

STEČAJ - RJEŠENJA I RAZLIKE U ZEMLJAMA ČLANICAMA EU

Osnovni izvori informacija

Institucije

Council of the EU – Vijeće Europske unije
European parliament – Europski parlament
European Commission- Europska komisija,
Directorate General Enterprise and Industry – Opća uprava za poduzetništvo
https://e-justice.europa.eu/content_insolvency_registers

Portali

www.insol-europe.org, **Insolvency Proceedings & Internet Gunther Thies**
www.german-business-portal.info, **Insolvency Proceedings - German Business Portal**
LinkedIn - Insolvency and Turnaround portal
www.Cooper Williamson – insolvency portal for UK
www.iiiglobal.org – International insolvency institute

Ključne riječi:

bankruptcy, insolvency, liquidator, debtor's assets

EU – osnovni izvori informacija

<http://ec.europa.eu/civiljustice/bankruptcy/>

Pravni izvori

Uredba Vijeća EU
Aneksi Uredbe
Direktive Parlamenta i Vijeća EU
Prijedlozi Komisije EU
Europska Konvencija

Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings

Annexes amended by Council Regulation (EC) 583/2011

Annexes amended by Council Regulation (EC) 210/2010

Annexes amended by Council Regulation (EC) 788/2008

Annexes amended by Council Regulation (EC) 681/2007

Annexes amended by Council Regulation (EC) 694/2006

Annexes amended by Council Regulation (EC) 603/2005

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions.

Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems.

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure - OJ L 399 of 30.12.2006

European Parliament and Council Directive 2001/24/EC on the reorganisation and winding-up of credit institutions - OJ L 125 of 05.05.2001

European Parliament and Council Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings - OJ L 110 of 20.04.2001

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters /* COM/2011/0445 final - 2011/0204 (COD) */

Regulation of the Council (EU) No 210/2010 of 25 February 2010 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (1).

Europska komisija 28.10.2008 OJ L 283

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of employees in the event of the insolvency of their employer.

Europska komisija 6.11.2006 COM(2006) 657 final

European Convention on Certain International Aspects of Bankruptcy (ETS No. 136)

Zakonodavni sažetak Uredbe o stečajnim postupcima
/scad plus/

a)

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings.

SUMMARY

This regulation establishes a common framework for insolvency proceedings in the European Union (EU). The purpose of harmonised arrangements regarding insolvency proceedings is to avoid assets or judicial proceedings from being transferred from one EU country to another in order to obtain a more favourable legal position to the detriment of creditors (“forum shopping”).

It should be noted that one quarter of cases of insolvency in the EU are associated with late payments.

Avoiding the transfer of assets or judicial proceedings from one EU country to another

Cases of insolvency with cross-border implications affect the proper functioning of the internal market. With a view to developing more uniform procedures that will discourage the parties from transferring assets or judicial proceedings from one EU country to another in order to obtain a more favourable legal position, the proposed solutions rely on the principle of proceedings with universal scope. At the same time, they retain the possibility of opening secondary proceedings within the territory of the EU country concerned.

The regulation applies to “collective insolvency proceedings that entail the partial or total divestment of a debtor and the appointment of a liquidator”. It applies equally to all proceedings, whether the debtor is a natural or a legal person, a trader, or an individual. A “liquidator” is a person or body that administers or liquidates the assets of which the debtor has been divested or supervises the administration of his/her affairs. Annex C of the regulation lists the persons or bodies who are authorised to exercise this function in each EU country.

However, the regulation does not apply to insolvency proceedings concerning:

- insurance undertakings;
- credit institutions;
- investment undertakings that provide services involving the holding of funds or securities for third parties;
- collective investment undertakings.

Determining the courts with jurisdiction and the applicable law

The regulation defines the concept of “court” as a judicial or other competent body that is authorised in national law to open proceedings. The courts with jurisdiction to open the main proceedings are those of the EU country where the debtor has his/her centre of main

interests. This should be the place where the debtor usually administers his/her interests and that is verifiable by third parties. In the case of a company or legal person, this is the place of the registered office, in the absence of proof to the contrary. In the case of a natural person, in principle it is the place where his/her work is domiciled or the place of his/her usual residence.

