between an association and its members by virtue of membership are "matters relating to a contract" within the meaning of Article 5 (1) of the Convention, whether the obligations in question arise simply from the act of becoming a member or from that act in conjunction with one or more decisions made by organs of the association.

In Case 34/82

REFERENCE to the Court under Article 3 of the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters by the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] for a preliminary ruling in the appeal on a point of law pending before it between

MARTIN PETERS BAUUNTERNEHMUNG GMBH, a limited liability company incorporated under German law and having its registered office in Aachen, Federal Republic of Germany,

and

ZUID NEDERLANDSE AANNEMERS VERENIGING [South Netherlands Contractors' Association], an association endowed with legal personality and having its registered office in Maastricht and its administrative office at Heeze, in the province of North Brabant, the Netherlands,

on the interpretation of Article 5 (1) of the Convention,

THE COURT

composed of: J. Mertens de Wilmars, President, A. O'Keeffe and U. Everling (Presidents of Chambers), G. Bosco, T. Koopmans, K. Bahlmann and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted in pursuance of Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

A — The main action

(a) The facts

By writ of 12 May 1978, the respondent in the appeal on a point of law, Zuid Nederlandse Aannemers Vereniging [South Netherlands Contractors' Association] (hereinafter referred to as "the Association"), sued the appellant in the appeal on a point of law, Martin Peters Bauunternehmung GmbH, a construction company (hereinafter referred to as "Peters"), before the Arrondissementsrechtbank [District Court], 's-Hertogenbosch, for the payment of HFL 112 725 together with statutory interest and costs, by virtue of a binding decision of the Association adopted under Article 16 of the document of constitution of the Association, of which Peters is a member.

The Association is an association under Netherlands law which has legal personality and its members are the undertakings which pursue their activities in the building industry in the provinces of Limburg, North Brabant, Zeeland and part of the province of Gelderland. According to the court making the order for reference, the object of the Association is "to promote the economic, financial, legal and other interests of its members ... in so far as those interests relate to or are in the widest sense connected with price regulation in the context of invitations to tender for contracts and the consequences thereof for contractors".

Under Article 36 of the document of constitution, the Association may take decisions, which are binding on its members and which are lodged with the Ministry for Economic Affairs of the Netherlands in accordance with the Wet Economiche Mededinging [Law on Economic Competition]. Among those decisions are included the "Guidelines on private tenders for public works and utilities", which constitute uniform rules on price regulation and lay down a certain number of common rules, to be complied with by any of the Association's members which tender for "any work" within the Association's area of activity, on the submission by a member of a tender for work and on the relations between the contractor whose tender is accepted and the Association.

Thus under the provisions contained in those Guidelines, any member of the Association must inform the latter of its intention to tender for work (Article 3 of the Guidelines) and, in the event of several members' intending to tender for the same work, the Association is to organize a meeting of the members concerned, presided over by one of its officials (Article 4 of the Guidelines). At that meeting, the members of the Association may agree to include in their tenders "compensation and contributions" intended to cover either "expenses and work of members connected

with their tender for the work" (Article 11 of the Guidelines), or a "contribution towards the costs of the Association's office (Article 12 of the Guidelines), or a "contribution towards a contractors' organization" (also Article 12).

The members of the Association are required to attend or to be represented at that meeting. The member of the Association which is actually to carry out the work becomes liable to the Association for the compensation agreed upon at the meeting and is required to pay it within the period prescribed by the Guidelines, that is to say in principle as soon as the member has started to carry out the work. That obligation is imposed on the member of the Association whose tender for the work is accepted, whether or not it attended the meeting (Article 17 of the Guidelines).

In this case Peters, a member of the Association, tendered for and was subsequently awarded work to be carried out at Kerkrade, that is to say within the Association's area of activity. In application of the provisions of the Guidelines, a meeting was organized by the Association on 3 May 1977, at which "compensation and contributions" within the meaning of those Guidelines were determined by the Association's members.

Although it was a member of the Association, Peters did not notify it of its intention to tender for the work at Kerkrade and did not attend the meeting on 3 May 1977. After Peters had started the work, the Association claimed from Peters payment of the sums in question. Peters expressly disputed that it was under any obligation in that respect and refused to pay to the Association the outstanding sums which had been determined pursuant to the provisions of the Guidelines.

