giulia of 23 February 1981;

— Article 7 of Regional Law No 75 of Abruzzo of 13 November 1980, and

— Articles 6, 7 and 23 of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 of the EC Treaty (now, after amendment, Articles 43 EC and 44 EC), Article 55 of the EC Treaty (now Article 45 EC), Articles 56 and 57 of the EC Treaty (now, after amendment, Articles 46 EC and 47 EC) and Article 58 of the EC Treaty (now Article 48 EC).

Pre-litigation procedure

- 2 Following complaints from certain organisers of trade fairs, the Commission examined a number of pieces of Italian national, regional and provincial legislation concerning trade fairs, exhibitions and markets (hereinafter 'trade fairs').

- 3 On completion of its examination, the Commission concluded that a first series of provisions was contrary to the principle of freedom to provide services, embodied in Article 59 et seq. of the Treaty, and that a second series of provisions was contrary both to the principle of freedom to provide services and to the principle of freedom of establishment embodied in Article 52 et seq. of the Treaty.

- 4 By letter of 16 April 1996 the Commission formally called on the Italian Republic to submit its observations on the matter within two months.

- 5 Considering the Italian Republic's reply unsatisfactory, the Commission sent a reasoned opinion to that Member State by letter of 18 May 1998 calling on it to take the measures necessary to comply with the reasoned opinion within two months of notification thereof.

- 6 By letter of 15 February 1999 the Permanent Representation of Italy to the European Union forwarded to the Commission the text of a draft law already approved by the Senate but still to be examined by a sub-committee of the tenth Industry Committee of the Chamber of Deputies.

- 7 It was in those circumstances that the Commission instituted the present proceedings.

Admissibility

- 8 It should be noted at the outset that the Court may consider of its own motion whether the conditions laid down in Article 226 EC for an action for failure to fulfil obligations to be brought are satisfied (Case C-362/90 *Commission v Italy* [1992] ECR I-2353, paragraph 8).

- 9 It appears, in the first place, that a number of the charges made by the Commission before the Court do not correspond exactly to those raised by it during the pre-litigation procedure or do not display the necessary clarity and precision.
- 10 It is settled case-law that the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under Community law and, on the other, to avail itself of its right to defend itself against the charges formulated by the Commission (see, in particular, Case C-152/98 *Commission v Netherlands* [2001] ECR I-3463, paragraph 23).
- 11 It follows that, first, the subject-matter of the proceedings under Article 226 EC is delimited by the pre-litigation procedure governed by that provision (*Commission v Netherlands*, cited above, paragraph 23). Accordingly, the application must be founded on the same grounds and pleas as the reasoned opinion (see, in particular, Case C-35/96 *Commission v Italy* [1998] ECR I-3851, paragraph 28). If a charge was not included in the reasoned opinion, it is inadmissible at the stage of proceedings before the Court.
- 12 Second, the reasoned opinion must contain a cogent and detailed exposition of the reasons which led the Commission to the conclusion that the Member State concerned had failed to fulfil one of its obligations under the Treaty (see, in particular, Case C-207/96 *Commission v Italy* [1997] ECR I-6869, paragraph 18).
- 13 In accordance with those principles, the first charge must be declared inadmissible to the extent to which it concerns Article 6 of Law No 35/78 of the Province

of Trento since, as observed by the Advocate General in point 22 of his Opinion, the references made to the subdivisions of that article by the Commission in the pre-litigation procedure are incorrect and differ from those mentioned in its application.

- 14 As regards the part of the Commission's second charge relating to Article 7 of Law No 43/80 of the Region of Emilia-Romagna, the application refers to Article 7, first paragraph, (a), of that Law, whereas the reasoned opinion criticises Article 7, third and fourth paragraphs, of that Law. It follows that the part of the second charge relating to that article was not clearly formulated in the reasoned opinion and must therefore be declared inadmissible.
- 15 In the second place, it is clear from the answers given by both parties to a question put to them by the Court that Regional Law No 16/79 of the Marches and Regional Law No 75/80 of Abruzzo were repealed on 13 April 1995 and 10 September 1993 respectively.
- 16 It is clear from the very terms of the second paragraph of Article 226 EC that the Commission may not bring proceedings before the Court for Treaty infringement unless a Member State has failed to comply with the reasoned opinion within the time-limit notified to it for that purpose (see Case C-362/90 *Commission v Italy*, cited above, paragraph 9).
- 17 Since Regional Law No 16/79 of the Marches and Regional Law No 75/80 of Abruzzo were repealed before the expiry of the period set in the reasoned opinion — and indeed before the formal warning was sent — the infringement complained of had ceased by the end of that period. Accordingly, the Commission's application must be declared inadmissible as regards those regional laws.