Secondary proceedings (listed in Annex B) may be opened subsequently in another EU country if the debtor has an establishment in its territory. "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human resources and goods. The effects of the winding-up proceedings must be limited to the assets of the debtor located in that territory. The opening of such proceedings may be requested by the liquidator of the main proceedings or by other persons or authorities according to the law of the country in which the opening of the proceedings is requested. In some cases, such territorial proceedings may be opened independently before the main proceedings, if the local creditors and the creditors of the local establishment request it or where main proceedings cannot be opened under the law of the EU country where the debtor has his/her centre of interests. However, these proceedings will become secondary proceedings once the main proceedings are opened.

The law of the EU country in which insolvency proceedings are opened determines all the terms of those proceedings: the conditions for their opening, conduct and closure. It also determines practical rules such as the definition of debtors and assets, the respective powers of the debtor and the liquidator, the effects of proceedings on contracts, individual creditors, claims, etc.

There are provisions throughout the EU guaranteeing the rights in rem of third parties, the right of a creditor to demand a set-off and the right of a seller based on reservation of title, such that these rights are not affected by the opening of the proceedings. Rights to immovable property are governed solely by the law of the EU country where the property is situated. Similarly, employment contracts and relationships, as well as the rights and obligations of parties to a payment or settlement system or to a financial market are governed solely by the law of the EU country that is applicable to them (for further details, see the directive on settlement finality in payment and securities settlement systems).

Recognition of insolvency proceedings

Decisions by the court with jurisdiction for the main proceedings are to be recognised immediately in other EU countries without further scrutiny, except:

- where the effects of such recognition would be contrary to the country's public policy;
- in the case of judgments that might result in a limitation of personal freedom or postal secrecy.

However, restrictions on creditors' rights (a stay or discharge) are possible only if they have given their consent.

If a court of an EU country decides to open insolvency proceedings, the decision is to be recognised in all other EU countries, even if the debtor could not be the subject of such

proceedings in the other countries. The effects of the decision are those provided for by the law of the country in which proceedings are opened and they come to an end in the event of secondary proceedings being opened in another EU country.

The liquidator appointed by a court with jurisdiction may act in the other EU countries in accordance with his powers provided for by the law of the EU country where the proceedings are opened, but respecting the law of the country on whose territory s/he is acting. In particular, s/he may have the debtor's assets removed and may bring any action to set aside that is in the interests of the creditors if assets were removed from the country of the main proceedings after the opening of the proceedings, subject to rights in rem of third parties or reservation of title.

A creditor domiciled in the EU who obtains total or partial satisfaction of his/her claim on the assets belonging to the debtor must return what s/he has obtained to the liquidator (subject to rights in rem or reservation of title). A consolidated account of dividends for the Union is drawn up to ensure that creditors receive equivalent dividends.

Publication measures may be taken in any other EU country at the request of the liquidator (publication of the decision opening the insolvency proceedings and/or registration in a public register). Publication may be mandatory, but in any event it is not a prior condition for recognition of the foreign proceedings.

If a person concerned is not aware of the opening of proceedings, s/he may be considered to act in good faith when making a payment to the debtor instead of the liquidator in another EU country. If such a payment is made before publication of the decision opening the proceedings, the person concerned is considered to have been unaware of the opening of proceedings. On the other hand, if a payment is made after publication of the decision, the person concerned is assumed to have been aware unless there is proof to the contrary.

Limitation of the applicability of the regulation

The regulation does not apply to:

- Denmark;
- any EU country where it is irreconcilable with obligations in respect of winding-up resulting from a convention concluded prior to its entry into force by this country and one or more third countries;
- the United Kingdom, to the extent that it is irreconcilable with existing arrangements with the Commonwealth.

The regulation applies to insolvency proceedings opened after its entry into force on 31 May 2002. It replaces existing bilateral and multilateral conventions between two or more EU countries.

Background

The winding-up of insolvent companies, compositions and analogous proceedings are excluded from the scope of the 1968 Brussels Convention. Work has been carried out at

various levels since 1963 with a view to formulating a Community instrument in the field. A convention on insolvency proceedings was concluded on 23 November 1995. However, this convention could not enter into force because one EU country failed to sign it within the time limit.

The Amsterdam Treaty, signed on 2 October 1997, lays down new provisions for judicial cooperation in civil matters. It was on this basis that this regulation on insolvency proceedings was adopted.

