JUDGMENT OF THE COURT (Fifth Chamber)
18 December 1997 *

In Case C-402/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Oberlandesgericht Frankfurt am Main (Germany) for a preliminary ruling in the proceedings pending before that court, concerning the commercial registration of an undertaking in the process of formation, brought by

European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung

on the interpretation of Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ 1985 L 199, p. 1),

THE COURT (Fifth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, M. Wathelet, J. C. Moitinho de Almeida, D. A. O. Edward and J.-P. Puissochet, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

* Language of the case: German.

after considering the written observations submitted on behalf of:

— European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung, by D. Ehle, Rechtsanwalt, Cologne,

— the German Government, by A. Dittrich, Ministerialrat in the Federal Ministry of Justice, and B. Kloke, Oberregierungsrat in the Federal Ministry of the Economy, acting as Agents,

— the Commission of the European Communities, by G. zur Hausen and A. Caeiro, Legal Advisers, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 13 November 1997,

gives the following

Judgment

1 By order of 9 December 1996, received at the Court on 23 December 1996, the Oberlandesgericht (Higher Regional Court), Frankfurt am Main, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) (OJ 1985 L 199, p. 1, 'the Regulation').

2 That question was raised in proceedings in which the Amtsgericht (Local Court), Frankfurt am Main, refused to enter European Information Technology Observatory, Europäische Wirtschaftliche Interessenvereinigung ('EITO'), an undertaking in the process of formation, with its official address in Frankfurt am Main, in Part A of the commercial register, on the ground that under German law the name of an Europäische Wirtschaftliche Interessenvereinigung, namely a European Economic Interest Grouping ('EEIG' or 'grouping'), may be derived only from purely personal names or from personal names with further additions, but the EEIG may not be registered if its name is purely descriptive of the object of the undertaking.

3 The Landgericht (Regional Court), Frankfurt am Main, upheld, by order of 21 June 1995, the Amtsgericht's refusal of that registration and EITO appealed to the Oberlandesgericht Frankfurt am Main.

4 Before those courts, EITO claimed that the refusal to register it in the commercial register was contrary to Article 5(a) of the Regulation, according to which a contract for the formation of a grouping is to include either the words 'European Economic Interest Grouping' or 'EEIG', unless those words or initials already form part of the name.

5 The Oberlandesgericht considered that EITO's appeal was not well founded. It referred to its decision of 18 May 1993 in which it held that the business name of an EEIG may not be entered in the commercial register if it is a name purely descriptive of the object of the undertaking, since the law applicable to the business names of general partnerships governed by German law (offene Handelsgesellschaften), to which EEIGs are subject, provides exclusively for the use of purely personal names or of personal names with further additions. In that decision, the Oberlandesgericht expressly rejected the view that Article 5(a) of the regulation requires a business name to be purely descriptive of the object of the undertaking. In its view, that provision states only that the words 'European Economic Interest Grouping' or the initials 'EEIG' need not necessarily precede or

follow the name and, consequently, apart from the addition specifying the type of legal entity, the question of business names is governed solely by national law.

6 Nevertheless, the Oberlandesgericht considered itself bound to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping to be interpreted as meaning that, apart from the additions of "European Economic Interest Grouping" or "EEIG", the name or business name of an EEIG may consist of a purely descriptive designation, even where internal law in principle precludes the use of such a name for the formation of a European Economic Interest Grouping?'

7 First of all, the Regulation creates a legal framework in which natural persons, companies, firms and other legal entities can cooperate across frontiers, by means of a new legal instrument.

8 According to Article 1(1), EEIGs are to be formed upon the terms, in the manner and with the effects laid down in the Regulation.

9 Article 2(1) provides: 'Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.'

10 Article 5 of the Regulation provides: 'A contract for the formation of a grouping shall include at least:

(a) the name of the grouping preceded or followed either by the words "European Economic Interest Grouping" or by the initials "EEIG", unless those words or initials already form part of the name;

...'.

11 EITO considers that the question referred by the national court should be answered in the affirmative. It refers first to the actual wording of Article 5(a), and in particular to the part of the sentence 'unless those words or initials already form part of the name'. It argues that where a business name is derived from personal names, the words 'European Economic Interest Grouping' or the initials 'EEIG' can only be a further addition and cannot already form part of the name. The phrase referred to above, which would otherwise be meaningless, shows that it is possible to adopt a name descriptive of the object of the undertaking.

