JUDGMENT OF THE COURT (First Chamber)

20 October 2011 *

In Case C-396/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Bari (Italy), made by decision of 6 July 2009, received at the Court on 13 October 2009, in the proceedings

Interedil Srl, in liquidation

v

Fallimento Interedil Srl,

Intesa Gestione Crediti SpA,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Safjan, A. Borg Barthet, M. Ilešič and M. Berger (Rapporteur), Judges,

* Language of the case: Italian.

Advocate General: J. Kokott,
Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 13 January 2011,

after considering the observations submitted on behalf of:

— Interedil Srl, in liquidation, by P. Troianiello, avvocato,

— Fallimento Interedil Srl, by G. Labanca, avvocato,

— Intesa Gestione Crediti SpA, by G. Costantino, avvocato,

— the European Commission, by N. Bambara and S. Petrova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 March 2011,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 3 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) ('the Regulation').

2 The reference was made in proceedings between Interedil Srl, in liquidation ('Interedil'), on the one hand and Fallimento Interedil Srl and Intesa Gestione Crediti SpA ('Intesa'), of which Italfondario SpA is the successor, on the other, concerning a petition for bankruptcy filed by Intesa against Interedil.

Legal context

European Union law

3 The Regulation was adopted on the basis, inter alia, of Articles 61(c) EC and 67(1) EC.

4 Article 2 of the Regulation, which deals with definitions, provides as follows:

'For the purposes of this Regulation, the following definitions shall apply:

(a) "insolvency proceedings" shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A;

…

(h) "establishment" shall mean any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.'

5 The list in Annex A to the Regulation refers, inter alia as regards Italy, to 'fallimento' proceedings.

6 Article 3 of the Regulation, which deals with international jurisdiction, provides as follows:

'1. The courts of the Member State within the territory of which the centre of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. 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.

2. Where the centre of a 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 he 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.

…'

7 Recital 13 in the preamble to the Regulation states that 'the "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and [which] is therefore ascertainable by third parties'.

National law

8 Article 382 of the Italian Codice di Procedura Civile (Code of Civil Procedure), which concerns the resolution by the Corte suprema di cassazione of questions of jurisdiction, provides as follows:

'When adjudicating on a question of jurisdiction, the Court shall give its ruling on that question, determining, where appropriate, the court having jurisdiction …'

9 It is apparent from the order for reference that, according to established case-law, any decision delivered by the Corte suprema di cassazione on the basis of that provision is final and binding on the court dealing with the substance of the case.

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

10 Interedil was constituted in the legal form of a 'società a responsabilità limitata' under Italian law and had its registered office in Monopoli (Italy). On 18 July 2001, its registered office was transferred to London (United Kingdom). On the same date, it was removed from the register of companies of the Italian State. Following the transfer of its registered office, Interedil was registered with the United Kingdom register of companies and entered in the register as an 'FC' (Foreign Company).

11 According to the statements made by Interedil as set out in the order for reference, at the same time as the transfer of its registered office, it was engaged in transactions which concluded in Interedil being acquired by the British group Canopus, contracts being negotiated and entered into for the transfer of a business concern. According to Interedil, a few months after the transfer of its registered office, the title to properties which it owned in Taranto (Italy) was transferred to Windowmist Ltd, as part of the assets of the business transferred. Interedil also stated that it was removed from the United Kingdom register of companies on 22 July 2002.

12 On 28 October 2003, Intesa filed a petition with the Tribunale di Bari for the opening of bankruptcy ('fallimento') proceedings against Interedil.

13 Interedil challenged the jurisdiction of that 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. On 13 December 2003, Interedil requested that the Corte suprema di cassazione give a ruling on the preliminary issue of jurisdiction.

14 On 24 May 2004, without wafting for the decision of the Corte suprema di cassazione and taking the view that the objection alleging that the Italian courts did not have jurisdiction was manifestly unfounded and that it was established that the undertaking in question was insolvent, the Tribunale di Bari ordered that Interedil be wound up.

