Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

19 September 2024*

(Reference for a preliminary ruling – Judicial cooperation in civil matters – Insolvency proceedings – Regulation (EU) 2015/848 – Article 3 – International jurisdiction – Centre of main interests of an individual exercising an independent business activity – Concept of 'principal place of business' – Concept of 'establishment' – Chairman of the supervisory board of a public limited company)

In Case C-501/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 29 June 2023, received at the Court on 7 August 2023, in the proceedings

DL

v

Land Berlin,

THE COURT (Eighth Chamber),

composed of N. Piçarra, President of the Chamber, K. Jürimäe (Rapporteur), President of the Third Chamber, acting as a Judge of the Eighth Chamber, and N. Jääskinen, Judge,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– DL, by T. Winter, Rechtsanwalt,

– the European Commission, by C. Vollrath and W. Wils, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: German.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19), read in conjunction with Article 2(10) of that regulation.

2 The request has been made in proceedings between DL and Land Berlin (Land of Berlin, Germany) concerning insolvency proceedings brought by the latter against DL.

Legal context

3 According to recitals 23, 24, 28, 37 and 38 of Regulation 2015/848:

‘(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor’s assets. To protect the diversity of interests, this Regulation permits secondary insolvency proceedings to be opened to run in parallel with the main insolvency proceedings. Secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that State. Mandatory rules of coordination with the main insolvency proceedings satisfy the need for unity in the [European] Union.

(24) Where main insolvency proceedings concerning a legal person or company have been opened in a Member State other than that of its registered office, it should be possible to open secondary insolvency proceedings in the Member State of the registered office, provided that the debtor is carrying out an economic activity with human means and assets in that State, in accordance with the case-law of the Court of Justice of the European Union.

…

(28) When determining whether the centre of the debtor's main interests is ascertainable by third parties, special consideration should be given to the creditors and to their perception as to where a debtor conducts the administration of its interests. This may require, in the event of a shift of centre of main interests, informing creditors of the new location from which the debtor is carrying out its activities in due course, for example by drawing attention to the change of address in commercial correspondence, or by making the new location public through other appropriate means.

…

(37) Prior to the opening of the main insolvency proceedings, the right to request the opening of insolvency proceedings in the Member State where the debtor has an establishment should be limited to local creditors and public authorities, or to cases in which main insolvency proceedings cannot be opened under the law of the Member State where the debtor has the centre of its main interests. The reason for this restriction is that cases in which territorial insolvency proceedings are requested before the main insolvency proceedings are intended to be limited to what is absolutely necessary.

(38) Following the opening of the main insolvency proceedings, this Regulation does not restrict the right to request the opening of insolvency proceedings in a Member State where the debtor has an establishment. The insolvency practitioner in the main insolvency proceedings or any other person empowered under the national law of that Member State may request the opening of secondary insolvency proceedings.'

4 Article 2(10) of that regulation defines 'establishment' as 'any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets'.

5 Article 3 of that regulation, headed 'International jurisdiction', provides:

'1. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main insolvency proceedings"). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.

In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

…'

The dispute in the main proceedings and the questions referred for a preliminary ruling

6 On 18 August 2020, the Land of Berlin brought an action before the Amtsgericht Charlottenburg (Local Court, Charlottenburg, Germany) seeking the opening of insolvency proceedings against DL ('the debtor'). At the date of the application, the debtor was domiciled in Berlin (Germany), Monaco, Los Angeles (United States) and on the island of Saint-Barthélemy (French Antilles). He was the chairman of the supervisory board of Landbell AG, a public limited company incorporated under German law with its registered office in Mainz (Germany). His assets consisted of a bank balance in Monaco and holdings in companies incorporated under Monegasque law which held assets, a securities account and shareholdings in Germany.

7 By order of 27 July 2021, the Amtsgericht Charlottenburg (Local Court, Charlottenburg) dismissed that application as inadmissible on the ground that it lacked territorial jurisdiction.

8 On 29 June 2022, the Landgericht Berlin (Regional Court, Berlin, Germany), following an 'immediate appeal' (*sofortige Beschwerde*) by the Finanzamt Wilmersdorf (Tax Office, Wilmersdorf, Germany) in its capacity as a creditor, set aside that order and referred the case back to the Amtsgericht Charlottenburg (Local Court, Charlottenburg), before which the action was first brought. The Landgericht Berlin (Regional Court, Berlin) took the view that the centre of the debtor's main interests is located at the place where the debtor carries out his independent business activity as chairman of the supervisory board.