Zakonodavni sažetak direktive Vijeća EU i Parlamenta o reorganizaciji i stečaju osiguravajućih društva i njihovih podružnica

b)

European Parliament and Council Directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings.

SUMMARY

Reorganisation and winding-up of insurance undertakings

To ensure, where an insurance undertaking with branches in other Member States fails, that a single winding-up procedure is applied to insured persons, policyholders, beneficiaries and creditors.

Background

The measure forms an integral part of the Financial Services Action Plan (FSAP) and fills a major gap in the financial services legislation. Its adoption comes at a time when financial services and personal investment are booming. The Directive was first proposed in 1987 but has involved a considerable amount of work, in particular owing to the complexity of Member States' insolvency rules.

Status

As matters stand, if an insurance undertaking with branches in other Member States has to be wound up, the authorities of each Member State in which the undertaking is represented may open separate winding-up proceedings. This can lead to conflicts of jurisdiction, and policyholders are not always treated equally. Similarly, if an undertaking has to be reorganised, the approaches can differ from one Member State to another. The Directive is designed to guarantee consumer protection, irrespective of the place of residence.

Principle of home country control

If an undertaking with branches in other Member States fails, the winding-up will be subject to a single bankruptcy proceeding initiated in the Member State where the insurance undertaking has its registered office (known as the home State). The proceedings will thus be governed by a single bankruptcy law. This approach is consistent with the home country control principle that is the basis for the Community insurance directives (life and non-life insurance).

The home country's legislation will assess the definition of branch and the way in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking should be treated.

c)

Zakonodavni sažetak strateškog okvira za mala i srednja poduzeća radi ponovnog poslovanja nakon stečaja

A “Small Business Act” for European SMEs

The Small Business Act (SBA) creates a strategic framework to enable the potential growth and innovation of SMEs to be better exploited. This should encourage the sustainable competitiveness of the European Union (EU) and its transition towards a knowledge economy.

ACT

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 25 June 2008 entitled “Think Small First” – A “Small Business Act” for Europe [COM(2008) 394 Final – Not published in the Official Journal].

SUMMARY

The initiative called “Small Business Act” (SBA) for Europe aims to create favourable conditions for the growth and sustainable competitiveness of European small and medium-sized enterprises (SMEs). Community and national policies should take better account of the role of SMEs in economic growth and job creation.

The SBA is founded on ten principles aimed at framing national and Community policy-making, as well as practical measures for implementing them.

The development of an entrepreneur-friendly environment in order to facilitate the creation of SMEs, by women and immigrants in particular, and to encourage business transfers, specifically of family businesses.

In particular, the Commission shall promote a business culture through networking of enterprises and exchanges of experience. Member States must take measures in the fields of education, training, taxation and support for entrepreneurs.

Support for honest entrepreneurs who wish to start up their business again after bankruptcy.

The Commission encourages the development of a "second chance policy". This requires Member States to put in place support schemes and to limit the length of liquidation procedures following non-fraudulent bankruptcy.

POSEBNA ZAKONSKA RJEŠENJA RADI MANJE RESTRIKCIJE U NACIONALNIM STEČAJNIM ZAKONIMA PREMA MALIM PODUZEĆIMA

European Charter for Small Enterprises

The EU has recognised the importance of small enterprises with the adoption of the European Charter for Small Enterprises by the "General Affairs" Council in Lisbon on 13 June 2000, and the approval of this Charter at the European Council held in Feira on 19 and 20 June of the same year. The Charter recommends that governments focus their strategic efforts in ten pathways for action which are of vital importance for the environment in which small enterprises operate.

Annex III to the Conclusions of the Presidency of the Santa Maria Da Feira European Council of 19 and 20 June 2000.

SUMMARY

Small enterprises are the driving force for innovation and job creation in Europe. Their small size makes them very sensitive to changes in the industry and environment in which they operate. This is why emphasis was placed on the need to facilitate the development of small enterprises by the Heads of State or Government and the European Commission at the European Council in Feira (Portugal) on 19 and 20 June 2000.

There will be a reduction in the negative impact of national bankruptcy laws and new regulations on small enterprises. It will be made easier for small enterprises to use administrative documents and they will not have to enforce certain regulative obligations.

For the EU Member States, the implementation process was launched in the spring of 2000. The acceding and candidate countries were involved in the process from the spring of 2002. Following the adoption of the Charter by the acceding and candidate countries in Maribor (Slovenia) on 23 April 2002, the process was also launched in other areas. The Western Balkan countries (Albania, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro) adopted the Charter in Thessaloniki (Greece) in June 2003. In 2004, these countries embarked upon the first stage of the implementation process, with Moldova joining in that same year.

d)

Zakonodavni sažetak direktive Vijeća EU radi zaštite radnika u slučaju preseljenja poslovanja poduzeća u druge zemlje članice

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Safeguarding employees' rights in the event of transfers of undertakings

The aim of this Directive is to protect employees in the event of a change of employer following a transfer of undertaking. It specifies the rights and obligations of employers affected by the transfer.

SUMMARY

The transfer of an undertaking or an establishment * may be the result of a legal transfer or merger. Following a transfer, the transferee * of the undertaking becomes an employee of the undertaking transferred by the transferor *.

In these circumstances, the rights and duties of the employment contracts of the employees from the transferred undertaking will be recognised. This Directive applies to all types of employment relationships, without distinction in relation to:

- the number of working hours, performed or to be performed;
- the type of employment contract (undetermined, fixed-duration, or temporary).

The Directive applies to all undertakings, public or private, which are engaged in economic activities whether or not they are operating for gain.

Transfer of employment relationships

The rights and obligations of employees are maintained where an undertaking is the subject of a transfer. These rights and duties are connected with an existing employment contract or relationship.

In addition, the transfer of an undertaking is not grounds for dismissal. Dismissals may only take place for economic, technical or organisational reasons.

Member States may require that the transferor notifies the transferee of all the rights and obligations which will be transferred. However, they are still transferred even if this communication is not carried out.

In principle, the working conditions of the employees are maintained for the duration of the collective agreement of the undertaking. However, these conditions may be amended, at least one year after the transfer of the undertaking and if the Member States so authorise.

In addition, in principle, the rights and obligations of the employees, which exist under the complementary social protection schemes, are not transferred. However, Member States take measures to protect the rights to old-age benefits acquired under these schemes.

The rights and obligations of employees are not preserved where the transfer is undertaken as part of insolvency or bankruptcy proceedings. To prevent the misuse of insolvency proceedings in order to deprive employees of their rights in the case of a transfer, Member States may take appropriate measures in order to prevent this type of practice.

Pripremni dokumenti

Baza Pre lex :

COM (2011) 156 2011/0065/NLE

Proposal for a COUNCIL REGULATION amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation

COM (2011) 84

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation and application of certain provisions of Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer

COM (2009) 564

Proposal for a COUNCIL REGULATION amending Annexes A and C to Regulation (EC) No 1346/2000 on insolvency proceedings

COM (2008) 246

Proposal for a COUNCIL REGULATION amending Annexes A and B to Regulation (EC) No 1346/2000 on insolvency proceedings

COM (2007) 70

Proposal for a COUNCIL REGULATION amending Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings

COM (2006) 657 2006/0220/COD

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of employees in the event of the insolvency of their employer (Codified version)

COM (2006) 38

Council Regulation (EC) No 694/2006 of 27 April 2006 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings

COM (2004) 827

Proposal for a COUNCIL REGULATION amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings

COM (2000) 832 2001/0006/COD

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer

COM (1996) 696

REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE ON THE TRANSPOSITION OF COUNCIL DIRECTIVE 80/987/EEC OF 20 OCTOBER 1980 ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE PROTECTION OF EMPLOYEES IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER IN AUSTRIA, FINLAND AND SWEDEN

COM (1995) 164

REPORT FROM THE COMMISSION - TRANSPOSITION OF COUNCIL DIRECTIVE 80/987/EEC OF 20 OCTOBER 1980 ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE PROTECTION OF EMPLOYEES IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

COM (1978) 141 1978/1006/CNS

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES CONCERNING THE PROTECTION OF EMPLOYEES IN THE EVENT OF THE INSOLVENCY OF THEIR EMPLOYER

JAI (1999) 1 1999/0806/CNS

Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings

SEC (2008) 475

COMMISSION STAFF WORKING DOCUMENT on implementation of Article 8 and related provisions of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, concerning supplementary company or inter-company pension schemes outside the national statutory social security schemes, 32011R0583

Council Implementing Regulation (EU) No 583/2011 of 9 June 2011 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation

OJ L 160, 18.6.2011, p. 52–64

52011PC0156

Proposal for a COUNCIL REGULATION amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation

COM/2011/0156 final - NLE 2011/0065

32010R0210

Implementing Regulation of the Council (EU) No 210/2010 of 25 February 2010 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation

OJ L 65, 13.3.2010, p. 1–13
52009PC0564

Proposal for a Council Regulation amending Annexes A and C to Regulation (EC) No 1346/2000 on insolvency proceedings
COM/2009/0564 final
32008R0788

Council Regulation (EC) No 788/2008 of 24 July 2008 amending the lists of insolvency proceedings and winding-up proceedings in Annexes A and B to Regulation (EC) No 1346/2000 on insolvency proceedings and codifying Annexes A, B and C to that Regulation
OJ L 213, 8.8.2008, p. 1–13
52008PC0246

Opinion of the Economic and Social Committee on the 'Initiative of the Federal Republic of Germany and the Republic of Finland with a view to the adoption of a Council Regulation on insolvency proceedings, submitted to the Council on 26 May 1999'
Official Journal C 075 , 15/03/2000 P. 0001 - 0004
ESC/2000/79
32007R0681

Council Regulation (EC) No 681/2007 of 13 June 2007 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings
OJ L 159, 20.6.2007, p. 1–13
52007PC0070

Proposal for a Council Regulation amending Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings
COM/2007/0070 final
32006R0694

Council Regulation (EC) No 694/2006 of 27 April 2006 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings
OJ L 121, 6.5.2006, p. 1–13
OJ L 294M , 25.10.2006, p. 10–22 (MT)
52006PC0038

Proposal for a Council Regulation amending Annexes A and C to Regulation (EC) No 1346/2000 as regards France
COM/2006/0038 final
32005R0603

Council Regulation (EC) No 603/2005 of 12 April 2005 amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings
OJ L 100, 20.4.2005, p. 1–8
OJ L 159M , 13.6.2006, p. 377–384 (MT)
52004PC0827

Proposal for a Council Regulation amending the lists of insolvency proceedings, winding-up proceedings and liquidators in Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings
COM/2004/0827 final

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 25 June 2008 entitled "Think Small First" – A "Small Business Act" for Europe [COM(2008) 394 Final – Not published in the Official Journal].
Support for honest entrepreneurs who wish to start up their business again after bankruptcy.

Sudska praksa Europskog suda (CURIA)

1)

Predmet C-292/08 German Graphics Graphische Maschinen GmbH v Alice van der Schee, acting as liquidator of Holland Binding BV (2009) ECR Page I-08421

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 2 July 2008 - German Graphics Graphische Maschinen GmbH v A. van der Schee, acting as liquidator of Holland Binding BV

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: German Graphics Graphische Maschinen GmbH

Respondent: A. van der Schee, acting as liquidator of Holland Binding BV

Questions referred

Must Article 25(2) of the Insolvency Regulation 1 be interpreted as meaning that the words 'provided that that Convention [that is to say, the Brussels I Regulation 2] is applicable' featuring in that provision imply that, before it can be concluded that the recognition and enforcement provisions of the Brussels I Regulation are applicable to judgments other than those referred to in Article 25(1) of the Insolvency Regulation, it is first necessary to examine whether, pursuant to Article 1(2)(b) of the Brussels I Regulation, such judgments fall outside the material scope of that regulation?

Must Article 1(2)(b) of the Brussels I Regulation, in conjunction with Article 7(1) of the Insolvency Regulation, be interpreted as meaning that it follows from the fact that an asset to which a reservation of title applies is situated, at the time of the opening of insolvency proceedings against the purchaser, in the Member State in which those insolvency proceedings are opened, that a claim of the seller based on that reservation of title, such as that of German Graphics, must be regarded as a claim which relates to bankruptcy or the winding-up of an insolvent company, within the meaning of Article 1(2)(b) of the Brussels I Regulation, and which therefore falls outside the material scope of that regulation?

Is it relevant in the context of Question 2 that, pursuant to Article 4(2)(b) of the Insolvency Regulation, the law of the Member State in which the insolvency proceedings are opened is to determine the assets which form part of the estate?

2)

Predmet: Eurofood IFSC Ltd. ECR (2006) Page I-03813

ORDER OF THE PRESIDENT OF THE COURT

15 September 2004 (1)
(Accelerated procedure)

In Case C-341/04,

REFERENCE for a preliminary ruling under Article 234 EC

from the Supreme Court (Ireland), made by decision of 27 July 2004, received at the Court on 9 August 2004, in the proceedings

Enrico Bondi

v

Bank of America N.A.

and Pearse Farrell, Official Liquidator and Director of Corporate Enforcement
and Certificate/Note holders,

THE PRESIDENT OF THE COURT,

having regard to the proposal from Judge Jann, Judge-Rapporteur,
after hearing Advocate General Jacobs,
makes the following
Order

1

The reference for a preliminary ruling concerns the interpretation of Articles 1, 2, 3, 16 and 17 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

2

The reference was made in the course of a dispute between Mr Bondi, on the one hand, and the Bank of America NA, Mr Farrell, the Director of Corporate Enforcement and the holders of notes issued by Eurofoods IFSC Limited ('Eurofoods'), on the other, relating to the recognition in Ireland of a decision made by an Italian court appointing an extraordinary administrator in connection with the insolvency of the Parmalat Group.

3

According to the order for reference, on 24 December 2003, pursuant to Decree Law No 347 of 23 December 2003 on urgent measures for the industrial restructuring of large insolvent undertakings (Guri No 298 of 24 December 2003), the Italian Minister for Production Activities admitted Parmalat SpA to extraordinary administration proceedings and appointed Mr Bondi as extraordinary administrator of that company.

Izveštaji, studije (Rapid)

1)

Millions of travellers who book holiday 'packages' with combinations of flights, hotels, car rentals etc on the internet or in the high-street look set to receive tougher financial protection if things go wrong, under plans put out for consultation by the European Commission today. The Commission is consulting on extending the basic cover provided by EU's 1990 Package Travel Directive – on information, liability for sub-standard services and protection for insolvency - to the next generation of 'dynamic packages' where consumers make up their own packages, often online, through one website or different partner websites. 23% of EU consumers, and over 40% in countries like Ireland, Sweden are now booking "dynamic packages", many of which currently fall outside EU protection rules (67% mistakenly think they are protected). Following the recent spate of airlines going bust, the paper also considers extending basic insolvency protection for consumers beyond package and dynamic packages across the board, including for stand alone airline tickets.

EU Consumer Commissioner Meglena Kuneva said: "We need tough protection that gives all consumers booking a package holiday the peace of mind they deserve, and we need a level playing field so businesses compete on equal terms. I am particularly concerned about the issue of insolvency.

2)

Good practice examples for businesses in financial difficulties

Bankruptcy law is a complex set of rules which is influenced by and has influences on many disciplines and policies, such as company law, taxation, employment, access to finance and administrative procedures. Excessively severe legal consequences of bankruptcy can obstruct entrepreneurship in two ways: on the one hand, they can deter entrepreneurs from starting afresh and contribute to the negative image of bankruptcy; on the other hand, they can become a deterrent to market exit. Their needs have to be met also when they are in trouble.

The aim of liquidation procedures is to protect the creditors while restructuring procedures allow debtors to get over their financial difficulties, aiming at ensuring the survival and continuity of a viable enterprise. However, liquidation procedures do not necessarily entail the cessation of all business activities; they can also result in transferring the viable parts of a company to another one or in a fresh start under a new name.

Several Member States report on new developments in their legislation on bankruptcy and restructuring

Title and reference

Written question E-0235/08 by Agustín Díaz de Mera García Consuegra (PPE-DE) to the Commission. A European insolvency and bankruptcy register

The title of this written question was published in OJ C 291, 13.11.2008

Written question E-2407/07 by Ilda Figueiredo (GUE/NGL) to the Commission. Defence of workers' entitlements in cases of company bankruptcy

The title of this written question was published in OJ C 45, 16.2.2008

Written question E-3908/07 by Ingeborg Gräßle (PPE-DE) to the Commission. Losses to the Community budget as a result of the inability to recover payments following insolvency, liquidation and bankruptcy

The title of this written question was published in OJ C 191, 29.7.2008

WRITTEN QUESTION NO 861/86 BY MR LAMBERT CROUX TO THE COMMISSION: EUROPEAN BANKRUPTCY LAWS

OJ C 54, 2.3.1987, p. 2

WRITTEN QUESTION NO 1895/81 BY MR COUSTE TO THE COMMISSION: BANKRUPTCY FIGURES

OJ C 156, 21.6.1982, p. 8

Priopćenja, vijesti

(Rapid i Curia press release)

Court of Justice of the European Union

1)

PRESS RELEASE No 6/10

Luxembourg, 21 January 2010

Press and Information

Judgment in Case C-444/07

MG Probud Gdynia sp. z o.o.

The Court explains the effect of the rules governing recognition by the Member States of judgments relating to insolvency proceedings

After the main insolvency proceedings have been opened in a Member State, the competent authorities of another Member State are, in principle, required to recognise and enforce all the judgments concerning those proceedings

2)

PRESS RELEASE No 08/07

25 January 2007

Judgment of the Court of Justice in Case C-278/05

Carol Marilyn Robins and Others v Secretary of State for Work and Pensions

THE MEMBER STATES ARE NOT REQUIRED TO FINANCE RIGHTS TO OLD-AGE BENEFITS UNDER SUPPLEMENTARY PENSION SCHEMES THEMSELVES IN THE EVENT OF THE EMPLOYER'S INSOLVENCY

Nevertheless, a level of protection of those rights such as that afforded by the United Kingdom system is inadequate

In accordance with a directive on the protection of workers in the event of the employer's insolvency,¹ the Member States are to ensure that the necessary measures are taken to protect the interests of employees and former employees in the event of the employer's insolvency in respect of rights conferring on them immediate or prospective entitlement to old-age benefits under supplementary occupational pension schemes.

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1)

Alfred Lanfer

German restarter

Lanfer Systemhaus Automation & Information GmbH & Co. KG

DE - 46325 Borken-Weseke

A family business

Founded in 1979 by Alfred Lanfer's father, the company specialised in manufacturing industrial switchgear units. The business gradually expanded to include other sectors, like IT (corporate software solutions).

Alfred joined the company in 1983 and took over sole management in 2000. Customers and business partners appreciated the company's professional expertise. At that time it employed 60 people. Business flourished, the order books were full, and prospects seemed bright.

From expansion to insolvency

Just when it seemed the problem was solved, disaster struck. The new technology turned out not to meet the requirements of the transport industry and the client stopped the project. With no more large orders, Lanfer was left saddled with an under-used specialised manufacturing workshop plus €60 000 in monthly payments to repay the investment loan.

That year, the balance sheet confirmed his worst fears: the company's debt was too great. "I did not want to fool either myself or the others", recalls Lanfer. "It was evident that we would not get rid of these debts". On July 4, 2003, with a heavy heart, he applied for insolvency.

Restart instead of resignation

Alfred Lanfer's world had collapsed. "But I knew I must not give up", he remembers. Rather than hushing up the crisis, he contacted the media himself and talked to journalists: "We wanted to show competence and avoid false rumours or half-truths being spread via the press".

This kind of professional crisis management paid off: once the insolvency administrator saw that the business had a solid foundation and could survive with a fresh injection of capital, prospective buyers soon appeared. Among them were the owners of two firms in the same line of business, who soon agreed to a solution. Two months after the insolvency

application, they set up "Lanfer Systemhaus Automation & Information GmbH & Co. KG" together with Lanfer and his commercial assistant. The new business is based on the time-tested products of the old one, plus a strategic reorientation with an accent on service. In 2006, three years after the crash, the company's profits were back where they had been before the crisis, with a staff of close to 60. In September 2006, Alfred Lanfer received the German START Award for his professional crisis management and exemplary restart.

"Now I hold only a 20% stake in the company, but its foundation is sound", says Lanfer. The new start was possible only because the banks knew and valued him as a conscientious businessman who had never lived beyond his means. After tough negotiations, the banks agreed to the new concept and restructured the debt.

Lessons learnt: Don't fight alone!

