

Case C-106/89

Marleasing SA

v

La Comercial Internacional de Alimentación SA

(Reference for a preliminary ruling  
from the Juzgado di Primera Instancia  
e Instrucción No 1, Oviedo (Spain))

(Directive 68/151/EEC — Article 11 —  
Consistent interpretation of national law)

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Summary of the Judgment

1. *Measures adopted by the Community institutions — Directives — Implementation by Member States — Need to ensure the effectiveness of directives — Obligations of the national courts*  
(*EEC Treaty, Art. 5 and Art. 189, third paragraph*)

2. *Freedom of movement for persons — Freedom of establishment — Companies — Directive 68/151 — Rules on nullity — Exhaustive list of cases in which nullity can arise — Obligation on the part of the national court not to allow nullity in other cases — Nullity on account of the illegality of a company's objects — Concept of the objects of a company*  
(*Council Directive 68/151, Art. 11*)

1. The Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, to ensure the fulfilment of

that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts. It follows that, in applying national law, whether the provisions in question were adopted before or after the

directive, the national court called upon to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in order to achieve the result pursued by it and thereby comply with the third paragraph of Article 189 of the Treaty.

2. A national court hearing a case which falls within the scope of Directive 68/151 on the coordination 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, is required to interpret its national law in the light of the purpose and the wording of that directive in order to preclude a declaration of nullity of a public limited company on a ground other than those listed in Article 11 of the directive. Those grounds must themselves be strictly interpreted, in the light of that purpose, so as to ensure that nullity on the ground that the objects of the company are unlawful or contrary to public policy must be understood as referring exclusively to the objects of the company as described in the instrument of incorporation or the articles of association.

## REPORT FOR THE HEARING in Case C-106/89\*

### I — Legal background

1. Article 395 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties<sup>1</sup> provides that the two new Member States are to put into effect the measures necessary for them to comply, from the date of accession, with the provisions of Community directives.

2. The object of the First Council Directive 68/151/EEC, based in particular upon Article 54(3)(g) of the EEC Treaty, is to ensure certainty in the law as regards relations between certain forms of companies, including public limited

companies and third parties and between members.

To that end Article 11 limits the instances of nullity of companies. It provides:

“The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:

- (1) Nullity must be ordered by decision of a court of law;
- (2) Nullity may be ordered only on the following grounds:

\* Language of the case: Spanish.

<sup>1</sup> — OJ 1985 L 302, p. 23.