9 In particular, in its order of 29 June 2022, the Landgericht Berlin (Regional Court, Berlin) found that the debtor, due to his role as the chairman of the supervisory board of a public limited company incorporated under German law, carried out an 'independent business … activity' within the meaning of the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848. However, it did not apply the presumption established by that provision, according to which the centre of the debtor's main interests is the 'principal place of business' of the debtor, unless proved otherwise. First of all, it referred to the concept of 'establishment', defined in Article 2(10) of that regulation, and it stated that in the course of his independent business activity, the debtor did not use any human means or any assets, either in Germany or elsewhere. Next, by applying the definition laid down in the second sentence of the first subparagraph of Article 3(1) of Regulation 2015/848, according to which the centre of the debtor's main interests corresponds to the 'place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties', it concluded that the German courts have international jurisdiction to open insolvency proceedings.

10 The debtor, who expresses doubt as to the international jurisdiction of the German courts, filed an appeal (*Rechtsbeschwerde*) before the Bundesgerichtshof (Federal Court of Justice, Germany), the referring court. That debtor seeks to have the decision of the Landgericht Berlin (Regional Court, Berlin) set aside and the creditor's immediate appeal dismissed.

11 The referring court takes the view that the international jurisdiction of the German courts must be assessed in the light of Article 3(1) of Regulation 2015/848.

12 In that regard, it observes, first, that in accordance with the first subparagraph of Article 3(1) of that regulation, the courts of the Member State within the territory of which the centre of the debtor's main interests is situated have jurisdiction to open insolvency proceedings. According to that provision, the 'centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties'. In

the particular case where the debtor is an individual exercising an independent business or professional activity, the third subparagraph of Article 3(1) of that regulation established a rebuttable presumption that the centre of that person's main interests is his or her 'principal place of business'. In the case of any other individual, in accordance with the first sentence of the fourth subparagraph of Article 3(1) of that regulation, the centre of main interests is to be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary.

13 The referring court found, as did the Landgericht Berlin (Regional Court, Berlin), that the debtor, when applying for the opening of insolvency proceedings, was exercising an 'independent business or professional activity', within the meaning of the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848.

14 According to the referring court, those concepts must be interpreted autonomously under EU law. An independent business activity is characterised by the fact, on the one hand, that the persons concerned perform their activities in their own name, on their own behalf and under their own responsibility and, on the other hand, bear the economic risk associated with carrying out those activities. Such persons act on their own behalf and under their own responsibility, are free to arrange how they perform their work and themselves receive the emoluments which make up their incomes.

15 In the main proceedings, those conditions are fulfilled by the debtor, given that the debtor was the chairman of the supervisory board of a public limited company incorporated under German law and that, pursuant to that law, the supervisory board did not receive instructions from the management board of the public limited company. In addition, according to the findings of the Landgericht Berlin (Regional Court, Berlin), the debtor may have borne a remuneration risk.

16 Second, pursuant to the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848, in the case of an individual exercising an independent business or professional activity, the centre of main interests is presumed to be that individual's principal place of business. 'Establishment', within the meaning of Article 2(10) of that regulation, refers to any place of operations where a debtor carries out a non-transitory economic activity with human means and assets.

17 In the light of the finding of the Landgericht Berlin (Regional Court, Berlin), according to which it was not appropriate to apply the presumption set out in the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848, due to the fact that the debtor, in the course of his independent business activity, did not use human means or assets, the referring court is uncertain as to the relevance of such a requirement in order to determine the principal place of business of an individual exercising an independent business activity.

18 According to the referring court, if that requirement were necessary, it must be considered that the debtor does not have an 'establishment' within the meaning of Article 2(10) of Regulation 2015/848. The question then arises as to whether the place where the independent business activity is carried out can, pursuant to the first sentence of the third subparagraph of Article 3(1) of that regulation, be presumed to be the place of the centre of the debtor's main interests, in the absence of proof to the contrary.

19 If the second question were to be answered in the affirmative, the fact that the centre of the debtor's main interests is also situated on German territory would constitute a rebuttable presumption, pursuant to the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848.

20 However, if the two preceding questions were to be answered in the negative, the issue would then arise as to whether the presumption set out in the first sentence of the fourth subparagraph of Article 3(1) of that regulation applies and whether an individual who does not have an 'establishment' within the meaning of the first sentence of the third subparagraph of Article 3(1) of that regulation, for the individual's independent business or professional activity, is covered by the concept of 'any other individual' in that provision.

21 In that regard, the referring court explains that the Landgericht Berlin (Regional Court, Berlin) ignored the presumption set out in the first sentence of the fourth subparagraph of Article 3(1) of Regulation 2015/848 and applied the second sentence of the first subparagraph of Article 3(1) of that regulation. If the presumption set out in the first sentence of the fourth subparagraph of Article 3(1) of that regulation were applicable, the debtor's habitual residence at the time of lodging the application for the opening of insolvency proceedings would first have to be determined. It would then have to be examined whether factual circumstances that have yet to be established make it possible to rebut that presumption. Such an interpretation would require the order of the Landgericht Berlin (Regional Court, Berlin) to be set aside.

22 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the first sentence of the third subparagraph of Article 3(1) [of Regulation 2015/848, read] in conjunction with Article 2(10) [of that regulation] to be interpreted as meaning that the place of operations of an individual exercising an independent business or professional activity constitutes an establishment even if the operations are carried out without any human means or assets?

(2) If Question 1 is answered in the negative, is the first sentence of the third subparagraph of Article 3(1) of [Regulation 2015/848] to be interpreted as meaning that, if an individual exercising an independent business or professional activity does not maintain an establishment within the meaning of Article 2(10) [of that regulation], the centre of main interests is presumed to be the place where the independent business or professional activity is exercised in the absence of proof to the contrary?

(3) If Question 2 is answered in the negative, is Article 3(1) of [Regulation 2015/848] to be interpreted as meaning that, in the case of an individual exercising an independent business or professional activity who does not maintain an establishment within the meaning of Article 2(10) of [that regulation], the centre of main interests is presumed to be the place of the individual's habitual residence pursuant to the first sentence of the fourth subparagraph of Article 3(1) of [that regulation], in the absence of proof to the contrary?'

Consideration of the questions referred

Preliminary observations

23 In his written observations, the debtor questions the referring court's assessment according to which, at the time of lodging the application for the opening of insolvency proceedings, he was exercising an 'independent business or professional activity', within the meaning of the first sentence of the third subparagraph of Article 3(1) of Regulation 2015/848. According to the debtor, his activity as chairman of the supervisory board which, moreover, is only secondary, does not fall within that concept, having regard to the conditions for carrying out that activity.

24 In accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 22 September 2016, *Breitsamer and Ulrich*, C-113/15, EU:C:2016:718, paragraph 33 and the case-law cited).

25 That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject matter of those proceedings depends (judgment of 22 September 2016, *Breitsamer and Ulrich*, C-113/15, EU:C:2016:718, paragraph 34 and the case-law cited).

26 In the present case, as set out in paragraph 13 above, the referring court expressly stated that it did not call into question the finding of the Landgericht Berlin (Regional Court, Berlin) that the debtor carried out, at the time of lodging the application to open the insolvency proceedings, an 'independent business or professional activity' within the meaning of the third subparagraph of Article 3(1) of Regulation 2015/848. It is apparent from the grounds of the order for reference that, by its questions referred for a preliminary ruling, the referring court seeks to determine, in essence, whether the presumption set out in that provision may be applied to that debtor, even though his activity, thus characterised as an 'independent business or professional activity', does not require any human means or any asset, whether that be within German territory or in another place.

27 In those circumstances, the questions referred must be answered on the basis of the premiss on which the court relies, namely that the debtor, at the time of lodging the application to open the insolvency proceedings, was exercising an 'independent business or professional activity', within the meaning of the third subparagraph of Article 3(1) of Regulation 2015/848. That premiss forms part of the factual background of the case in the main proceedings, which it is not for the Court to review.

The first question

28 By its first question, the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the concept of 'principal place of business' of an individual exercising an independent business or professional activity, within the meaning of that provision, corresponds to the concept of 'establishment' defined in Article 2(10) of that regulation.

29 The first subparagraph of Article 3(1) of Regulation 2015/848 provides that the courts of the Member State within whose territory the centre of a debtor's main interests is situated have jurisdiction to open the insolvency proceedings, referred to as 'main insolvency proceedings' in that regulation. The centre of main interests is to be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.

30 The third subparagraph of Article 3(1) of that regulation provides that, in the case of an individual exercising an independent business or professional activity, the centre of main interests is to be presumed to be that individual's principal place of business, in the absence of proof to the contrary.