(b) The procedure before the national courts

By writ of 12 May 1978, the Association summoned Peters to appear before the Arrondissementsrechtbank, 's-Hertogenbosch, within whose jurisdiction the Association has its administrative office.

Peters appeared solely in order to contest the jurisdiction of that court on the ground that, since it had its domicile in the territory of the Federal Republic of Germany, it could not be sued before a Netherlands court by virtue of Article 2 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

However, by judgment of 2 March 1979, the Arrondissementsrechtbank, 's-Hertogenbosch, dismissed the objection of lack of jurisdiction raised by Peters taking the view that the dispute arose out of a contract and that it therefore had jurisdiction under Article 5 (1) of the Convention of 27 September 1968, which provides:

"A person domiciled in a Contracting State may, in another Contracting State, be sued:

1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;".

Peters appealed against that decision to the Gerechtshof [Regional Court of Appeal], 's-Hertogenbosch, but by judgment of 7 May 1980 that court

confirmed the judgment of 2 March 1979, considering *inter alia* at paragraphs 7 and 9 of the grounds of its judgment that:

Paragraph 7: "The alleged obligation upon Peters to pay the amounts claimed in the main action must be regarded as a matter relating to a contract within the meaning of the Convention. The alleged obligation to pay the amounts in question arises from the relationship between the Association and Peters created by the latter's joining the Association as a member. That act of becoming a member is a bilateral legal transaction which is based on the mutual agreement of both parties and from which ensues a whole series of rights and obligations for those parties."

Paragraph 9: "The Arrondissementsrechtbank therefore rightly took the view that the compensation and contributions alleged to be owed were to be regarded as arising from a matter relating to a contract."

Peters brought an appeal on a point of law against that decision of the Gerechtshof, on the ground that that court's analysis of the nature of the relationship between Peters and the Association was erroneous.

In order to determine whether that ground was well founded, the Hoge Raad stayed the proceedings by judgment of 15 January 1982 and considered it necessary to refer to the Court of Justice the following question for a preliminary ruling:

"Does Article 5 (1) of the Convention apply to claims which are made by an association constituted under private law possessing legal personality against one of its members in a matter relating to obligations in regard to the payment of a sum of money and which have their basis in the relationship between the parties by virtue of membership, such relationship arising from the defendant party's joining the association as a member by virtue of a legal transaction entered into for that purpose? Does it make any difference whether the obligations in question arise simply from the act of becoming a member, or from that act in conjunction with one or more decisions made by organs of the association?"

B — Written procedure

The request for a preliminary ruling submitted by the Hoge Raad was received at the Court Registry on 21 January 1982.

Written observations were submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community by Peters, represented by H. J. Bronkhorst, an Advocate at the Hoge Raad der Nederlanden; by the Association, represented by E. Korthals Altes of The Hague Bar; by the Commission of the European Communities, represented by Dr E. Zimmermann, its Legal Adviser, acting as Agent, assisted by W. J. L. Calkoen of the Rotterdam Bar; by the Government of the Federal Republic of Germany, represented by Dr C. Böhmer, acting as Agent; and by the Government of the Italian Republic, represented by Oscar Fuimara, Avvocato dello Stato, acting as Agent.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court ordered the following measures of inquiry under Article 45 of the Rules of Procedure:

1. The Zuid Nederlandse Aannemers Vereniging is requested to lodge the following documents by 15 December 1982:

   The document of constitution of the Association;

   The "Guidelines", together with the date on which they were drawn up;

   A statement of the date on which Peters joined the Association.

2. Martin Peters Bauunternehmung GmbH is requested to inform the Court in writing by 15 December 1982 of the date on which it received a copy or became aware of the Guidelines.

3. The Zuid Nederlandse Aannemers Vereniging is requested to lodge by 15 December 1982 a copy of the invoice which it sent to Peters in order to obtain payment of the amount which it considered to be due to it.

II — Written observations submitted to the Court

A — Observations submitted by the appellant in the appeal on a point of law

The company Martin Peters states by way of a preliminary observation that there are different views of the legal nature of an association in the different national legal systems in the Community.

Certain legal systems, including the French, Italian and Belgian systems, are governed by the "contractual concept", which regards an association as an agreement entered into between the founder members and which is given substance by a document of constitution which may in law be assimilated to a contract. According to that viewpoint, where a new member joins an association which is already in being, this also gives rise to a contractual relationship, and the decisions adopted by the association are deemed to be the result of the agreement by which the association was created.

