Case C-83/91

Wienand Meilicke

v

ADV/ORGA AG

(Reference for a preliminary ruling from the Landgericht Hannover)

(Company law — Directive 77/91/EEC)

Report for the Hearing ................................................................. I - 4872
Opinion of Advocate General Tesauro delivered on 8 April 1992 ................. I - 4897
Judgment of the Court, 16 July 1992 ............................................. I - 4919

Summary of the Judgment

1. Preliminary rulings — Jurisdiction of the Court — Limits — General or hypothetical questions — Determination by the Court of its own jurisdiction

   (EEC Treaty, Art. 177)

2. Preliminary rulings — Reference to the Court — Stage of the proceedings at which reference should be made

   (EEC Treaty, Art. 177)

3. Preliminary rulings — Jurisdiction of the Court — Hypothetical question submitted in circumstances in which a useful answer is precluded — Lack of jurisdiction of the Court

   (EEC Treaty, Art. 177)

1. In the framework of the procedure for cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess having regard to the particular features of the case, whether a preliminary ruling is necessary to enable it to give judgment. Consequently, where
the questions submitted by the national court concern the interpretation of a provision of Community law, the Court is, in principle, bound to give a ruling.

Nevertheless, it is a matter for the Court of Justice, in order to determine whether it has jurisdiction, to examine the conditions in which the case has been referred to it. The spirit of cooperation which must prevail in the preliminary ruling procedure requires the national court to have regard to the function entrusted to the Court of Justice, which is to assist in the administration of justice in the Member States and not to deliver advisory opinions on general or hypothetical questions.

2. The need to provide an interpretation of Community law which will be of use to the national court makes it essential to define the legal context in which the interpretation requested should be placed. Accordingly, it may be convenient, in certain circumstances, for the facts of the case to be established and for questions of purely national law to be settled at the time the reference is made to the Court of Justice, so as to enable the latter to take cognizance of all the features of fact and of law which may be relevant to the interpretation of Community law which it is called upon to give.

3. The Court would be exceeding the limits of the function entrusted to it if it decided to give a ruling on a hypothetical problem without having before it the matters of fact or law necessary to give a useful answer to the questions submitted to it.

REPORT FOR THE HEARING
in Case C-83/91 *

I — Facts and procedure

1. Legislative background

1. Article 54(3)(g) of the EEC Treaty provides that the Council and the Commission are to coordinate to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 of the Treaty with a view to making such safeguards equivalent. In pursuit of that objective, on 13 December 1976 the Council adopted the second directive (77/91/EEC) concerning the formation of public limited liability companies and the maintenance and alteration of their capital ('the Second Directive', OJ 1977 L 76, p. 1).

* Language of the case: German.