Substance

Preliminary observations

- 18 According to the Commission, the national, regional and provincial provisions complained of impose unjustified restrictions both on the freedom to provide services and on the right of establishment in relation to the organisation of trade fairs for operators from other Member States.
- 19 Before the Court, the Italian Government no longer denies the infringement.
- 20 However, it must be borne in mind that in an action for failure to fulfil obligations brought by the Commission under Article 226 EC, the expediency of which is a matter for the Commission alone to judge, it is for the Court to determine whether or not the alleged breach of obligations exists, even if the State concerned no longer denies the breach (Case C-243/89 *Commission v Denmark* [1993] ECR I-3353, paragraph 30).
- 21 The organisation of trade fairs is an economic activity falling within the chapter of the Treaty dealing with the right of establishment when that activity is carried on by a national of one Member State in another Member State on a stable and continuous basis from a principal or secondary establishment in the latter Member State and within the chapter of the Treaty dealing with services when it is carried on by a national of one Member State who moves to another Member State in order to carry on that activity on a temporary basis (see, to that effect, Case C-55/94 *Gebhard*, [1995] ECR I-4165, paragraphs 25 and 26).

- 22 Articles 52 and 59 of the Treaty require the elimination of restrictions on freedom of establishment and freedom to provide services respectively. All measures which prohibit, impede or render less attractive the exercise of such freedoms must be regarded as constituting such restrictions (see, to that effect, with regard to freedom of establishment, Case C-168/91 *Konstantinidis* [1993] ECR I-1191, paragraph 15, and with regard to freedom to provide services Case C-205/99 *Analir and Others* [2001] ECR I-1271, paragraph 21).
- 23 It is clear from settled case-law, however, that where such measures apply to any person or undertaking carrying on an activity in the territory of the host Member State, they may be justified where they serve overriding requirements relating to the public interest, are suitable for securing the attainment of the objective which they pursue and do not go beyond what is necessary in order to attain it (see, to that effect, *Gebhard*, paragraph 37, and *Analir*, paragraph 25).
- 24 In the light of those considerations, it is necessary to examine the Commission's first charge, alleging breach of the principle of freedom to provide services, and then the second charge, alleging breach of both the principle of freedom to provide services and the principle of freedom of establishment.

The first charge: breach of the principle of freedom to provide services

- 25 By its first charge, the Commission maintains that some of the national, regional or provincial provisions at issue are contrary to the principle of freedom to

provide services because of their restrictive or discriminatory nature, in so far as they:

- require trade-fair organisers to obtain official recognition from the Italian national, regional or local authorities (Article 2, first paragraph, of Decree-Law No 454/34; Article 2, first paragraph, of Presidential Decree No 7/72; Article 2, paragraph 4, of Presidential Decree No 390/94; Article 8, first and second paragraphs, of Regional Law No 43/80 of Emilia-Romagna; Article 5, first paragraph, of Provincial Law No 35/78 of Trento; Article 7 of Regional Law No 35/88 of Veneto; Article 4, paragraph 1(c) of Regional Law No 45/80 of Lombardy);

- require trade-fair organisers to have a permanent national or local headquarters, establishment or organisation (Article 15, paragraph 3, of Regional Law No 45/80 of Lombardy; Article 8, last paragraph, of Regional Law No 10/81 of Friuli Venezia Giulia);

- require trade-fair organisers to have a particular legal form or status, thereby excluding other categories of operators (Article 4 of Regional Law No 43/80 of Emilia-Romagna, under which trade events must be organised by public bodies, by organisations directly under the auspices of trade associations, by private associations and by committees whose object or main aim is an activity of some other kind);

- require the business of trade-fair organisers to be carried out on an exclusive basis (Article 4, paragraph 1(c), of Regional Law No 45/80 of Lombardy; Article 3 of Regional Law No 10/81 of Friuli Venezia Giulia; Article 5, first paragraph, of Provincial Law No 35/78 of Trento);

- require trade-fair organisers to operate on a not-for-profit basis (Article 4, paragraph 1(c) and paragraph 2, of Regional Law No 45/80 of Lombardy; Article 6, paragraph 1(e), (f) and (h), of Regional Law No 35/88 of Veneto; Article 4 of Regional Law No 10/81 of Friuli Venezia Giulia; Articles 3, 5, first and second paragraphs, 12 and 19, first paragraph, of Provincial Law No 35/78 of Trento; Article 4 of Regional Law No 40/78 of Liguria; Article 5, sixth paragraph, (c), of Regional Law No 43/80 of Emilia-Romagna);

