JUDGMENT OF THE COURT (Second Chamber)

24 January 2008 *

In Case C-257/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Corte suprema di cassazione (Italy), made by decision of 12 July 2005, received at the Court on 13 June 2006, in the proceedings

**Roby Profumi Srl**

v

**Comune di Parma,**

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk (Rapporteur), P. Kūris, J.-C. Bonichot and C. Toader, Judges,

* Language of the case: Italian.

Advocate General: J. Mazák,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 24 May 2007,

after considering the observations submitted on behalf of:

— Roby Profumi Srl, by M. Pozzi, avvocato,

— the Belgian Government, by L. Van den Broeck, acting as Agent,

— the French Government, by R. Loosli-Surrans, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by G. Albenzio, avvocato dello Stato,

— the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,

— the Commission of the European Communities, by A. Caeiros and D. Recchia, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 28 EC and Article 7 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 by Council Directive 93/35/EEC of 14 June 1993 (OJ 1993 L 151, p. 32) ('Directive 76/768').

2 The reference has been made in proceedings between the company Roby Profumi Srl ('Roby Profumi') and the Comune di Parma (Municipality of Parma) regarding the upholding by the mayor of that municipality of penalties imposed on Roby Profumi by reason of its non-compliance with national laws on cosmetic products.

### Legal context

*Community legislation*

3 Directive 76/768 has the objective of approximating the laws of the Member States on cosmetic products in order to guarantee the free movement of those products within the European Community. With a view to safeguarding public health, the directive establishes common rules regarding the composition, labelling and packaging of cosmetic products.

4 Article 7 of Directive 76/768 provides:

‘1. Member States may not, for reasons related to the requirements laid down in this Directive and the Annexes thereto, refuse, prohibit or restrict the marketing of any cosmetic products which comply with the requirements of this Directive and the Annexes thereto.

2. They may, however, require that the particulars provided for in Article 6(1) (b), (c), (d) and (f) be expressed at least in their own national or official language or languages; they may also require that the particulars provided for in Article 6(1) (g) be expressed in a language easily understood by the consumer. To that end, the Commission shall adopt a common ingredients nomenclature in accordance with the Article 10 procedure.

3. Furthermore, a Member State may, for purposes of prompt and appropriate medical treatment in the event of difficulties, require that appropriate and adequate information on substances used in cosmetic products be made available to the competent authority, which shall ensure that that information is used only for the purposes of such treatment.

Each Member State shall designate a competent authority and send details thereof to the Commission, which shall publish that information in the *Official Journal of the European Communities*.’

*National legislation*

5 Article 10 of Law No 713, on the rules for implementing directives of the European Economic Community on the production and sale of cosmetic products (norme per l'attuazione delle direttive della Comunità economica europea sulla produzione e la vendita dei cosmetici) of 11 October 1986 (Ordinary Supplement to GURI No 253 of 30 October 1986), as amended by Legislative Decree No 126 of 24 April 1997 (GURI No 112 of 16 May 1997) ('Law No 713/86') provides:

'…

3a. The importation of cosmetic products from countries which are not members of the European Union shall take place under the responsibility of an expert fulfilling the conditions referred to in paragraphs 1 and 2. He shall be required to assess the manufacturing process used for the products.

4. Good practice in the manufacture of cosmetic products, which is also based on Community rules, shall be determined and updated by decree of the Minister for Health, acting in conjunction with the Ministers for Industry, Trade, Crafts and Employment and the Minister for Social Welfare.

5. Any person who intends to produce or package the products referred to in Article 1, on his own behalf or for a third party, shall communicate that in writing to the Ministry of Health and to the Region at least 30 days before the start of that activity.

6. The communication must contain:

(a) the name or the corporate name and the registered office of the business and of the manufacturing plant;

(b) a description of the premises and equipment making possible confirmation that they have the necessary technical and hygienic features for the type of manufacture referred to and the documents confirming the purchase or lease of that equipment;

(c) the identity and qualifications of the technical director;

(d) a full and detailed list of the substances used and the substances contained in the commercial product.

7. Any amendment to the information referred to in paragraphs 6(a), (b) and (c) shall require a fresh preliminary communication.

8. A similar communication dealing with paragraphs 6(a) to (d) only shall be made by importers of pre-packaged, ready-for-sale, products coming from Member States of the European Union, while importers of those products coming from countries which are not members of the European Union shall be required also to communicate the identity and qualifications of the expert referred to in paragraph 3a.

…'

## The dispute in the main proceedings and the question referred for a preliminary ruling

6 Roby Profumi is a company established under Italian law and operating in the import-export sector for cosmetic products within the Community market.

7 On 9 October 2000 Roby Profumi had a fine of ITL 10 000 000 imposed on it by a local administrative health authority on account of non-compliance with its obligation, set down in Article 10(8) of Law No 713/86, to communicate to the Ministry of Health and to the Region specific information relating to imported cosmetic products. Following an administrative appeal brought by Roby Profumi against that decision, the mayor of the Comune di Parma issued an order of injunction on 31 July 2001 confirming the penalty imposed and raising the amount of the fine to ITL 15 000 000.

8 Roby Profumi appealed against that order of injunction to the Tribunale di Parma (Parma District Court) (Italy). That court, while taking the view that the obligation under Article 10(8) of Law No 713/86 — which it considers compatible with Community law — had not been met by Roby Profumi, nevertheless partially upheld the appeal by reducing the amount of the fine to ITL 5 000 000.

