

1. where:

- (i) a party before the national court claims to be entitled to rights under Community law having direct effect in national law ('the rights claimed');
- (ii) a national measure in clear terms will, if applied, automatically deprive that party of the rights claimed;
- (iii) there are serious arguments both for and against the existence of the rights claimed and the national court has sought a preliminary ruling under Article 177 as to whether or not the rights claimed exist;
- (iv) the national law presumes the national measure in question to be compatible with Community law unless and until it is declared incompatible;
- (v) the national court has no power to give interim protection to the rights claimed by suspending the application of the national measure pending the preliminary ruling;
- (vi) if the preliminary ruling is in the event in favour of the rights claimed, the party entitled to those rights is likely to have suffered irremediable damages unless given such interim protection;

does Community law either

- (a) oblige the national court to grant such interim protection of the rights claimed;

or

- (b) give the court power to grant such interim protection of the rights claimed?

2. if question 1 (a) is answered in the negative and question 1 (b) in the affirmative, what are the criteria to be applied in deciding whether or not to grant such interim protection of the rights claimed?

Reference for a preliminary ruling by the Oberlandesgericht Koblenz by judgment of that court of 1 June 1989 in the case of Powell Duffryn plc v. Wolfgang Petereit, Rechtsanwalt, in his capacity as trustee in bankruptcy of IBH-Holding AG

(Case 214/89)

(89/C 211/08)

Reference has been made to the Court of Justice of the European Communities by judgment of the Sixth Civil Senate of the Oberlandesgericht [Higher Regional Court] Koblenz of 1 June 1989, which was received at the Court Registry on 10 July 1989, for a preliminary ruling in the case of Powell Duffryn plc, Powell Duffryn House, London Road, Bracknell, Berkshire RG12 2AG, United Kingdom, v. Wolfgang Petereit, Rechtsanwalt, in his capacity as trustee in bankruptcy of the assets of IBH-Holding AG, 24a Kaiserstraße, D-6500 Mainz, on the following questions:

1. does the rule contained in the statutes of a company limited by shares on the basis of which the shareholder by subscribing for or purchasing shares submits, with regard to all disputes with the company or its organs, to the jurisdiction of the courts ordinarily competent to entertain suits concerning the company constitute an agreement conferring jurisdiction within the meaning of Article 17 of the Brussels Convention which is concluded between the shareholder and the company?

(Must this question be answered differently depending on whether the shareholder himself subscribes for shares on the occasion of an increase in the company's capital or purchases existing shares?)

2. if question 1 is answered in the affirmative:

- (a) does subscription for and acceptance of shares, by means of a written declaration of subscription, on the occasion of an increase in the capital of a company limited by shares comply with the requirement for writing laid down in the first paragraph of Article 17 of the Brussels Convention as regards a jurisdiction clause contained in the statutes of the company?

- (b) does the jurisdiction clause satisfy the requirement that the dispute must arise in connection with a particular legal relationship within the meaning of Article 17 of the Brussels Convention?

- (c) does the jurisdiction clause in the statutes also cover claims to payment arising out of a contract relating to the subscription of shares and claims to the repayment of wrongly paid dividends?