- require that trade fairs be held periodically (Article 6, first paragraph, of Regional Law No 43/80 of Emilia-Romagna, under which national and international trade events must be organised by a body having a permanent headquarters and a permanent management structure and must be of pre-determined frequency and duration);

- require trade events to be organised in conformity with objectives set by a region as part of its regional planning (Article 5, sixth paragraph, (a), of Regional Law No 43/80 of Emilia-Romagna);

- require compliance with particularly strict time-limits in the compulsory administrative authorisation procedure (Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390/94, under which an application for recognition as an international trade fair and authorisation for it to be held must be made to the competent authorities not later than 30 September two years before that in which the event is to be held (paragraph 4), and also require that such standing is to be recognised before 1 February in the year before that in which the event is to be held and that notice of that measure is to be given to the regions (paragraph 5), that measures within the purview of the regional authorities relating to the authorisation in question must be adopted by the regions 30 days before the notification referred to in paragraph 5 (paragraph 6) and that, before 30 September in the year preceding that in which the

events are held, the regions must forward to the Ministry of Industry, Commerce and Crafts a list of trade events that are authorised and recognised as being of national importance (paragraph 7));

- prohibit the organisation of trade fairs other than those included on the official calendar (Article 7 of Royal Decree No 454/34; Article 16, first paragraph, of Regional Law No 43/80 of Emilia-Romagna).

26 According to settled case-law, national legislation which makes the provision of certain services on national territory by an undertaking established in another Member State subject to the issue of an administrative authorisation constitutes a restriction on the freedom to provide services within the meaning of Article 59 of the Treaty (see, *inter alia*, Case C-355/98 *Commission v Belgium* [2000] ECR I-1221, paragraph 35).

27 Whilst the requirement of official recognition or prior authorisation for the organisation of trade fairs might possibly be justified by the general interest in ensuring that the service provided is of the requisite quality and that the event is conducted safely, such a requirement is not justified where that interest is safeguarded by the rules to which the provider of the service is subject in the Member State where he is established.

28 However, the national and regional provisions at issue do not appear to take any account of the rules applicable to the provider of the service in his Member State of establishment. Moreover, the Italian Government has not even contended that those provisions should be interpreted to that effect.

- 29 The restrictions described in the first indent of paragraph 25 of this judgment are thus not justified. It follows that the first charge is well founded in so far as it relates to national, regional and provincial provisions which require approval or official recognition for conduct of the business of trade-fair organiser.
- 30 As regards the requirement that a trade-fair organiser must have a permanent national or local headquarters, it must be observed that if the requirement of authorisation constitutes a restriction on the freedom to provide services, the requirement of a permanent establishment is the very negation of that freedom. It makes a dead letter of Article 59 of the Treaty, a provision whose very purpose is to abolish restrictions on the freedom to provide services of persons who are not established in the State in which the service is to be provided. If such a requirement is to be accepted, it must be shown that it constitutes a condition which is indispensable for attaining the objective pursued (see, *inter alia*, Case C-222/95 *Parodi* [1997] ECR I-3899, paragraph 31).
- 31 The Italian Government has not put forward any argument to show that the requirement of a permanent national or local headquarters, establishment or organisation is indispensable for the conduct of the business of a trade-fair organiser. Accordingly, the first charge is well founded in so far as it relates to the regional provisions mentioned in the second indent of paragraph 25 of this judgment.
- 32 The requirement that a trade-fair organiser must have a particular legal form or status, the requirement that he conduct his business of trade-fair organiser on an exclusive basis and the prohibition of pursuing profit also constitute significant restrictions on the freedom to provide services. It is difficult to envisage reasons in the public interest which might justify such restrictions. Moreover, since no reason has been put forward by the Italian Government, the first charge must be considered well founded in so far as it relates to the regional and provincial provisions mentioned in the third to fifth indents of paragraph 25 of this judgment, with the exception, however, of Article 19, first paragraph, of Provincial Law No 35/78 of Trento. The Commission has not succeeded in

showing that that provision, allowing for the grant of subsidies to certain operators in the trade-fair sector, undermines the freedom to provide services.

