JUDGMENT OF THE COURT (Fourth Chamber)
11 January 1990 *

In Case C-38/89

REFERENCE to the Court under Article 177 of the EEC Treaty from the tribunal de police (Local Criminal Court), Aix-les-Bains, France, for a preliminary ruling in the action pending before that court between

Ministère public (Public Prosecutor)

and

Guy Blanguernon

on the interpretation of Article 54(3)(g) of the EEC Treaty and the Fourth Council Directive (78/660/EEC) of 25 July 1978 on the annual accounts of certain types of companies (Official Journal 1978, L 222, p. 11) with a view to determining when national legislation adopted in accordance therewith may enter into force,

THE COURT (Fourth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

after considering the observations submitted on behalf of

Guy Blanguernon, by P. Lippens de Cerf, avocat, at the hearing,

* Language of the case: French.

the French Government, by E. Belliard and S. Grassi, acting as Agents,

the Commission of the European Communities, by its Legal Advisers, É. Lasnet and A. Caeiro, acting as Agents,

having regard to the Report for the Hearing and further to the hearing on 10 October 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on the same date,

gives the following

Judgment

1 By judgment dated 30 June 1988, which was received at the Court on 16 February 1989, the tribunal de police, Aix-les-Bains, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 54(3)(g) of the EEC Treaty and the Fourth Council Directive (78/660/EEC) of 25 July 1978 on the annual accounts of certain types of companies (Official Journal 1978, L 222, p. 11, hereinafter referred to as 'the Fourth Directive').

2 That question was raised in the course of criminal proceedings against Mr Blanguernon, the financial director of Pakem, a private limited liability company, who is charged with failing to lodge the annual accounts of that company at the Registry of the tribunal de commerce (Commercial Court), Chambéry, within the month following their approval by the general meeting of shareholders.

3 A failure of that kind is punishable under the French legislation laying down accounting requirements for traders and certain companies. The purpose of that legislation is to transpose into French law the provisions of the Fourth Directive, which is based on Article 54(3)(g) of the Treaty. That article provides for the adoption of directives coordinating to the necessary extent the safeguards which,

for the protection of the interests of members and others, are required by Member States of the companies or firms referred to in the second paragraph of Article 58 of the Treaty with a view to making such safeguards equivalent throughout the Community.

4 Before the national court, Mr Blanguernon claimed that the application of the French legislation concerning accounting requirements was prejudicial to French companies inasmuch as they were obliged to publish their accounts while their competitors in other Member States were under no such obligation. Certain Member States had not adopted measures to implement the Fourth Directive.

5 In view of that argument, the tribunal de police, Aix-les-Bains, decided to stay the proceedings and seek a preliminary ruling from the Court on the following question:

'Is it in accordance with the wording and spirit of Article 54(3)(g) of the EEC Treaty and the Fourth Council Directive of 25 July 1978 for national laws enacted pursuant thereto to enter into force individually so long as not all the Member States have adopted equivalent legislation, which is a necessary condition for the simultaneous coordination required by the Fourth Directive?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case in the main proceedings, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 It must first of all be pointed out that, as the Court has consistently held, a Member State may not rely on the fact that other Member States have also failed to perform their obligations in order to justify its own failure to fulfil its obligations under the Treaty (see, in particular, the judgment of 26 February 1976 in Case 52/75 *Commission* v *Italy* [1976] ECR 277). In the legal order established by the Treaty, the implementation of Community law by the Member States cannot be made subject to a condition of reciprocity. Articles 169 and 170 of the Treaty

provide the appropriate remedies in cases where Member States fail to fulfil their obligations under the Treaty.

8 It follows that the national law of a Member State giving effect to a Community directive must have full force, even if the directive in question has not yet been transposed and implemented in the legislation of other Member States.

9 This also applies to national legislation giving effect to the Fourth Directive based on Article 54(3)(g) of the Treaty. That directive and that article refer to the equivalence of the safeguards required by Member States for the protection of the interests of members and others only in order to specify the degree of harmonization to be achieved. It cannot, therefore, be inferred from that aim that the applicability of measures implementing the Fourth Directive in a Member State is conditional upon the adoption of equivalent measures in all the other Member States.

10 The answer to the national court's question must therefore be that Article 54(3)(g) of the Treaty and the Fourth Council Directive (78/660/EEC) of 25 July 1978 on the annual accounts of certain types of companies must be interpreted as meaning that the legislation of Member States intended to implement that directive must be brought into force and applied even if other Member States have not yet adopted measures to implement the directive.

Costs

11 The costs incurred by the French Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question submitted to it by the tribunal de police, Aix-les-Bains, by judgment of 30 June 1988, hereby rules:

Article 54(3)(g) of the EEC Treaty and the Fourth Council Directive (78/660/EEC) of 25 July 1978 on the annual accounts of certain types of companies must be interpreted as meaning that the legislation of Member States intended to implement that directive must be brought into force and applied even if other Member States have not yet adopted measures to implement the directive.

Kakouris Koopmans Díez de Velasco

Delivered in open court in Luxembourg on 11 January 1990.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Fourth Chamber