15 On 18 June 2004, Interedil lodged an appeal against the winding-up order before the Corte suprema di cassazione.

16 On 20 May 2005, the Corte suprema di cassazione adjudicated by way of order on the preliminary issue of jurisdiction referred to it and held that the Italian courts had jurisdiction. It took the view that the presumption in the second sentence of Article 3(1) of the Regulation that the centre of main interests corresponded to the place of the registered office could be rebutted as a result of various circumstances, namely the presence of immovable property in Italy owned by Interedil, the existence of a lease agreement in respect of two hotel complexes and a contract concluded with a banking institution, and the fact that the Bari register of companies had not been notified of the transfer of Interedil's registered office.

17 Doubting the validity of the Corte di suprema di cassazione's finding, in the light of the criteria established by the Court in Case C-341/04 *Eurofood IFSC* [2006] ECR I-3813, the Tribunale di Bari decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is the term "the centre of a debtor's main interests" in Article 3(1) of [the] Regulation … to be interpreted in accordance with Community law or national law, and,

if the former, how is that term to be defined and what are the decisive factors or considerations for the purpose of identifying the "centre of main interests"?

(2) Can the presumption laid down in Article 3(1) of [the] Regulation …, according to which "[i]n the case of a company... 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", be rebutted if it is established that the company carries on genuine business activity in a State other than that in which it has its registered office, or is it necessary, in order for the presumption to be deemed rebutted, to establish that the company has not carried on any business activity in the State in which it has its registered office?

(3) If a company has, in a Member State other than that in which it has its registered office, immovable property, a lease agreement concluded by the debtor company with another company in respect of two hotel complexes, and a contract with a banking institution, are these sufficient factors or considerations to rebut the presumption laid down in Article 3(1) of [the] Regulation … that the place of the company's "registered office" is the centre of its main interests and are such circumstances sufficient for the company to be regarded as having an "establishment" in that Member State within the meaning of Article 3(2) of [the] Regulation …?

(4) If the ruling on jurisdiction by the Corte [suprema] di cassazione in the aforementioned Order … is based on an interpretation of Article 3 of [the] Regulation … which is at variance with that of the Court of Justice …, is the application of that provision of Community law, as interpreted by the Court of Justice, precluded by Article 382 of the [Italian] Code of Civil Procedure, according to which rulings on jurisdiction by the Corte [suprema] di cassazione are final and binding?'

The questions referred

The jurisdiction of the Court

18 The European Commission expresses doubts as to the jurisdiction of the Court to answer the questions referred for a preliminary ruling. It points out that the reference was made in the form of an order of 6 July 2009, received at the Court on 13 October 2009. Article 68(1) EC, which was in force at that time, provided that only those national courts or tribunals against whose decision there was no judicial remedy under national law could refer a question to the Court for a preliminary ruling in order to obtain an interpretation of the acts adopted by the Community institutions on the basis of Title IV of the EC Treaty. However, while the Regulation was adopted on the basis of Articles 61(c) EC and 67(1) EC, which form part of Title IV of the Treaty, a judicial remedy is available, according to the Commission, under domestic law in respect of the decisions of the referring court.

19 It is sufficient to point out in that connection that Article 68 EC lapsed with the entry into force of the Lisbon Treaty on 1 December 2009 and the limitation laid down in that provision on the right to refer a question to the Court for a preliminary ruling disappeared. Pursuant to Article 267 TFEU, the courts and tribunals against whose decisions there is a judicial remedy under domestic law have enjoyed, since that date, the right to refer questions to the Court where acts adopted on the basis of Title IV of the EC Treaty are concerned (see, to that effect, Case C-238/09 *Weryński* [2011] ECR I-601, paragraphs 28 and 29).

20 At paragraphs 30 and 31 of *Weryński*, the Court held that, in the light of the objective of establishing effective cooperation between the Court of Justice and the national courts pursued by Article 267 TFEU and the principle of procedural economy, it must

be held that since 1 December 2009 the Court has had jurisdiction to hear and determine a reference for a preliminary ruling from a court against whose decisions there is a judicial remedy under national law, even where the reference was lodged prior to that date.

21 The Court therefore has jurisdiction in any event to hear and determine the present reference for a preliminary ruling.

Whether the questions referred are admissible

The link between the questions referred and the main proceedings

22 Referring to a question raised by the Commission in its written observations, Interedil submitted at the hearing that, since it was removed from the United Kingdom register of companies in July 2002, it ceased to exist as of that date. Consequently, the filing of a petition for the opening of bankruptcy proceedings against it with the Tribunale di Bari in October 2003 had no purpose and the reference for a preliminary ruling is therefore inadmissible.