- 33 As regards the national and regional provisions which require trade fairs to be held periodically, the requirement that trade fairs conform with the aims decided upon by a region as part of its regional programming, the observance of strict time-limits in the procedure for authorising trade fairs, and also the provisions prohibiting the organisation of trade fairs other than those included on the official calendar, there is no doubt that provisions of that kind are liable to render the exercise of the freedom to provide services more difficult. Whilst it is not impossible that there may be reasons in the general interest capable of justifying restrictions of that kind, the Italian Government has not put forward any with sufficient precision to enable the Court to assess such merits as they might have and to verify whether the conditions of necessity and proportionality are fulfilled. The first charge therefore appears also to be well founded in so far as it relates to the provisions indicated in the sixth to ninth indents of paragraph 25 of this judgment.
- 34 Finally, it must be pointed out that the Commission has not given the reasons for which the provisions of Article 6, paragraph 1(g) and paragraph 4, of Regional Law No 35/88 of Veneto, which it cites in the application only in the form of order sought by it, undermine the freedom to provide services. Accordingly, the first charge must be rejected in so far as it relates to those provisions.

The second charge: breach of the principles of freedom to provide services and freedom of establishment

- 35 By its second charge, the Commission claims that certain national, regional and provincial provisions are contrary both to the principle of freedom to provide services and to freedom of establishment, in so far as they make the business of trade-fair organisers subject to the following:

- involvement of the public authorities or local bodies of other kinds in administrative appointments, wholly or in part, for trade-fair organisers, such as the board of directors, the executive committee, the auditors, the chairman, or the secretary (Article 3 of Presidential Decree No 7/72; Articles 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12/72 of Liguria; Article 8, paragraph 1(d) of Regional Law No 35/88 of Veneto; Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43/80 of Emilia-Romagna; Article 5 of Regional Law No 10/81 of Friuli Venezia Giulia);

- inclusion amongst the founders or members of at least one local territorial institution (Article 8, second paragraph, of Regional Law No 43/80 of Emilia-Romagna);

- the involvement, even if only on an advisory basis, of bodies made up of operators already in the territory in question or their representatives for the purposes of recognition and approval of the organiser and the grant of public financing to him (Article 6, third paragraph, points 3 and 4, of Regional Law No 43/80 of Emilia-Romagna; Articles 6, 7 and 23 of Provincial Law No 35/78 of Trento; Articles 13, 14 and 15, first paragraph, (a), of Regional Law No 10/81 of Friuli Venezia Giulia; Article 5, paragraphs 2 and 5, Article 10, paragraph 4, Article 11, paragraphs 2 and 3, and Article 15, paragraph 1, of Regional Law No 45/80 of Lombardy).

36 It must first be pointed out that national and regional provisions which make administrative appointments for trade-fair organisers subject to the involvement of public authorities or local bodies of some other kind are liable to impede or even prevent the exercise by operators from other Member States of their right of freedom to provide services and to render exercise of their right of establishment in Italy more difficult.

- 37 The same applies to Article 8, second paragraph, of Regional Law No 43/80 of Emilia-Romagna, which, although not making exercise of the business of trade-fair organiser subject to involvement of public authorities or local bodies in the administrative appointments for such organisers, nevertheless makes the activity of trade-fair organisers subject to the inclusion among the founders or members of at least one local territorial institution.
- 38 It is difficult to see what reasons in the public interest might justify such restrictions. Moreover, no specific reason has been put forward by the Italian Government. It follows that the second charge is well founded in so far as it relates to the national and regional provisions cited in the first and second indents of paragraph 35 of this judgment, with the exception, however, of Article 8, second paragraph, of Regional Law No 43/80 of Emilia-Romagna, in so far as it is covered by the first indent of that paragraph.
- 39 As regards, finally, the provisions which make the organisation of trade fairs subject to the involvement of bodies made up of operators already in the territory concerned or representatives of such operators for the purposes of recognition and approval of the organiser and granting public financing to the latter, it must be observed that the requirement of approval or official recognition constitutes a restriction on the freedom to provide services or freedom of establishment. Similarly, and for the reasons given by the Advocate General in point 165 of his Opinion, an adverse effect of that kind may derive from provisions requiring the involvement of bodies made up of competing operators already present in the territory concerned.
- 40 That applies to Articles 13, 14 and 15, first paragraph, (a), of Regional Law No 10/81 of Friuli Veneto Giulia, which provides for the involvement, for the purpose of the authorisation of trade fairs, of an advisory committee which includes, among others, four chairmen of trade-fair organisers whose principal offices are in the region. In absence of any justification, those provisions, mentioned in the third indent of paragraph 35 of this judgment, are contrary to the principles of freedom to provide services and freedom of establishment.