31 In the present case, the referring court interprets the concept of 'principal place of business', within the meaning of the third subparagraph of Article 3(1) of Regulation 2015/848, in the light of the concept of 'establishment' defined in Article 2(10) of that regulation. It asks whether, having regard to that definition, that place constitutes an 'establishment', in the absence of human means or assets.

32 In that regard, it should be noted that in the German-language version of Regulation 2015/848, there is a linguistic proximity between the terms 'establishment' (*Niederlassung*) and 'principal place of business' (*Hauptniederlassung*).

33 However, as the European Commission submits in its written observations, that proximity does not exist in other language versions of that regulation which use semantically different terms, such as, inter alia, the versions in English (establishment and principal place of business), French (*établissement* and *lieu d'activité principal*), Italian (*dipendenza* and *sede principale di attività*), Polish (*oddział* and *główne miejsce wykonywania tej działalności*), Spanish (*establecimiento* and *centro principal de actividad*) and Swedish (*driftställe* and *huvudsakliga verksamhetsställe*).

34 Consequently, in accordance with settled case-law, the need for a uniform interpretation of a provision of EU law means that, where there is divergence between the various language versions of that provision, the provision at issue must be interpreted by reference to the context and purpose of the rules of which it forms part (judgment of 9 September 2020, *TMD Friction and TMD Friction EsCo*, C-674/18 and C-675/18, EU:C:2020:682, paragraph 89 and the case-law cited).

35 In the first place, as regards the regulatory context, it should be noted that the concept of 'establishment', within the meaning of Article 2(10) of Regulation 2015/848, appears in Article 3(2) of that regulation, which determines the criterion of international jurisdiction for the opening of insolvency proceedings in a Member State other than that in which the debtor's centre of main interests, within the meaning of Article 3(1) of that regulation, is situated.

36 In accordance with Article 3(2) of that regulation, where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State are to have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State.

37 Furthermore, it follows from Article 3(3) of Regulation 2015/848 that, where insolvency proceedings have been opened in accordance with paragraph 1 of that article, any proceedings opened subsequently in accordance with paragraph 2 of that article are to be secondary insolvency proceedings.

38 The EU legislature, therefore, chose to distinguish clearly between, on the one hand, the main insolvency proceedings, set out in Article 3(1) of Regulation 2015/848, and, on the other hand, the secondary insolvency proceedings, set out in Article 3(2) of that regulation. As is apparent from recitals 23, 24, 37 and 38 of that regulation, the presence, in a Member State, of an 'establishment', as defined in Article 2(10) of that regulation, constitutes the determining criterion only for the opening of secondary insolvency proceedings in that Member State. Therefore, that definition cannot be interpreted as relevant in the context of Article 3(1) of that regulation.

39 In the second place, such an interpretation is consistent with the objective of Regulation 2015/848, which is to provide legal certainty and predictability as regards the determination of the court having jurisdiction on the basis of objective criteria (see, to that effect, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 20).

40 That objective would be undermined in the case of correspondence between the concept of 'principal place of business', within the meaning of the third subparagraph of Article 3(1) of Regulation 2015/848, and that of 'establishment', referred to in Article 2(10) of that regulation, which would create confusion between the applicable criteria for opening primary and secondary insolvency proceedings.

41 In the light of all of the foregoing considerations, the answer to the first question is that the third subparagraph of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the concept of 'principal place of business' of an individual exercising an independent business or professional activity, within the meaning of that provision, does not correspond to the concept of 'establishment' defined in Article 2(10) of that regulation.

The second question

42 By its second question, the referring court asks, in essence, whether the third subparagraph of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that, with regard to an individual exercising an independent business or professional activity, it may be presumed, in the absence of proof to the contrary, that that individual's centre of main interests is situated in the principal place of business of that individual, even though that activity does not require any human means or any asset.

43 As is apparent from the first subparagraph of Article 3(1) of Regulation 2015/848, the general connecting factor for determining international jurisdiction for the purposes of opening insolvency proceedings is the centre of the debtor's main interests. In the particular case where

the debtor is an individual exercising an independent business or professional activity, the third subparagraph of Article 3(1) of that regulation establishes a rebuttable presumption that the centre of that person's main interests is the principal place of business of that person.

44 In the first place, the Court has held that the 'centre of main interests', within the meaning of Article 3(1) of Regulation 2015/848, must be determined following an overall assessment of all the objective criteria ascertainable by third parties, in particular the creditors, and which are capable of determining the actual place where the debtor conducts the administration of his or her interests on a regular basis (see, to that effect, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 22).