9 Roby Profumi lodged an appeal on a point of law against the decision of the Tribunale di Parma. It contends, inter alia, that that court should not have applied the aforementioned national provision on the ground that it is contrary to Article 28 EC and Article 7 of Directive 76/768.

10 The Corte suprema di cassazione (Supreme Court of Cassation) (Italy), having doubts as regards the compatibility of the Italian provision with the aforementioned Community law provisions, decided to stay proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 10(8) of Law No 713/86, as amended by Article 9(4) of Legislative Decree No 126/1997, compatible with Article 28 EC and Article 7 of Directive 76/768?'

**The question referred for a preliminary ruling**

*Initial observations*

11 First, it must be borne in mind that, in accordance with settled case-law, although in a reference for a preliminary ruling the Court cannot give a ruling either on questions which fall within the national law of the Member States or on the compatibility of national provisions with Community law, it can, however, supply a ruling on the interpretation of Community law so as to enable the national court to decide the case before it (see, inter alia, Case C-150/88 *Eau de Cologne & Parfümerie-Fabrik 4711* [1989] ECR 3891, paragraph 12, and Case C-124/99 *Borawitz* [2000] ECR I-7293, paragraph 17).

12 It must also be remembered that, in the question referred, the national court is asking, in essence, whether Article 28 EC and Article 7 of Directive 76/768 preclude a national provision which requires the importer of cosmetic products to communicate to the Ministry of Health and to the Region, inter alia, the name or corporate

name of the business, its registered office and that of the manufacturing plant and a full and detailed list of the substances used and contained in those products.

13 Secondly, it must also be borne in mind that Directive 76/768 provided exhaustively for the harmonisation of national rules on the packaging and labelling of cosmetic products (see, inter alia, Case C-77/97 *Unilever* [1999] ECR I-431, paragraph 24; Case C-220/98 *Estée Lauder* [2000] ECR I-117, paragraph 23, and Case C-99/01 *Linhart and Biffl* [2002] ECR I-9375, paragraph 17).

14 As the Court has already held, when the question referred concerns harmonisation at Community level, the national measures relating thereto must be assessed in the light of the provisions of that harmonising measure and not those of the EC Treaty (see, to that effect, *Eau de Cologne & Parfümerie-Fabrik 4711*, paragraph 28; Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 9, and Case C-324/99 *Daimler-Chrysler* [2001] ECR I-9897, paragraph 32).

15 It follows that, in order to reply to the question referred, the Court must restrict itself to the interpretation of Directive 76/768.

*Reply of the Court*

16 It should, first, be stated that, in adopting Directive 76/768, the Community legislature sought to reconcile the objective of achieving the free movement of cosmetic products and that of safeguarding public health (see Case C-169/99 *Schwarzkopf* [2001] ECR I-5901, paragraph 27).

17 As is clear from the second and third recitals in the preamble to Directive 76/768, the Community legislature, although finding that the differences between national laws on cosmetic products obliged Community cosmetic producers to vary their production according to the Member State for which the products were intended and that those differences impeded free movement of those products, concluded that those national provisions had the aim of safeguarding public health and that, consequently, Community harmonisation in that area must pursue the same objective. The amendments subsequently made to Directive 76/768 were guided by those same considerations (see *Schwarzkopf*, paragraph 28).

18 The rules laid down by Directive 76/768 include the obligation, laid down in Article 7(1), on Member States not to refuse, prohibit or restrict the marketing of any cosmetic products which comply with the requirements of that directive and the annexes thereto.

19 Next, under Article 7(3) of the directive a Member State may 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 be made available to the competent authority (see Case C-246/91 *Commission* v *France* [1993] ECR I-2289, paragraph 9).

20 That provision, which is incorporated in a directive primarily designed (according to, in particular, the second and third recitals in its preamble) to ensure freedom of trade in cosmetic products, also seeks to protect human health, within the meaning of Article 30 EC (see, to that effect, *Estée Lauder*, paragraph 25).

21 The measures which the Member States are required to take for the implementation of Article 7(3) of Directive 76/768 must however be consistent with the principle of proportionality (see, to that effect, *Unilever*, paragraph 27; *Estée Lauder*, paragraph 26, and *Linhart and Biffl*, paragraph 26).

22 In this instance, in the case in the main proceedings, it is clear from the national legislation that importers of cosmetic products are required to communicate to the authorities responsible for protection of health and life of humans the name or corporate name of the manufacturer, its registered office and that of the manufacturing plant and a full and detailed list of the substances contained in the product being marketed.

23 That obligation to provide information allows the competent authorities, in the event of difficulties, to send to the medical services as quickly as possible the necessary information for prompt and appropriate treatment.

24 Such an obligation to provide information is proportionate to the objective of protecting human health, contained in Article 7(3) of Directive 76/768, since it ensures that the competent national authorities have at their disposal detailed information on the relevant product. It is only on the basis of that information that appropriate treatment can be prescribed.

25 Having regard to the foregoing, the reply must be that Article 7 of Directive 76/768 does not preclude a national provision which, in the interests of prompt and appropriate medical treatment in the event of difficulties, requires the importer of cosmetic products to communicate to the Ministry of Health and to the Region the name or the corporate name of the business, its registered office and that of the manufacturing plant, and a full and detailed list of the substances used and the substances contained in those products.

## Costs

26 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**Article 7 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, does not preclude a national provision which, in the interests of prompt and appropriate medical treatment in the event of difficulties, requires the importer of cosmetic products to communicate to the Ministry of Health and to the Region the name or the corporate name of the business, its registered office and that of the manufacturing plant, and a full and detailed list of the substances used and the substances contained in those products.**

[Signatures]