23 The Court has consistently held that it can refrain from giving a preliminary ruling on a question submitted by a national court only where, inter alia, it is quite obvious that the interpretation of European Union law sought by that court bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a

useful answer to the questions submitted to it (see, inter alia, Case C-439/08 *VEBIC* [2010] ECR I-12471, paragraph 42 and the case-law cited).

24 It should be noted that the Regulation simply establishes uniform rules on international jurisdiction, the recognition of judgments and the applicable law in insolvency proceedings having cross-border effects. The question whether an application for a debtor to be declared bankrupt is admissible is still governed by the national law applicable.

25 It is apparent from the information provided by the Tribunale di Bari that it was informed by Interedil that that company had been removed from the United Kingdom register of companies in July 2002. On the other hand, it is not at all apparent from the order for reference whether that fact is capable, under national law, of precluding the opening of bankruptcy proceedings. It cannot be ruled out that it is possible, under national law, to open such proceedings for the purpose of organising payment of the creditors of a dissolved company.

26 It is therefore not manifest that the interpretation of European Union law sought by the national court bears no relation to the actual facts of the main action or its purpose or concerns a hypothetical problem.

27 The objection of inadmissibility raised by Interedil must therefore be rejected.

The purpose of the questions referred

28 The defendants in the main proceedings submit that, having regard to their purpose, the questions are inadmissible. In their view, Questions 1 and 4 do not disclose any difference between the provisions of European Union law and their application by the national courts, whereas Questions 2 and 3 invite the Court to apply the rules of European Union law to the specific case before the referring court.

29 In a reference for a preliminary ruling, the Court is empowered to rule on the interpretation or validity of a rule of European Union law on the basis of the facts which the national court or tribunal puts before it, and it is for the national court or tribunal to apply that rule to the specific case before it (see, inter alia, Case C-149/05 *Price* [2006] ECR I-7691, paragraph 52 and the case-law cited).

30 The first three questions concern, in essence, the interpretation to be given to the term 'centre of a debtor's main interests', within the meaning of Article 3(1) of the Regulation. Having regard to their purpose, those questions are therefore admissible.

31 Question 4 concerns whether it is possible for the referring court to disregard the rulings of a higher court if, in the light of the interpretation given by the Court of Justice, it considers those rulings to be inconsistent with European Union law. That question, which concerns the preliminary ruling procedure under Article 267 TFEU, is therefore also admissible.

The claim that there is no dispute to be resolved

32 The defendants in the main proceedings submit that the issue as to whether the Italian courts have jurisdiction to open bankruptcy proceedings was resolved by the Corte suprema di cassazione by a decision which, in their view, has acquired the force of res judicata. They infer from this that there is therefore no 'case pending' before the referring court within the meaning of Article 267 TFEU and that the reference for a preliminary ruling is thus inadmissible.

33 It is necessary to consider those arguments in relation to Question 4, by which the Tribunale di Bari seeks to ascertain the extent to which it is bound by the Corte suprema di cassazione's interpretation of European Union law.

Question 4

34 By its fourth question, the Tribunale di Bari asks, in essence, whether European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with European Union law, as interpreted by the Court of Justice.

35 The Court has already held that the existence of a national procedural rule cannot call into question the discretion of national courts not ruling at final instance to make a reference to the Court for a preliminary ruling where they have doubts, as in the main

proceedings, as to the interpretation of European Union law (Case C-173/09 *Elchinov* [2010] ECR I-8889, paragraph 25).

36 It is settled case-law that a judgment in which the Court gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the European Union institutions in question, for the purposes of the decision to be given in the main proceedings (see, inter alia, *Elchinov*, paragraph 29).

37 It follows that the national court, having exercised the discretion conferred on it by the second paragraph of Article 267 TFEU, is bound, for the purposes of the decision to be given in the main proceedings, by the interpretation of the provisions at issue given by the Court and must, if necessary, disregard the rulings of the higher court if it considers, having regard to that interpretation, that they are not consistent with European Union law (see, inter alia, *Elchinov*, paragraph 30).

38 It is appropriate to point out that, in accordance with settled case-law, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of European Union law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, that is to say, in the present case, the national procedural rule at issue in the main proceedings, and it is not necessary for the court to request or await the prior setting aside of that national provision by legislative or other constitutional means (see, inter alia, *Elchinov*, paragraph 31).