45 It follows from the actual wording of the first subparagraph of Article 3(1) of Regulation 2015/848, first, that the above considerations apply without distinction to all debtors, whether they are companies, legal persons or individuals, and, second, that, by using the term 'interests' in that provision, the EU legislature intended to cover all economic activities in general.

46 First, that general connecting factor for determining international jurisdiction for the purposes of opening insolvency proceedings and the approach based on objective criteria, ascertainable by third parties, which should be adopted for its application therefore also apply for individuals exercising an independent business or professional activity (see, to that effect, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 23). Second, having regard to the concept of 'interests' used in Article 3(1) of Regulation 2015/848, the criteria for determining the centre of the main interests of an individual are similar, whether or not that person exercises an independent business or professional activity, inasmuch as those criteria relate to the economic activity of the latter category of persons.

47 In the case of individuals not exercising an independent business or professional activity, the Court makes clear that the applicable criteria for determining the centre of the main interests of such persons are those connected, inter alia, to their economic situation which corresponds to the place where they conduct the administration of their economic interests or the majority of their revenue is earned and spent, or the place where the greater part of their assets is located (see, by analogy, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 24).

48 In the second place, with regard to the rebuttable presumption set out in the third subparagraph of Article 3(1) of Regulation 2015/848, it follows from the actual wording of that provision, read in the light of the first subparagraph of Article 3(1) of that regulation, that individuals exercising an independent business or professional activity are presumed, in the absence of proof to the contrary, to conduct the administration of their interests on a regular basis in their place of habitual residence, since there is a strong possibility that that place corresponds to the centre of their main interests. Therefore, as long as that presumption is not rebutted, the courts of the Member State where that place of business is located have international jurisdiction to open insolvency proceedings against those individuals.

49 In that regard, the mere fact that the independent business or professional activity of the person concerned does not require any asset or any human means cannot, in itself, suffice to rebut that presumption.

50 If the location of the debtor's assets or any human means used for the exercise of an independent business or professional activity of the person concerned constitute objective criteria, ascertainable by third parties, to be taken into consideration when determining the place where

the debtor conducts the administration of his or her interests on a regular basis, the presumption set out in the previous paragraph may, however, be reversed only following an overall assessment of all the objective criteria, ascertainable by third parties (see, by analogy, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 28).

51 In addition, that presumption would be deprived of useful effect if it were to be interpreted as necessarily requiring the presence of assets or human means in the principal place of business of the person concerned. As noted by the Commission, in essence, in its observations, by its very nature, the independent business or professional activity is capable of being exercised in the absence of such assets or human means, so that such a requirement would exclude a significant number of persons exercising such a business or activity from the scope of that presumption.

52 In the present case, it is apparent from the information provided by the referring court that the Landgericht Berlin (Regional Court, Berlin) found that the debtor did not use any human means or any asset in the course of his independent business activity as chairman of the supervisory board of a German public limited company, either in Germany or elsewhere.

53 If the presence of such human means or assets is not decisive for the purposes of establishing the centre of main interests of a person, it is nevertheless for the court having jurisdiction to determine, taking into account the criteria recalled in paragraph 47 above, the location of the centre of the debtor's main interests, taking into consideration all the objective factors, ascertainable by third parties, which are connected with the debtor's economic situation, such as, inter alia, those which allow the location of the place where that person conducts the administration of his or her economic interests and where the majority of his or her revenue is earned and spent to be determined.

54 In the light of all of the foregoing considerations, the answer to the second question is that the third subparagraph of Article 3(1) of Regulation 2015/848 must be interpreted as meaning that, with regard to an individual exercising an independent business or professional activity, it is to be presumed, in the absence of proof to the contrary, that that individual's centre of main interests is situated in the principal place of business of that individual, even where that activity does not require any human means or any asset.

The third question

55 In view of the answer given to the second question, there is no need to answer the third question.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **The third subparagraph of Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings**

must be interpreted as meaning that the concept of 'principal place of business' of an individual exercising an independent business or professional activity, within the meaning of that provision, does not correspond to the concept of 'establishment' defined in Article 2(10) of that regulation.

2. The third subparagraph of Article 3(1) of Regulation 2015/848

must be interpreted as meaning that with regard to an individual exercising an independent business or professional activity, it is to be presumed, in the absence of proof to the contrary, that that individual's centre of main interests is situated in the principal place of business of that individual, even where that activity does not require any human means or any asset.

[Signatures]