OPINION OF ADVOCATE GENERAL COSMAS

delivered on 6 November 1997 *

1. In this action under Article 169 of the EC Treaty, the Commission asks the Court for a declaration that, by failing to adopt the laws, regulations and administrative measures necessary in order to comply with Council Directive 92/74/EEC of 22 September 1992 widening the scope of Directive 81/851/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to veterinary medicinal products and laying down additional provisions on homeopathic veterinary medicinal products, the French Republic has failed to fulfil its obligations under that directive.

2. The first subparagraph of Article 10(1) of Council Directive 92/74/EEC ('the directive') provides as follows:

'Member States shall take the measures necessary to comply with this directive by 31 December 1993. They shall forthwith inform the Commission thereof.'

3. Since the Commission had not received notification from the French Government regarding the transposition of the directive into national law and did not have any other information enabling it to conclude that the French Republic had complied with its obligations under the directive, it sent a letter of formal notice to the French Government on 10 February 1994.

4. The French Government failed to reply to that letter, so the Commission issued a reasoned opinion on 4 March 1996, in which it called on the French Republic to adopt, within two months from receipt of the opinion, the measures necessary to comply with the directive.

5. The French authorities stated in their reply to the reasoned opinion that they had prepared a draft law and decree in connection with the transposition of the directive.

6. By application lodged at the Court Registry on 16 April 1997 the Commission brought this action, seeking, first, a declaration that the French Republic has failed to fulfil its obligations and, secondly, an order for costs against it.

* Original language: Greek.

7. The French Republic does not dispute the Commission's charge against it. In its defence lodged on 26 May 1997, it merely pointed out that the draft law for transposing the directive into the national legal order could not be enacted in good time by the National Assembly because the President of the Republic had recently dissolved Parliament and called early elections. It also confirmed that it was proceeding with the utmost diligence to fill the gap in its legislation.

8. The Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its legal order in order to justify a failure to comply with obligations and time-limits resulting from the EC Treaty and from Community directives. [1]

9. Accordingly, since the French Republic has not transposed the directive into national law, the infringement pleaded by the Commission is well founded.

Conclusion

10. In view of the foregoing, I propose that the Court should:

— declare that, by failing to adopt, within the period laid down, the laws, regulations and administrative measures necessary in order to comply with Council Directive 92/74/EEC of 22 September 1992 widening the scope of Directive 81/851/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to veterinary medicinal products and laying down additional provisions on homeopathic veterinary medicinal products, the French Republic has failed to fulfil its obligations under that directive; and

— order the French Republic to pay the costs.

1 — See Case C-303/93 *Commission* v *Italy* [1994] ECR I-1901, Case C-65/94 *Commission* v *Belgium* [1994] ECR I-4627, Case C-135/96 *Commission* v *Belgium* [1997] I-1061 and Case C-294/96 *Commission* v *Belgium* [1997] ECR I-1781.