

Case C-112/05 Commission v Germany [2007]

Facts: The German Law of 21 July 1960 stated that Volkswagen was to be converted into a public limited company. The applicant considered that some clauses of this Law constituted restrictions on the free movement of capital and on the free movement of establishment.

Held: The legislature was procuring for itself a considerable influence and a blocking minority on the basis of a lower level of investment than would be required under general company law. Land and the Federal State capped the voting rights of every shareholder, increased the required majority of the shares represented for resolutions of the general assembly, and procured for themselves the right to appoint four representatives to the supervisory board irrespective of the extent to their holding. These measures were not justified by overriding reasons in the general interest according to EU law. This situation was liable to deter direct investors from other Member States, limiting the possibility for other shareholders to participate in the company with an effective participation in its management and its control. National measures must be regarded as restrictions to the free movement of capital if they are liable to prevent or limit the acquisition of shares in the undertakings concerned or to deter investors of other Member States from investing in their capital.