41 On other hand, the restrictions on the freedom to provide services or freedom of establishment created by the other provisions mentioned in the third indent of paragraph 35 of this judgment, namely Article 6, third paragraph, points 3 and 4, of Regional Law No 43/80 of Emilia-Romagna, Articles 6, 7 and 23 of Provincial Law No 35/78 of Trento, and Article 5, paragraphs 2 and 5, Article 10, paragraph 4, Article 11, paragraphs 2 and 3, and Article 15, paragraph 1, of Regional Law No 45/80 of Lombardy may be justified by the fact that the knowledge or experience of representatives of the business world who are not in competition with the operators to whom the recognition or approval procedure relates and that of representatives of the people for whom the trade fair is intended may prove to make a valuable contribution to the procedure in question.

42 In view of all the foregoing considerations, it must be held that

— by retaining the following provisions:

— Article 2, first paragraph, and Article 7 of Royal Decree No 454/34;

— Article 2, first paragraph, of Presidential Decree No 7/72;

— Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390/94;

— Article 4 of Regional Law No 40/78 of Liguria;

— Article 6, paragraph 1(e), (f) and (h), and Article 7 of Regional Law No 35/88 of Veneto;

— Article 4, Article 5, sixth paragraph, (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43/80 of Emilia-Romagna;

— Article 4, paragraph 1(c) and paragraph 2, and Article 15, paragraph 3, of Regional Law No 45/80 of Lombardy;

— Articles 3, 4 and 8, last paragraph, of Regional Law No 10/81 of Friuli Veneto Giulia, and

— Articles 3, 5 and 12 of Regional Law No 35/78 of Trento,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty, and that

— by retaining the following provisions:

— Article 3 of Presidential Decree No 7/72;

- Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12/72 of Liguria;

- Article 8, paragraph 1(d), of Regional Law No 35/88 of Veneto;

- Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43/80 of Emilia-Romagna, and

- Articles 5, 13, 14 and 15, first paragraph, (a), of Regional Law No 10/81 of Friuli Veneto Giulia,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 to 58 of the Treaty.

Costs

- 43 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 asked that the Italian Republic be ordered to pay the costs and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that by retaining the following provisions:

— Article 2, first paragraph, and Article 7 of Royal Decree No 454 of 29 January 1934;

— Article 2, first paragraph, of Presidential Decree No 7 of 15 January 1972;

— Article 2, paragraphs 4, 6 and 7, of Presidential Decree No 390 of 18 April 1994;

— Article 4 of Regional Law No 40 of Liguria of 14 July 1978;

- Article 6, paragraph 1(e), (f) and (h), and Article 7 of Regional Law No 35 of Veneto of 2 August 1988;

- Article 4, Article 5, sixth paragraph, (a) and (c), Article 6, first paragraph, Article 8, first and second paragraphs, and Article 16, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980;

- Article 4, paragraph 1(c) and paragraph 2, and Article 15, paragraph 3, of Regional Law No 45 of Lombardy of 29 April 1980;

- Articles 3, 4 and 8, last paragraph, of Regional Law No 10 of Friuli Veneto Giulia of 23 February 1981, and

- Articles 3, 5 and 12 of Provincial Law No 35 of the Autonomous Province of Trento of 2 September 1978,

the Italian Republic has failed to fulfil its obligations under Article 59 of the EC Treaty (now, after amendment, Article 49 EC), Article 60 of the EC Treaty (now Article 50 EC), Articles 61, 63 and 64 of the EC Treaty (now, after amendment, Articles 51 EC, 52 EC and 53 EC) and Articles 65 and 66 of the EC Treaty (now Articles 54 EC and 55 EC);

2. Declares that by retaining the following provisions:

— Article 3 of Presidential Decree No 7 of 15 January 1972;

— Article 2(c) and (d), Article 3, first paragraph, (b) and (c), and Article 5, first paragraph, (a), of Regional Law No 12 of Liguria of 3 November 1972;

— Article 8, paragraph 1(d), of Regional Law No 35 of Veneto of 2 August 1988;

— Article 8, second paragraph, and Article 11, first paragraph, of Regional Law No 43 of Emilia-Romagna of 26 May 1980, and

— Articles 5, 13, 14 and 15, first paragraph, (a), of Regional Law No 10 of Friuli Veneto Giulia of 23 February 1981,

the Italian Republic has failed to fulfil its obligations under Articles 59 to 61 and 63 to 66 of the Treaty and under Articles 52 and 54 of the EC Treaty (now, after amendment, Articles 43 EC and 44 EC), Article 55 of the EC Treaty (now Article 45 EC), Articles 56 and 57 of the EC Treaty (now, after amendment, Articles 46 EC and 47 EC) and Article 58 of the EC Treaty (now Article 48 EC);

3. Dismisses the remainder of the action;

4. Orders the Italian Republic to pay the costs.

Jann

von Bahr

La Pergola

Sevón

Wathelet

Delivered in open court in Luxembourg on 15 January 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber