OPINION OF ADVOCATE GENERAL COSMAS

delivered on 15 January 1998 *

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, [1] the Kingdom of Belgium 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 Kingdom of Belgium regarding the transposition of the directive into national law and did not have any other information enabling it to conclude that it had complied with its obligations under the directive, on 10 February 1994 it sent a letter of formal notice under reference SG(94)D/1879 to that State and set a period of two months for the submission of observations.

4. In its reply of 12 June 1995 [2] the Kingdom of Belgium stated that the measures needed in order to comply with the directive were contained in a draft royal decree which, at that time, was still being dealt with by the Ministry of Public Health.

5. After establishing that the Kingdom of Belgium had failed to adopt the measures necessary in order to comply with the directive within the period laid down, the Commission sent a reasoned opinion to that State by letter of 22 May 1996, [3] in which it

* Original language: Greek.

1 — OJ 1992 L 297, p. 12.

2 — Letter under reference RVD/nfd 11/91/550/50.533.

3 — SG(96)D/4751.

concluded that it had failed to fulfil its obligations under the directive. The Commission called upon it to adopt the measures necessary to comply with the reasoned opinion within two months.

6. Since the Commission did not receive any information indicating that the directive had been transposed into Belgian law, it brought this action by application lodged at the Court Registry on 30 April 1997, seeking, first, a declaration that the Kingdom of Belgium had failed to fulfil its obligations and, secondly, an order for costs against it.

7. As the Commission correctly states, under the third paragraph of Article 189 of the EC Treaty directives are to bind the Member States as to the result to be achieved. That obligation includes the obligation to comply with the time-limits laid down by a directive. [4] In this case, the relevant provisions of the directive require the Member States to take the appropriate measures by 31 December 1993 and forthwith to inform the Commission thereof. Notwithstanding the expiry of the time-limit, the Kingdom of Belgium failed to adopt the appropriate measures to comply with the directive or provide any substantive information thereon, thus failing to fulfil its obligations under Article 189 of the Treaty and Article 10 of the directive. Furthermore, the Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its internal legal order in order to justify a failure to comply with obligations and time-limits resulting from the EC Treaty and from Community directives. [5]

8. The Kingdom of Belgium does not dispute the Commission's claim that it failed to take the action required. It merely states that the draft royal decree by which the directive is to be transposed into national law has been submitted to the Council of State for its opinion.

9. In view of the above, I consider that the infringement by the Kingdom of Belgium which the Commission pleads is well founded.

4 — Judgment of the Court in Case 10/76 *Commission* v *Italy* [1976] ECR 1359.

5 — 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] ECR I-1061 and Case C-294/96 *Commission* v *Belgium* [1997] ECR I-1781.

Conclusion

10. I therefore 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 Kingdom of Belgium has failed to fulfil its obligations under that directive; and

— order the Kingdom of Belgium to pay the costs.