39 In the light of the foregoing, the answer to question 4 is that European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with European Union law, as interpreted by the Court of Justice.

40 On those grounds, the objection of inadmissibility raised by the defendants in the main proceedings, on the basis of the claim that there is no dispute to be resolved, must be rejected.

The first part of question 1

41 By the first part of Question 1, the Tribunale di Bari asks whether the term 'the centre of a debtor's main interests' in Article 3(1) of the Regulation must be interpreted by reference to European Union law or national law.

42 The Court has consistently held that it follows from the need for uniform application of European Union law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question (see, inter alia, Case C-174/08 *NCC Construction Danmark* [2009] ECR I-10567, paragraph 24 and case-law cited).

43 With regard in particular to the term 'the centre of a debtor's main interests' within the meaning of Article 3(1) of the Regulation, the Court held, at paragraph 31 of *Eurofood IFSC*, that that concept is peculiar to the Regulation, thus having an autonomous meaning, and must therefore be interpreted in a uniform way, independently of national legislation.

44 The answer to the first part of Question 1 is therefore that the term 'centre of a debtor's main interests' in Article 3(1) of the Regulation must be interpreted by reference to European Union law.

The second part of Question 1, Question 2, and the first part of Question 3

45 By the second part of Question 1, Question 2, and the first part of Question 3, the Tribunale di Bari asks, in essence, how the second sentence of Article 3(1) of the Regulation must be interpreted for the purposes of determining the centre of a debtor company's main interests.

46 In view of the fact that Interedil, according to the information given in the order for reference, transferred its registered office from Italy to the United Kingdom during 2001 and was then removed from the United Kingdom register of companies during 2002, it will also be necessary, in order to provide a full answer to the referring court, to identify the relevant date for the purpose of determining the centre of the debtor's main interests, so that the court with jurisdiction to open the main insolvency proceedings may be identified.

The relevant criteria for determining the centre of the debtor's main interests

47 While the Regulation does not provide a definition of the term 'centre of a debtor's main interests', guidance as to the scope of that term is, nevertheless, as the Court stated at paragraph 32 of *Eurofood IFSC*, to be found in recital 13 in the preamble to

the Regulation, which states that 'the "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and [which] is therefore ascertainable by third parties'.

48 As the Advocate General observed at point 69 of her Opinion, the presumption in the second sentence of Article 3(1) of the Regulation that the place of the company's registered office is the centre of its main interests and the reference in recital 13 in the preamble to the Regulation to the place where the debtor conducts the administration of his interests reflect the European Union legislature's intention to attach greater importance to the place in which the company has its central administration as the criterion for jurisdiction.

49 With reference to that recital, the Court also stated, at paragraph 33 of *Eurofood IFSC*, that the centre of a debtor's main interests must be identified by reference to criteria that are both objective and ascertainable by third parties, in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open the main insolvency proceedings. That requirement for objectivity and that possibility of ascertainment by third parties may be considered to be met where the material factors taken into account for the purpose of establishing the place in which the debtor company conducts the administration of its interests on a regular basis have been made public or, at the very least, made sufficiently accessible to enable third parties, that is to say in particular the company's creditors, to be aware of them.

50 It follows that, 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 the second sentence of Article 3(1) of the Regulation that the centre of the company's main interests is located in that place is wholly applicable. In such a case, as the Advocate General observed at point 69 of her Opinion, it is not possible that the centre of the debtor company's main interests is located elsewhere.

51 The presumption in the second sentence of Article 3(1) of the Regulation may be rebutted, however, where, from the viewpoint of third parties, the place in which a company's central administration is located is not the same as that of its registered office. As the Court held at paragraph 34 of *Eurofood IFSC*, the simple presumption laid down by the European Union legislature in favour of the registered office of that company can be rebutted 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.

52 The factors to be taken into account include, in particular, all the places in which the debtor company pursues economic activities and all those in which it holds assets, in so far as those places are ascertainable by third parties. As the Advocate General observed at point 70 of her Opinion, those factors must be assessed in a comprehensive manner, account being taken of the individual circumstances of each particular case.

