

## I

(Information)

## COURT OF JUSTICE

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## JUDGMENT OF THE COURT

of 7 January 2003

**in Case C-306/99 (Reference for a preliminary ruling from the Finanzgericht Hamburg): Banque internationale pour l'Afrique occidentale SA (BIAO) v Finanzamt für Großunternehmen in Hamburg <sup>(1)</sup>**

**(Fourth Directive 78/660/EEC — Annual accounts of certain types of companies — Jurisdiction of the Court to interpret Community law in a context where it is not directly applicable — Provisions for risk under a loan guarantee — Taking into account of the individual situation of the debtor and of its State of establishment — Date on which the risk may or must be evaluated and entered on the balance sheet)**

(2003/C 44/01)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-306/99: Reference to the Court under Article 234 EC by the Finanzgericht Hamburg (Germany) for a preliminary ruling in the proceedings pending before that court between Banque internationale pour l'Afrique occidentale SA (BIAO) and Finanzamt für Großunternehmen in Hamburg, on the interpretation of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11), the Court, composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (President of Chamber),

D.A.O. Edward (Rapporteur), A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric and S. von Bahr, Judges; F.G. Jacobs, Advocate General; L. Hewlett, Principal Administrator, Registrar, has given a judgment on 7 January 2003, in which it has ruled:

1. *The questions appearing in the second and third parts of the reference for a preliminary ruling, concerning the interpretation of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, are admissible.*
2. *The Fourth Directive 78/660 does not preclude a provision intended to cover possible losses or debts arising from a commitment appearing at the foot of the balance sheet pursuant to Article 14 of that directive from being entered on the liabilities side of the balance sheet pursuant to Article 20(1), provided that the loss or debt in question may be characterised as 'likely or certain' at the balance-sheet date. Article 31(1)(e) of that directive does not exclude the possibility that, in order to ensure compliance with the principle of prudence and the principle that a true and fair view of the assets and liabilities be given, the most appropriate method of valuation might be to carry out a globalised assessment of all the relevant factors.*
3. *In circumstances such as those in point in the main proceedings, repayment of a loan, which takes place after the balance-sheet date (that being the relevant date for valuing balance-sheet items), does not constitute a fact necessitating retrospective revaluation of a provision relating to that loan entered on the liabilities side of the balance sheet. However, compliance with the principle that a true and fair view of the assets and liabilities be given requires that mention should be made in the annual accounts of the disappearance of the risk covered by that provision.*

<sup>(1)</sup> OJ C 333 of 20.11.1999.