OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 10 October 1989 *

Mr President,
Members of the Court,

I — Admissibility

1. At the hearing today, the defendant's representative stated that the criminal proceedings against his client had been discontinued as a result of an amnesty. To his knowledge, though, no request had been made to withdraw the reference made to the Court of Justice for a preliminary ruling. According to its case-law, the Court remains seised of a request for a preliminary ruling until it is expressly withdrawn. Unless the Court should decide otherwise, therefore, the questions referred to it must be answered.

II — Substance

2. As regards the substance of the request, the national court wishes to know whether national legislation which Member States are obliged to adopt in accordance with a directive based on Article 54(3)(g) of the EEC Treaty may enter into force individually so long as not all the Member States have enacted equivalent legislation.

3. It must be pointed out first of all that, as the Court has consistently held, a Member State may not make the fulfilment of its own obligations under Community law conditional upon the performance of the same obligations by the other Member States. [1] In other words, the principle of reciprocity has no validity in Community law as far as the fulfilment of obligations under the Treaty is concerned. Unilateral action may not be taken against the failure of individual Member States to fulfil such obligations; only the forms of procedure prescribed in Articles 169 and 170 of the EEC Treaty may be used, by the Commission and by the Member States of the European Communities, for that purpose.

4. Since, therefore, a Member State has not only the power but actually a duty under Article 189 of the EEC Treaty to implement a directive within the prescribed period, it is undisputable that the individual citizen must comply with the national law corresponding to the directive, even if other Member States have not yet fulfilled that obligation. It follows that he may not rely on a failure to implement the directive in other Member States.

5. This applies also to the Fourth Council Directive of 25 July 1978 on the annual accounts of certain types of companies, [2] with which this reference is concerned. That directive is based on Article 54(3)(g) of the EEC Treaty, which provides for the coordi-

* Original language German

1 — See the judgments of 22 March 1977 in Case 78/76 *Steinike und Weinlig* v *Germany* [1977] ECR 595, at p. 613, of 25 September 1979 in Case 232/78 *Commission* v *France* [1979] ECR 2729, and of 14 February 1984 in Case 325/82 *Commission* v *Germany* [1984] ECR 777, at p. 793. See also Article 55 of the Constitution of the French Republic of 4 October 1958.

2 — OJ 1978, L 222, p. 11

nation of the safeguards which, for the protection of the interests of companies and others, are required by Member States with a view to making such safeguards equivalent throughout the Community.

6. Article 54(3)(g) mentions the equivalence of the safeguards and the directive itself also stresses in its preamble the need for simultaneous coordination in those fields because the activities of the companies or firms concerned frequently extend beyond the frontiers of their national territories. In the view of the defendant in the main proceedings, it runs contrary to those aims of equivalence and simultaneous coordination for the national legislation transposing the directive to enter into force at different times in different States.

7. It should be noted, in that regard, that the requirement of equivalent safeguards expresses the actual degree of harmonization to be attained by directives based on Article 54(3)(g). That provision does not, therefore, require complete standardization; it is sufficient that the national safeguards should be equivalent in their effects. A legal obligation on the Community legislature and the Member States to make the national applicability of implementing measures dependent on the enactment of such measures in all the Member States cannot, however, be inferred from Article 54(3)(g). The Community is based on observance of the law by the Member States, so that it may be assumed that the Member States have brought their pre-existing national laws into line with the legal prescriptions of the directive at the time specified by the directive.

8. Whilst the transposition of directives at different times in the individual Member States may result in unequal treatment of citizens in the different Member States, that inequality of treatment derives from a legislative technicality: a directive is binding as to the result to be achieved; however, its effectiveness depends — at least when it imposes obligations on individuals — on transposition by the legislatures of the Member States; as a result, not only the forms and means chosen may be different but also the date of transposition. Since directives generally lay down a period within which they are to be transposed and their substance may be transposed and brought into effect either at the beginning or at the end of that period, it is not only possible but, so to speak, inherent in the transposition of directives that they may come into force at different times. That is what clearly distinguishes them from regulations, which are directly applicable in each Member State from the date of their entry into force.

9. Furthermore, in the specific context of the transposition of directives concerning company law, Member States must introduce the provisions of Community law into their own different systems of company law, which may cause serious difficulties.[3] In order to lessen those difficulties, the period allowed for the implementation of individual provisions of the directive in question is longer than that normally

3 — See, in this connection, the Fifth Annual Report to the European Parliament on Commission monitoring of the application of Community law, p. 2 *et seq.* of the roneoed version, and the Fourth Progress Report of the Commission to the Council and the European Parliament concerning the implementation of the Commission's White Paper on the completion of the internal market, p. 4, point 14 *et seq.*

prescribed in such cases. For that reason, the period laid down for transposition in this case is two years.[4]

10. It will not be easy to convince a national of a Member State that when laws come to be approximated he must put up with the disadvantages arising from the fact that another Member State has not duly fulfilled its obligations under Community law in that regard. The conclusions to be drawn from that state of affairs are, primarily, a matter for the Member States and the political organs of the Community. In the present case, a solution is hardly to be achieved through legal proceedings.

11. I therefore propose that the Court should answer the national court's question as follows:

'National legislation enacted on the basis of directives (such as, for example, those based on Article 54(3)(g) of the EEC Treaty) must enter into force no later than the date specified in the directive, even if all the Member States have not complied with their duty of transposition arising under the directive.'

4 — Last recital in the preamble to, and Article 55(1) of, the directive.