Action brought on 4 March 2003 by the Commission of the European Communities against Ireland

(Case C-99/03)

(2003/C 101/47)

An action against Ireland was brought before the Court of Justice of the European Communities on 4 March 2003 by the Commission of the European Communities, represented by James Flett, acting as agent, with an address for service in Luxembourg.

The Applicant claims that the Court should:

1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2000/52/EC of the Commission of 26 July 2000 amending Directive 80/723/EC on the transparency of financial relations between Member States and public undertakings [1], or in any event by failing to communicate them forthwith to the Commission, Ireland has failed to fulfil its obligations under the Treaty and the Directive;

2) order Ireland to pay the costs.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding, as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. When that period expired on 31 July 2001 Ireland had failed to adopt the measures necessary to comply with the directive referred to in the conclusions of the Commission, or in any event had failed to inform the Commission of such measures.

[1] OJ L 193 of 29.7.2000, p. 75.

Reference for a preliminary ruling by the Tribunale di Milano — Prima sezione penale by order of that Court of 26 November 2002 in the criminal proceedings against Alfonso Galeazzo and Marco Benatti

(Case C-101/03)

(2003/C 101/48)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Milano — Prima sezione penale (Milan District Court, First Criminal Chamber) of 26 November 2002, received at the Court Registry on 4 March 2003, for a preliminary ruling in the criminal proceedings against Alfonso Galeazzo and Marco Benatti on the following questions:

1. Does Article 6 of Directive 68/151/EEC [1] on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community concern not only cases of failure to publish the balance sheet and profit and loss account, but also cases where those documents are published but their contents are false, given that the harm to the interests of members and third parties is clearly greater in the latter case? Is the directive intended in that respect to lay down a minimum level of protection at Community level leaving it to the Member States to put in place means of protection against the submitting of false balance sheets or the publishing of false company accounts?

2. Do the criteria of effectiveness, proportionality and dissuasiveness, which the penalties to be adopted by the Member States under Council Directive 68/151 must satisfy in order to be regarded as appropriate, refer to the nature or type of penalty considered in the abstract, or rather to its application in practice having regard to the structural characteristics of the legal system within which it takes effect?

3. Are the principles set out in Council Directive 78/660/EEC [2] of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, Council Directive 83/349/EEC [3] of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts and Council Directive 90/605/EEC [4] of 8 November 1990 amending Directive 78/660/EEC on annual accounts and Directive 83/349/EEC on consolidated accounts as regards the scope of those directives, upon which national measures relating to the drafting and contents of annual accounts and annual reports, in particular, of capital companies, must be based, to be interpreted as precluding a Member State from setting minimum thresholds below which inaccurate statements in annual accounts and annual reports relating to companies limited by shares, partnerships limited by shares and limited liability companies are not punishable?

[1] OJ, English Special Edition 1968 (I), p. 41.
[2] OJ 1978 L 222, p. 11.
[3] OJ 1983 L 193, p. 1.
[4] OJ 1990 L 317, p. 60.