Other legal systems, in particular the German and Netherlands systems, are by contrast governed by the "institutional theory" according to which an association is a special legal concept created by a legal act *sui generis:* a collective declaration intended to create a relationship of collaboration. According to that theory, the document of constitution represents "objective law" for the members and decisions taken in application thereof are measures which are based not on the principle of mutual agreement but on the "majority principle". From that viewpoint, the association has legal personality and takes part in legal relationships directly and independently of its members.

In relation to the interpretation of the provisions of the Convention of 27 September 1968, Peters argues that the Court of Justice has used two methods alternately: on the one hand, the method of independent interpretation, and on the other, interpretation by reference to the national legal concept applicable to the legal relationship at issue before the court of a Contracting State, also known as interpretation according to the *lex causae.* It concludes that whichever of the two methods is finally applied, the interpretation to be given to Article 5 (1) of the Convention in this case will lead to the exclusion of the subject-matter in the main action from the scope of that article of the Convention.

1. The method of interpretation based on the independent nature of the Convention is the one which the Court has used most frequently (for example: judgment of 14. 10. 1976 in Case 29/76 *LTU Lufttransportunternehmen GmbH & Co. KG* v *Eurocontrol* [1976] ECR 1541). It leads to an analysis of the provision to be interpreted by reference to the objectives and scheme of the Convention on the basis of the legal concepts peculiar to the Convention itself.

According to that viewpoint, the rules of direct jurisdiction laid down in Article 5 of the Convention — which is intended to add certain rules of jurisdiction to

those defined in principle in Article 2 — are based on the idea that there is a direct connecting factor between the dispute and the court which is called upon to decide it and must, according to Peters, be interpreted narrowly in order, as the Court stressed in paragraphs 9 and 10 of its judgment of 6 October 1976 in Case 14/76 *De Bloos* v *Bouyer* [1976] ECR 1497, at p. 1508, to avoid Article 5 being interpreted widely so as to confer jurisdiction upon a number of courts in relation to one and the same legal relationship between the parties.

According to Peters, that restrictive view is confirmed by the Jenard Report [1] which stresses that the authors of the Convention intended, because of the need to find a compromise between the very different national legal systems, to limit the courts which have jurisdiction in relation to disputes arising out of contractual obligations to the "special forum of the place of performance", as defined under German law (Paragraph 29 of the German Zivilprozeßordnung [Code of Civil Procedure]).

Nevertheless Peters considers that this rule of jurisdiction does not extend to obligations which arise out of a relationship resulting from membership of an association. The origin of those obligations is not a mutual agreement between the association and its members, since the latter are not as a general rule able as individuals to influence the decisions taken and furthermore those decisions are usually intended to apply to an indeterminate number of persons who are not necessarily instrumental in causing the decisions to be taken.

1 — Report of P. Jenard on the Convention of 27 September 1968 — OJ C 59, 1979, p. 1.

Peters considers that this analysis is confirmed by the content of other conventions concluded in the framework of Article 220 of the EEC Treaty and especially by Article 1 (2) (e) of the Convention on the Law Applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980, which provides that the rules of the Convention are not to apply to "questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding-up of companies and other bodies corporate or unincorporate . . .".

Because of the different views under the various national laws as to the legal nature of an association, it was necessary to include that provision and, more generally, to exclude from the scope of Article 5 (1) of the Convention of 27 September 1968 disputes arising out of the performance of obligations under a relationship deriving from membership of an association.

That interpretation of Article 5 (1) of the Convention is also supported by the absence of any concept common to the national legal orders in relation to the nature of the relationship deriving from membership of an association and by the requirement that the scope of Article 5 (1) of the Convention of 1968 and that of Article 1 of the Convention of 1980 should correspond as closely as possible.

2. If, on the other hand, the Court should adopt the method of interpretation based on the *lex causae* in order to answer the questions submitted to it, the question whether or not the legal

relationship which forms the subject-matter of the main action is contractual in nature would have to be resolved in accordance with the law applicable to the legal relationship in question, that is to say Netherlands law. As has already been emphasized, that system of law is, according to Peters, based on the institutional idea of the association which entails the view that obligations arising out of a decision taken by an association do not fall within the concept of "matters relating to a contract" within the meaning of Article 5 (1) of the Convention.

