Joined Cases T-344/00 and T-345/00

CEVA Santé animale SA and Pharmacia entreprises SA

v

Commission of the European Communities

(Regulation (EEC) No 2377/90 — Veterinary medicinal products — Application for the inclusion of 'progesterone' in the list of substances for which it does not appear necessary to fix a maximum residue limit — Opinion of the Committee for Veterinary Medicinal Products (CVMP) — Re-examination by the CVMP — Failure by the Commission to adopt a draft of measures to be taken — Actions for failure to act — Definition of a position putting an end to a failure to act — No need to adjudicate — Actions in damages — Liability of the Community — Causal link — Interlocutory judgment)

Summary of the Judgment

Non-contractual liability — Conditions — Unlawful conduct consisting in failure to act in relation to a legislative act — Regulation No 2377/90 — Maximum residue limits of

veterinary medicinal products in foodstuffs of animal origin — Procedure for establishing limits — Failure by the Commission to adopt measures to enable progesterone to be used — Clear and serious breach of the principle of sound administration giving rise to liability on the part of the Community — Justification — Complexity of the progesterone file — Not permissible

(Art. 288(2) EC; Council Regulation No 2377/90, Arts 7 and 14)

Failure by the Commission to adopt the measures needed for the continued use of progesterone, for therapeutic and zootechnical purposes, after the date from which, under Article 14 of Regulation No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin, the administration to food-producing animals of veterinary medicinal products containing pharmacologically active substances which are not mentioned in Annexes I, II or III to the regulation was prohibited within the Community constitutes a clear and serious breach of the principle of sound administration giving rise, in principle, to non-contractual liability on the Community's part because:

— first of all, pursuant to Article 7 of Regulation No 2377/90, which lays down a reasonably speedy procedure for establishing limits, the applicants have for several years been asking the Commission to include progesterone in the list of substances for which it does not appear necessary to fix a maximum residue limit,

— secondly, the Committee for Veterinary Medicinal Products, whose opinions are of central importance in Regulation No 2377/90, has always favoured inclusion, even after the Commission had submitted new scientific evidence to it, and

— thirdly, the Commission itself has always maintained the view that progesterone should continue to be authorised for therapeutic and zootechnical treatment.

The scientific and political complexities of the progesterone file cannot excuse the inaction of the Commission, which, by failing to adopt a draft of the measures to be taken, disregarded the legitimate interests of the applicants, of which it was fully aware and with which it ought to have concerned itself.

(see paras 101-103)