"You cannot manage a business as a lone fighter these days," Lanfer concludes. "I am a good engineer and I can calculate an offer, but you need specialists for financing and marketing." As insolvency loomed nearer he could not sleep, working night and day to devise rescue scenarios. But even in those desperate straits, it was important not to fight alone. "Without the support of my wife and my commercial assistant, I would not have managed", he recalls.

Alfred Lanfer's advice to entrepreneurs in financial difficulties

"Applying for insolvency is probably the hardest decision in a businessman's life. But in an emergency, this is what you must do if you are a responsible person. There is no need to be ashamed, since this is the right thing to do from the entrepreneurial viewpoint. You create a better position for a new start - after all, insolvency may mark the end of a business but not necessarily the end of an entrepreneur."

First try:

Company founded in 1979 by Alfred Lanfer's father / 2000: takeover

Business sector: automation solutions

Core business: manufacture of industrial switchgear units

Maximum number of employees: 75

Insolvency: 2003

Fresh restart:

New start: 2003

Company: Lanfer Systemhaus Automation & Information GmbH & Co. KG

Business sector: automation and IT service solutions

Core business: manufacture of industrial switchgear units and related IT solutions

Number of employees in 2006: 55

Footnotes

Web Europa.eu/Enterprise/Policies/SME/ Entrepreneurs make mistakes - but then who doesn't?

2)

Judicial cooperation within the EC Insolvency Regulation
By Prof. Heinz Vallender, Cologne (Germany)

The success of cross-border insolvencies within the European Community depends primarily on how effectively harmonisation between the different proceedings is conducted and on how thoroughly cooperation between the respective liquidators and courts can be achieved. Prior to the Insolvency Regulation taking force, the European Community lacked a legal framework for the coordination of cross-border insolvencies. Within its territorial and temporal scope the Insolvency Regulation replaces all previous bi- and multilateral agreements between member states. As an act of secondary EC law the Insolvency Regulation is binding in its entirety and directly applicable in all member states.

According to the Insolvency Regulation concurrent proceedings are possible only in the form of main and secondary insolvency proceedings. Given their legal background main and secondary insolvency proceedings inevitably host a certain conflict potential, as the opening of the secondary proceeding causes partial dissolution of the debtor's *total* assets to the detriment of the assets of the main insolvency proceeding. The opening of secondary insolvency proceedings leads to an apportionment of the insolvent debtor's total assets. Consequently only the apportioned assets may be dealt with and decided upon by the respective liquidator and court.

Although in cases of cross-border insolvency proceedings cooperation between liquidators is of utmost importance. Yet - in order to harmonize the decision making process - special circumstances might also call for an enhanced coordination and cooperation between insolvency courts.

Footnotes

Prof. Heinz Vallender, Cologne, Germany, The International Insolvency Institute,
web <http://www.iiiglobal.org/>

3)

Free Choice in International Company Insolvency Law in Europe
Horst Eidenmüller

Abstract

Within the European Union, firms are now free under Articles 43 and 48 EC to choose a corporate form of their liking, regardless of the actual head office (real seat) of the company. However, they are not free to choose the applicable bankruptcy regime. Under Article 3(1), first sentence, of the European Insolvency Regulation (EIR), jurisdiction for main insolvency proceedings lies with the courts of the Member State in which the debtor has the centre of its main interests (COMI). The COMI standard is fuzzy and allows last-minute forum shopping by the management/shareholders of a distressed debtor, to the detriment, especially, of creditors who cannot (easily) adapt. Given the poor performance of the COMI standard, it seems worthwhile to explore the merits of an alternative approach that gives more room to freedom of choice in international company insolvency law in Europe. Various models of free choice are discussed: free choice of the applicable insolvency law, free choice of the applicable insolvency law insofar as it contains substantive – as opposed to procedural – provisions, free choice of the bankruptcy forum ('unconstrained forum choice') and free choice of the bankruptcy forum in combination with the company law applicable to a company ('constrained forum choice'). This article shows that, on efficiency grounds, the last model is to be preferred. It would improve matters compared to the status quo, and it would also be easy to implement in practice by changing the wording of Article 3 EIR. Even though this solution is preferable as a policy option, it is not mandated by Articles 43 and 48 EC. However, these treaty provisions do not mandate the COMI standard either. European legislation is thus free to effect the desirable changes to the EIR.

(Published Online October 13 2005)

Footnotes

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