For those reasons, and whatever may be the method of interpretation applied by the Court in relation to the provision in question of the Convention of 27 September 1968, Peters puts forward the view that the question referred to the Court must be answered as follows:

Either:

"Article 5 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters does not apply to claims made by an association constituted under private law and endowed with legal personality against one of its members in a matter relating to an obligation to pay a sum of money, where such claims have their basis in the relationship between the parties derived from affiliation and created by the fact that the defendant party has become a member of that association by means of a legal transaction performed for that purpose. In that respect, it is irrelevant whether the obligation in question arises simply from the fact of becoming a member or from that fact in conjunction with one or more decisions taken by organs of the association."

Or, "the question submitted by the national court 'must be determined in accordance with the national law on legal persons'."

B — Observations submitted by the defendant in the appeal on a point of law

The Association points out first, on the one hand, that the obligation in question in the main action must be performed in the Netherlands, and, on the other, that the substantive law applicable to the case before the national court is Netherlands law, by reason both of the tacit choice of the applicable law made by the parties upon Peters' becoming a member of the Association and of the unwritten principle of Netherlands private international law according to which the relations between an association constituted under Netherlands law and one of its members are governed by Netherlands law, whatever the member's nationality or wherever such member is in fact established.

In that regard, the Association stresses that under Article 1429 (2) of the Netherlands Burgerlijk Wetboek [Civil Code] a debt is, in the absence of agreement between the parties to the contrary, payable at the place of establishment of the creditor, in this case the Association, whose offices are situated within the jurisdiction of the Arrondissementsrechtbank, 's-Hertogenbosch.

In relation to the answer to be given to the question referred to the Court, the Association points out that the Court has interpreted Article 5 (1) of the Convention by reference to more than one method. In its judgment of 6 October 1976 in Case 12/76 *Industrie Tessili Italiana Como* v *Dunlop* [1976] ECR 1473, it applied the method of the *lex causae*, stating that the expression "place of performance" involved a reference to the national law applicable; in its judgment of 6 October 1976 in Case 14/76 *A. De Bloos* v *Boyer* [1976] ECR 1497, it applied the method of "independent interpretation", when it stated that the concept of "obligation"

appearing in the same article was to be given an independent interpretation, peculiar to the Convention.

1. In the event of the Court's adopting the "independent method" in order to interpret the concept of "matters relating to a contract" within the meaning of Article 5 (1) of the Convention, the Association submits that in the absence of any guidance supplied by the actual wording of that provision, it is appropriate to refer to the commentary on the Convention contained in the Jenard Report and to inquire whether a common concept of the relationship arising out of affiliation to an association may be obtained from a comparative study of the various national laws in the Community.

A study of the Jenard Report makes it clear that Article 5 (1) represents a compromise between the different national legal systems, probably inspired by German law as regards the rule of jurisdiction thus defined — court of the place of performance of the obligation — but without its being possible to state that the concept of "matters relating to a contract" within the meaning of that provision is also directly inspired by the concepts of that legal order.

In any event, the reference to German law in order to define the concept of "matters relating to a contract" (or "contractual relationship") would lead to a broad interpretation. According to the Association, under Paragraph 29 of the German Zivilprozeßordnung, "a contractual obligation" includes all contractual commitments including those which do not fall within the law of obligations, such as agreements in family law, the law of procedure, or public law. Moreover, it should be emphasized that according to Paragraph 22 of the Zivilprozeßordnung, the court which has jurisdiction in a dispute relating to the payment of a debt owed to an association by one of its members is that of the place in which the association has its registered office.

For that reason, although the Jenard Report does not lay down a clear definition of the concept of "matters relating to a contract" within the meaning of the provision in question, it may be stated that German law does not prevent the provisions of Article 5 (1) of the Convention from being applied in relation to a dispute over the payment of a debt arising out of the relationship resulting from membership of an association.

The Association further considers that this analysis is confirmed by the wording of Article 1 (2) (e) of the Convention on the Law Applicable to Contractual Obligations, opened for signature in Rome on 19 June 1980. The object of that provision is expressly to exclude from the scope of the Convention "... questions governed by the law of companies and other bodies corporate or unincorporate such as the creation, by registration or otherwise, legal capacity, internal organization or winding-up of companies and other bodies corporate or unincorporate ...". It may therefore be concluded that in the absence of that derogation, those matters would fall within the scope of that Convention and might be regarded as falling, so far as the matters of the Convention were concerned, within the law of contract.

Finally, the Association argues that this analysis may not be called in question by a comparative study of the different legal orders in the Community. Such a study in fact shows that the national laws are divided between two theories of the legal nature of an association and of membership thereof, known as the "institutional" and the "contractual" theories, of which there are, moreover,

many variations. It is therefore impossible to derive a concept common to the laws of the Member States which would be capable of imposing in an unambiguous manner an interpretation of the notion of "matters relating to a contract" within the meaning of the Convention in relation to its possible application to the performance of an obligation arising out of the relationship resulting from membership of an association.

In addition, the discussion on the different theories of the legal nature of an association and the relationship resulting from membership thereof is largely theoretical and belongs to a different context from that of the definition of the scope of Article 5 (1) of the Convention, so that that question cannot, in the Association's opinion, be decisive, in relation to the reply to be given to the national court.

2. In the event of the Court's adopting the method of interpretation according to the *lex causae,* the Association contends that Netherlands law must be applied in this case.

In short, the Association reaches the conclusion, on the one hand, that the first part of the question submitted by the Hoge Raad must be answered in the affirmative, to the effect that the concept of "matters relating to a contract" referred to in Article 5 (1) of the Brussels Convention of 27 September 1968 applies to the debts owed to an association by one of its members and, on the other, that the second part of that question must be answered in the negative, to the effect that, in order to answer the question submitted by the national court, it is unnecessary to draw any distinction according to whether or not the obligation in question arises directly from the act of joining the association on the part of the member which is in debt to it.

C — Observations of the Commission

After setting out the facts which give rise to the dispute in the main action, the Commission observes that according to the Jenard Report the objective of the provisions of the Convention of 27 September 1968 is to facilitate the free movement of judgments in the Community by laying down rules of jurisdiction common to all the Member States.

For that reason, the Commission takes the view that the provisions of the Convention, and especially those laying down rules of jurisdiction, must be interpreted independently by reference to the objectives of the Convention in order to ensure greater legal certainty by means of a clear and uniform interpretation for all the Member States of the Community and in order to enable the court before which an action is brought to determine whether it in fact has jurisdiction without having to examine too closely the substantive aspects of the case. The Commission further stresses that in its case-law prior to the judgment of 6 October 1976 in Case 12/76 *Industrie Tessili Italiana Como* v *Dunlop* [1976] ECR 1473, the Court always adopted that method.

In support of recourse to that method of interpretation the Commission further relies on the diversity of the national legal systems and of academic writing on the legal nature of an association and the relationship resulting from membership thereof. The national legal systems are divided between those which subscribe to the "contractual" concept, according to which the obligations of the member of an association arise from a contract although certain obligations may possibly arise without a member's free consent (the concept applied in France, Italy, Belgium, the United Kingdom and Denmark), and those which subscribe to the "institutional" concept, according to which those obligations arise not only from the act of becoming a member but

also from the documents of constitution, so that the relationship resulting from membership must be regarded as a "special relationship" or even a "socio-legal contract" (Sozialrechtlicher Vertrag) (the concept applied in the Federal Republic of Germany and the Netherlands).

However, according to the Commission the distinction between those two theories is of little importance in this case, for so far as the rules of jurisdiction are concerned Article 22 of the German Zivilprozeßordnung lays down a special rule for the determination of disputes concerning the payment of a debt owed to an association, which confers jurisdiction upon the court of the place in which the association has its seat.

For that reason the Commission takes the view that it would be a mistake to attach too much importance to the different views of the nature of an association in the various national laws, for discussion among authors on this subject was not intended to elucidate questions of jurisdiction but was conducted in order to answer the question whether the general rules of the law of contract are applicable to disputes which call in question the relationship resulting from membership of an association.

Under those circumstances, having regard to the need to apply the independent method of interpretation in order to ensure legal certainty and clarity, the Commission suggests that the answer to the first part of the question submitted by the national court should be that Article 5 (1) of the Convention applies to any debt owing to an association by one of its members.

Finally, in support of that argument, the Commission relies, on the one hand, on the need in the interests of justice to confer jurisdiction on the court of the place in which the association is established and thus the court which is in a position to understand the association's document of constitution and the circumstances relating to its creation and functioning and, on the other, on the simplicity of such a rule of procedure which enables the association to summon its members before the same court, wherever they reside, and finally, on the fact that neither academic writing nor the text of the Convention contradict such an interpretation.

In relation to the answer to the second part of the question submitted to the Court by the Hoge Raad, the Commission considers that it is immaterial whether the obligations in question arise simply from the act of becoming a member or are the result both of that act and of one or more decisions adopted by the organs of the association. It bases that interpretation on the need to lay down Community rules of jurisdiction which enable the court before which an action is brought easily to determine whether it has jurisdiction without having to examine the details of the case before it and the parties before that court to rely upon the rules laid down in the Convention as soon as the proceedings are commenced.

D — Observations of the Government of the Federal Republic of Germany

The Government of the Federal Republic of Germany states by way of a preliminary remark that its observations are strictly limited to the questions submitted by the Hoge Raad, for it doubts whether under German law the dispute to which the main action relates may be regarded as relating to commercial or civil law by reason of the nature of the activities pursued by the Association and the powers at its disposal, apparently subject to the control of the Netherlands State.

In any event, the Federal Republic of Germany considers that Article 5 (1) of

the Convention must be interpreted widely both because of the origin and terms of that provision and on the ground of practical requirements.

1. It is clear from Chapter IV, Part B, Section 2 of the Jenard Report that the provisions of Article 5 (1) of the Convention are based on the one hand on rules of procedure and jurisdiction defined by the national laws which all take a fairly wide view of the concept of matters relating to a contract (which may cover other matters covered by the law of obligations) and on the other hand on international conventions concluded between certain of the Member States of the Community (the Benelux Treaty, conventions concluded between Belgium, France, the Netherlands and Italy), which in relation to jurisdiction contain wide-ranging provisions which are not limited to actions derived directly from a contract.

For that reason the Government of the Federal Republic of Germany considers that if the authors of the Convention had intended to limit the concept of "matters relating to contract" to its strict sense, they would have expressed that intention either in the actual terms of the provision or in the documents preparatory to its conclusion. In such a case, moreover, commentators would have drawn attention to such a radical modification of the concepts in force in the various national laws, which, according to the Government of the Federal Republic of Germany, has not happened.

In any event, the "remarkable differences" which are apparent from a comparison of the different language versions of the Convention militate in favour of the attribution to Article 5 (1) of a wide scope and do not in any way necessitate a strict interpretation whereby the claim must arise directly out of a contract.

2. A wide interpretation of Article 5 (1) of the Convention also finds support in the general scheme of the rules of special jurisdiction laid down in Article 5, which is clearly intended to establish a list covering all the important situations in which from experience at national level the need for a rule of special jurisdiction has become apparent. Thus the authors of the Convention intended to contrast matters relating to a contract (subparagraph (1)) with matters relating to tort or delict (subparagraph (3)) in order to establish a rule of special jurisdiction in favour of each.

Those rules would be pointless if, through a restrictive interpretation of the provisions in question, certain aspects of one of the subjects covered by the special rules of jurisdiction were to be excluded from the system thus defined.

3. Finally, a wide interpretation of the concept of "matters relating to a contract" within the meaning of Article 5 (1) of the Convention is justified on practical grounds.

If certain of the obligations incumbent on a member of an association may not be considered in some national legal system as falling directly within the law of contract, it nevertheless remains that in all the national laws and in particular under German law becoming a member of an association is achieved by means of a contract which gives rise to rights and obligations for the member. In expressing its desire for membership, the member agrees not only to the existing documents of constitution but also to decisions which may be taken subsequently pursuant to those documents and from which it may dissociate itself

only by the dissolution of the contract of membership.

For that reason it appears necessary, according to the Federal Republic of Germany, to include in the scope of Article 5 (1) of the Convention all actions arising out of a dispute between an association and a member thereof, failing which the application of that provision would depend on chance, according to whether the obligation in question arises directly from the document of constitution or is the result of an express agreement made between the member and the association.

Too narrow an interpretation of the concept of "matters relating to a contract" within the meaning of the Convention of 27 September 1968 would thus lead to a multiplicity of jurisdictions according to the places of domicile of the various members of the association; that would lead foreign courts, sometimes far removed from the Association's area of activity, to decide disputes according to rules of national law which may differ from one State to another and thus to arrive at solutions which would be prejudicial to the equal treatment of the various members of the same association.

For those different reasons, the Government of the Federal Republic of Germany suggests that the question put to the Court by the Hoge Raad der Nederlanden should be answered in the following terms:

"Article 5 (1) of the Convention applies to claims made by an association constituted under private law and endowed with legal personality against one of its members in a matter relating to an obligation to pay a sum of money which has its basis in the relationship between the parties inherent in membership, such as is created (by virtue of a legal transaction entered into for that purpose) between the member and the association.

In that regard it does not matter whether the obligations in question arise simply from the contract of membership or from the act of becoming a member considered in conjunction with one or more decisions adopted by organs of the association."

E — Observations of the Government of the Italian Republic

The Italian Government considers that a systematic and general examination of Article 5 of the Convention shows that that provision is intended to cover the whole area of the law of obligations (contractual, extra-contractual, delictual, quasi-delictual or statutory) in order to define, for the purpose of disputes relating to that law a body of rules of jurisdiction to supplement the rules laid down in Article 1 of the Convention.

It therefore seems possible to attribute to the expression "matters relating to a contract" referred to in Article 5 (1) the meaning, which is "common and general" in the different national laws, that is to say that of a lawful transaction producing a civil obligation which forms the basis for a legal action.

In that context it seems scarcely relevant to look for the true origin of the obligation the performance of which forms the subject-matter of the main action. Whether the obligation arises directly from the member's joining the Association or whether it results from a decision of the Association adopted in accordance with its document of constitution, it is always contractual in origin.

Consequently, the Italian Republic proposes that the first part of the question put by the national court should be answered in the affirmative and the second part in the negative.

III — Oral procedure

At the sitting on 11 January 1983, oral argument was presented by E. Korthals Altes of The Hague Bar, for Zuid Nederlandse Aannemers Vereniging, and Erich Zimmermann and W.J.L. Calkoen, of the Rotterdam Bar, acting as Agents for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 1 February 1983.

Decision

1 By a judgment dated 15 January 1982 which was received at the Court on 21 January 1982, the Hoge Raad der Nederlanden [Supreme Court of the Netherlands] referred to the Court of Justice for a preliminary ruling under the Protocol of 3 June 1971 on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Convention") two questions on the interpretation of Article 5 (1) of the Convention.

2 Those questions arose in the course of a dispute between Zuid Nederlandse Aannemers Vereniging (South Netherlands Contractors' Association), hereinafter referred to as "the Association", an association under Netherlands law, having its registered office in Maastricht and its administrative office at Heeze (North Brabant) and one of its members, Martin Peters Bauunternehmung GmbH (hereinafter referred to as "Peters"), a company incorporated under German law having its registered office in Aachen, in the Federal Republic of Germany, concerning the recovery of sums payable by the latter by virtue of an internal rule adopted by the organs of the association and binding on its members.

3 The Association brought a claim before the Arrondissementsrechtbank [District Court], 's-Hertogenbosch, which dismissed the objection of lack of jurisdiction raised by Peters. It ruled that it had jurisdiction on the ground that in its view the dispute arose out of a contract and that it therefore had jurisdiction under Article 5 (1) of the Convention, which provides that a person, in this case Peters, domiciled in a Contracting State may, in another Contracting State, be sued in matters relating to a contract in the courts for the place of performance of the obligation in question.

4 Peters appealed against that decision to the Gerechtshof [Regional Court of Appeal], 's-Hertogenbosch, which confirmed the judgment at first instance on the ground that the obligation to pay the amounts claimed by the Association from Peters should be regarded as a contractual obligation for the purposes of Article 5 (1) of the Convention.

5 Peters brought an appeal on a point of law against that decision before the Hoge Raad der Nederlanden challenging the analysis made by the Gerechtshof, s'-Hertogenbosch, in relation to the nature of the relationship between it and the Association.

6 The Hoge Raad decided, before giving a decision, to refer to the Court of Justice the following two questions on the interpretation of the Brussels Convention:

"1. Does Article 5 (1) of the Convention apply to claims which are made by an association constituted under private law possessing legal personality against one of its members in a matter relating to obligations in regard to the payment of a sum of money and which have their basis in the relationship between the parties by virtue of membership, such relationship arising from the defendant party's joining the association as a member by virtue of a legal transaction entered into for that purpose?

2. Does it make any difference whether the obligations in question arise simply from the act of becoming a member, or from that act in conjunction with one or more decisions made by organs of the association?"

1. First question

7 Article 5 of the Convention makes provision in a number of cases for a special jurisdiction which the plaintiff may choose, in derogation from the general jurisdiction provided for in Article 2 (1) of the Convention.

8 According to Article 5 (1) of the Convention: "A person domiciled in a Contracting State may, in another Contracting State, be sued: (1) in matters relating to a contract, in the courts for the place of performance of the obligation in question."

9 Thus the concept of matters relating to a contract serves as a criterion to define the scope of one of the rules of special jurisdiction available to the plaintiff. Having regard to the objectives and the general scheme of the Convention, that it is important that, in order to ensure as far as possible the equality and uniformity of the rights and obligations arising out of the Convention for the Contracting States and the persons concerned, that concept should not be interpreted simply as referring to the national law of one or other of the States concerned.

10 Therefore, and as the Court ruled on similar grounds in relation to the words "the operation of a branch, agency or other establishment" referred to in Article 5 (5) of the Convention (judgment of 22. 11. 1978 in Case 33/78 *Somafer* v *Saar-Ferngas AG* [1978] ECR 2183), the concept of matters relating to a contract should be regarded as an independent concept which, for the purpose of the application of the Convention, must be interpreted by reference chiefly to the system and objectives of the Convention, in order to ensure that it is fully effective.

11 In this regard it should be pointed out that although Article 5 makes provision in a number of cases for a special jurisdiction which the plaintiff may choose, this is because of the existence, in certain clearly-defined situations, of a particularly close connecting factor between a dispute and the court which may be called upon to hear it, with a view to the efficacious conduct of the proceedings.

12 In that context, the designation by Article 5 (1) of the Convention of the courts for the place of performance of the obligation in question expresses the concern that, because of the close links created by a contract between the parties thereto, it should be possible for all the difficulties which may arise on the occasion of the performance of a contractual obligation to be brought before the same court: that for the place of performance of the obligation.

13 In that regard it appears that membership of an association creates between the members close links of the same kind as those which are created between the parties to a contract and that consequently the obligations to which the national court refers may be regarded as contractual for the purpose of the application of Article 5 (1) of the Convention.

14 Since under national legal systems it is usually stipulated that the place in which the association is established is to be the place of performance of obligations arising out of the act of becoming a member, the application of Article 5 (1) of the Convention also has practical advantages: the court for the place in which the association has its seat is in fact usually the best fitted to understand the documents of constitution, rules and decisions of the association, and also the circumstances out of which the dispute arose.

15 Under those circumstances the answer to the first question should be that the obligations in regard to the payment of a sum of money which have their basis in the relationship between an association and its members by virtue of membership must be regarded as "matters relating to a contract" within the meaning of Article 5 (1) of the Convention.

2. Second question

16 The national court asks the Court of Justice to state whether, in order to determine whether or not an obligation of a member towards an association falls within "matters relating to a contract", a distinction should be drawn according to whether the obligation in question arises simply from the act of becoming a member or results from that act in conjunction with a decision made by an organ of the association.

17 It should be noted that multiplication of the bases of jurisdiction in one and the same type of case is not likely to encourage legal certainty and effective legal protection throughout the territory of the Community. The provisions of the Convention should therefore be interpreted in such a way that the court seised is not required to declare that it has jurisdiction to adjudicate upon certain applications but has no jurisdiction to hear certain other applications, even though they are closely related. Moreover, respect for the purposes and spirit of the Convention requires an interpretation of Article 5 which enables the national court to rule on its own jurisdiction without being compelled to consider the substance of the case.

18 On those grounds, the answer should be that the fact that the obligation in question arises simply from the act of becoming a member or results from that act in conjunction with a decision of an organ of the association has no effect on the application of the provisions of Article 5 (1) of the Convention to a dispute concerning that obligation.

Costs

19 The costs incurred by the Commission of the European Communities, the Italian Government and the Government of the Federal Republic of Germany, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action before the national court, costs are a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Hoge Raad der Nederlanden by judgment of 15 January 1982, hereby rules:

1. **Obligations in regard to the payment of a sum of money which have their basis in the relationship existing between an association and its members by virtue of membership are "matters relating to a contract" within the meaning of Article 5 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.**

2. **It makes no difference in that regard whether the obligations in question arise simply from the act of becoming a member or from that act in conjunction with one or more decisions made by organs of the association.**

Mertens de Wilmars O'Keeffe Everling

Bosco Koopmans Bahlmann Galmot

Delivered in open court in Luxembourg on 22 March 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President