12 EITO goes on to cite the objectives listed in the recitals in the preamble to the Regulation. It claims that the legislature intended to encourage cross-frontier cooperation by according the members of the grouping considerable freedom in the organization of their contractual relations. That necessarily involves accepting business names descriptive of the object of the undertaking. In its view, there is a direct link between the name of an EEIG and the organization of its contractual relations and internal operations.

13 Moreover, according to EITO, equal treatment of the members of an EEIG must also be reflected in its business name, possibly by including the name of each member in the business name. That, however, would raise two problems: first, the

number of members might make such a business name impracticable and, second, it would not guarantee that the business name gave a suitable indication of the EEIG's sphere of operations. The result of refusing names descriptive of the object of the undertaking would therefore be to prevent EEIGs from achieving their objective of promoting cooperation within the Community.

14 Last, EITO points out that the importance of business names descriptive of the object of the undertaking for cross-frontier cooperation is illustrated by the fact that more than 80% of EEIGs set up have such a name. If descriptive names were not allowed, there would be a risk of legal divergence within the common market which is precisely what a uniform legal structure is supposed to eliminate. Accordingly, interpretation and application of the Regulation must not be guided solely by German law.

15 The German Government and the Commission consider that the answer to the question referred should be in the negative. The German Government notes in particular that Article 5(a) of the Regulation does no more than determine the manner in which the legal form of the EEIG is to be mentioned in the name and makes no provision regarding the content of the grouping's name. The rules applicable to the content of the grouping's name are consequently a matter for national law exclusively. That follows directly from Article 2(1) of the Regulation.

16 The Commission states that, subject to the provisions of the Regulation, the law applicable, in accordance with Article 2(1), is the internal law of the Member State in which the official address is situated. In its view, the business name of a grouping falls within the sphere of domestic law.

17 The argument that the expression 'unless those words or initials already form part of the name' means that the Regulation necessarily offers the possibility of a name purely descriptive of the object of the undertaking, the Commission submits, is

not convincing. That argument relies on provisions of national law to interpret a provision of Community law, which, however, must be interpreted independently and may not be influenced by the necessarily differing rules of the various Member States.

18 The Commission adds that the freedom afforded by the Regulation with regard to the business names of EEIGs is confirmed by Article 1(3), which provides that the Member States are to determine whether or not groupings registered at their registries have legal personality.

19 As the German Government and the Commission have rightly submitted, the interpretation of Article 5(a) put forward by EITO cannot be accepted.

20 It is clear from Article 2(1) that, subject to the provisions of the Regulation, the law applicable is the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

21 As the Advocate General has indicated at point 5 of his Opinion, all that Article 5(a) requires is that the business name of an EEIG should contain either the words 'European Economic Interest Grouping' or the initials 'EEIG'. The purpose of that provision is to enable the grouping to be identified and distinguished in its relations with third parties by means of the reference to the type of association established by the Regulation. It does not, however, impose any other requirement

as to the content of the grouping's business name. In particular, the phrase 'unless those words or initials already form part of the name' is simply intended, where appropriate, to avoid any pointless repetition.

22 The Regulation thus provides that the business name of an EEIG must include the words 'European Economic Interest Grouping' or the initials 'EEIG', but is silent as to the content of the name. It follows that requirements in that connection may, in accordance with Article 2(1) of the Regulation, be imposed by the provisions of internal law applicable in the Member State in which the grouping has its official address.

23 The answer to the national court's question must therefore be that Article 5(a) of the Regulation is to be interpreted as meaning that the business name of an EEIG must include the words 'European Economic Interest Grouping' or the initials 'EEIG', whilst the other elements to be included may be imposed by the provisions of internal law applicable in the Member State in which the grouping has its official address.

Costs

24 The costs incurred by the German Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Oberlandesgericht Frankfurt am Main by order of 9 December 1996, hereby rules:

Article 5(a) of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG) is to be interpreted as meaning that the business name of an EEIG must include the words 'European Economic Interest Grouping' or the initials 'EEIG', whilst the other elements to be included may be imposed by the provisions of internal law applicable in the Member State in which the grouping has its official address.

Gulmann Wathelet Moitinho de Almeida

Edward Puissochet

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber