The term of ‘center of main interest’ in the Regulation on insolvency proceedings

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Having received a reference for a preliminary ruling concerning the interpretation of Article 3 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, the Court of justice said, by a judgment date October 2011, 20, the term of "center of main interests".

The reference was made in proceedings between InteredilSrl, in liquidation, on the one hand and FallimentoInteredilSrl and IntesaGestioneCreditiSpA, of which ItalfondarioSpA is the successor, on the other, concerning a petition for bankruptcy filed by Intesa against Interedil. Interedil challenged the jurisdiction of the Italian court on the ground that, as a result of the transfer of its registered office to the United Kingdom, only the courts of that Member State had jurisdiction to open insolvency proceedings.

The Court hereby rules that the term ‘center of a debtor’s main interests’ in Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted by reference to European Union law. For the purposes of determining a debtor company’s main center of interests, the second sentence of Article 3(1) of Regulation No 1346/2000 must be interpreted as follows:
– a debtor company’s main center of interests must be determined by attaching greater importance to the place of the company’s central administration, as may be established by objective factors which are ascertainable by third parties. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in that provision cannot be rebutted. Where a company’s central administration is not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company’s actual center of management and supervision and of the management of its interests is located in that other Member State;
– where a debtor company’s registered office is transferred before a request to open insolvency proceedings is lodged, the company’s center of main activities is presumed to be the place of its new registered office.

Finally, the Court adds that the term ‘establishment’ within the meaning of Article 3(2) of Regulation No 1346/2000 must be interpreted as requiring the presence of a structure consisting of a minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.

Read the judgment of the Court [2]

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