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Press and Information

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Judgment of the Court of Justice in Case C-341/04

Eurofood IFSC Ltd

**THE COURT WITH JURISDICTION TO OPEN "MAIN" INSOLVENCY
PROCEEDINGS IS, SAVE WHERE GOOD REASON IS SHOWN TO THE
CONTRARY, THE COURT OF THE MEMBER STATE WHERE THE DEBTOR'S
REGISTERED OFFICE IS SITUATED**

Mutual trust requires that the courts of other Member States recognise the decision to open proceedings, without reviewing that jurisdiction unless it infringes fundamental rights.

Eurofood, an Irish company with its registered office in Dublin, is a wholly-owned subsidiary of the Italian company Parmalat Spa. Its main business is providing financing facilities for the Parmalat group.

On 24 December 2003, with a view to its industrial restructuring, Parmalat was placed under extraordinary administration in Italy with Mr. Bondi as administrator.

At the request of the Bank of America NA of 27 January 2004 seeking the liquidation of Eurofood on account of its debts, the High Court (Ireland) appointed Mr Farrell as the provisional liquidator, granting him powers to take possession of Eurofood's assets, manage its affairs, open a bank account in its name, and instruct lawyers on its behalf.

On 9 February 2004, Eurofood was placed under the extraordinary administration in Italy of Mr Bondi. On 10 February 2004, the Tribunale Civile e Penale di Parma (District Court, Parma) scheduled a hearing for 17 February 2004, on an application for a declaration of Eurofood's insolvency. Mr Farrell was informed on 13 February. On 20 February 2004, the Parma court, taking the view that Eurofood's centre of main interests was in Italy, held that it had international jurisdiction to determine whether that company was insolvent.

On 23 March 2004, the High Court held that the insolvency proceedings against Eurofood had been opened in Ireland on the date of the application by the Bank of America NA, and that those proceedings were the "main" proceedings because the centre of Eurofood's interests was

in Ireland. It also held that the conduct of the proceedings before the Italian court in Parma justified the refusal of the Irish courts to recognise the decision of that court. Finding Eurofood insolvent, the High Court ordered its liquidation and appointed Mr Farrell as liquidator. Mr. Bondi challenged that judgment.

In those circumstances, the Supreme Court of Ireland referred several questions to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of the Community regulation on insolvency procedures, with a view to determining, in particular, which court had jurisdiction to liquidate Eurofood¹.

The court with jurisdiction to open the "main" insolvency proceedings

According to the Community regulation, **the court with jurisdiction to open the "main" insolvency proceedings**, applying to the debtor's assets situated in all Member States, **is the court of the Member State where the centre of the debtor's main interests is situated.**

The **centre of the main interests** of a debtor company is presumed to be **the place of the registered office** where the debtor regularly administers its interests.

The Court of Justice has held that that presumption can be rebutted only if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at that registered office is deemed to reflect (as in the case of a company not carrying on any business in the territory of the Member State where its registered office is situated).

Where a company carries on its business in the territory of the Member State where its registered office is situated, the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption linked to the place of the registered office.

Recognition of the decision to open main insolvency proceedings by the courts of other Member States

The regulation provides that insolvency proceedings opened in one Member State are to be recognised in all the Member States from the time that they produce their effects in the State of opening (the rule of priority).

The principle of mutual trust requires that **the courts of the other Member States recognise the decision opening the main insolvency proceedings, without being able to review the jurisdiction of the court of the State where proceedings were opened.**

Meaning of "decision opening insolvency proceedings"

The mechanism providing that only one main set of proceedings may be opened could be seriously disrupted if the courts of Member States, hearing applications based on a debtor's insolvency at the same time, could claim concurrent jurisdiction over an extended period.

In order to ensure the effectiveness of the system, the Court of Justice has held that a decision handed down by a court of a Member State, based on the debtor's insolvency and seeking the opening of one of the procedures laid down by the Community regulation involving

¹ Council Regulation (EC) No 1346/2000 of 29 May 2000, OJ 2000 L 160, p. 1.

divestment of the debtor and the appointment of a liquidator constitutes a decision opening insolvency proceedings. Such divestment involves the debtor losing the powers of management which he has over his assets.

Grounds for non-recognition of insolvency proceedings

A Member State may refuse to recognise insolvency proceedings opened in another Member State where such recognition would produce effects clearly contrary to its public policy, its fundamental principles or the constitutional rights and liberties of the individual.

In the context of insolvency proceedings, the right of creditors or their representatives to participate in accordance with the equality of arms principle is of particular importance.

Therefore, a Member State may refuse to recognise insolvency proceedings opened in another Member State where the decision to open the proceedings was taken in flagrant breach of the fundamental right to be heard, which a person concerned by such proceedings enjoys.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, EN, ES, FR, DE, IT, HU, PL, SL, SK

The full text of the Judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-341/04>

It can usually be consulted after midday (CET) on the day of delivery.

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