53 In that context, the location, in a Member State other than that in which the registered office is situated, of immovable property owned by the debtor company, in respect of which the company has concluded lease agreements, and the existence in that Member State of a contract concluded with a financial institution – circumstances referred to by the referring court – may be regarded as objective factors and, in the light of the fact that they are likely to be matters in the public domain, as factors that are ascertainable by third parties. The fact nevertheless remains that 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 laid down by the European Union legislature 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 centre of management and supervision and of the management of its interests is located in that other Member State.

The relevant date for the purpose of locating the centre of the debtor's main interests

54 First, it should be noted that the Regulation does not contain any express provisions concerning the specific case involving the transfer of a debtor's centre of interests. In the light of the general terms in which Article 3(1) of the Regulation is worded, the last place in which that centre was located must therefore be regarded as the relevant place for the purpose of determining the court having jurisdiction to open the main insolvency proceedings.

55 That interpretation finds support in the Court's case-law. The Court has held that, where the centre of a debtor's main interests is transferred after the lodging of a request to open insolvency proceedings, but before the proceedings are opened, the courts of the Member State within the territory of which the centre of main interests was situated at the time when the request was lodged retain jurisdiction to rule on those proceedings (Case C-1/04 *Staubitz-Schreiber* [2006] ECR I-701, paragraph 29). It must be inferred from this that, in principle, it is the location of the debtor's main centre of interests at the date on which the request to open insolvency proceedings was lodged that is relevant for the purpose of determining the court having jurisdiction.

56 In a case such as that in the main proceedings in which the registered office is transferred before a request to open insolvency proceedings is lodged, the centre of the debtor's main interests is therefore presumed, in accordance with the second sentence of Article 3(1) of the Regulation, to be located at the place of the new registered office and, accordingly, it is the courts of the Member State within the territory of which the new registered office is located which, in principle, have jurisdiction to open the main insolvency proceedings, unless the presumption in Article 3(1) of the Regulation is rebutted by evidence that the centre of main interests has not followed the change of registered office.

57 The same rules must apply where, at the date on which the request to open insolvency proceedings is lodged, the debtor company has been removed from the register of companies and where, as submitted by Interedil in its observations, it has ceased all activity.

58 As is apparent from paragraphs 47 to 51 above, the term 'centre of main interests' meets the need to establish a connection with the place with which, from an objective viewpoint and in a manner that is ascertainable by third parties, the company has the closest links. It is therefore logical in such a situation to attach greater importance to the location of the last centre of main interests at the time when the debtor company was removed from the register of companies and ceased all activities.

59 The answer to the second part of Question 1, Question 2 and the first part of Question 3 is therefore that, for the purposes of determining a debtor company's main centre of interests, the second sentence of Article 3(1) of the Regulation must be interpreted as follows:

— a debtor company's main centre 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 centre 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 centre of main activities is presumed to be the place of its new registered office.

The second part of Question 3

60 By the second part of Question 3, the Tribunale di Bari asks, in essence, how the term 'establishment' within the meaning of Article 3(2) of the Regulation must be interpreted.

61 Article 2(h) of the Regulation defines the term 'establishment' as designating any place of operations where the debtor carries out a non-transitory economic activity with human means and goods.

62 The fact that that definition links the pursuit of an economic activity to the presence of human resources shows that a minimum level of organisation and a degree of stability are required. It follows that, conversely, the presence alone of goods in isolation or bank accounts does not, in principle, satisfy the requirements for classification as an 'establishment'.

63 Since, in accordance with Article 3(2) of the Regulation, the presence of an establishment in the territory of a Member State confers jurisdiction on the courts of that State to open secondary insolvency proceedings against the debtor, it must be concluded that, in order to ensure legal certainty and foreseeability concerning the determination of the courts with jurisdiction, the existence of an establishment must

be determined, in the same way as the location of the centre of main interests, on the basis of objective factors which are ascertainable by third parties.

64 The answer to the second part of Question 3 is therefore that the term 'establishment' within the meaning of Article 3(2) of the Regulation 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.

Costs

65 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 (First Chamber) hereby rules:

1. **European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with European Union law, as interpreted by the Court of Justice.**

2. The term 'centre 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.

3. For the purposes of determining a debtor company's main centre of interests, the second sentence of Article 3(1) of Regulation No 1346/2000 must be interpreted as follows:

— **a debtor company's main centre 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 centre 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 centre of main activities is presumed to be the place of its new registered office.**

4. 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.

[Signatures]