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Centre of Main Interest (otherwise known as COMI) with Regard to the Existing Case-law of the Court of Justice of the European Union (CJEU)

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Abstract

The centre of main interests is the key concept of Regulation (EU) 2015/8 48 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. Its significance lies in the fact that this concept constitutes the sole determinant for establishing international jurisdiction for the opening of the main insolvency proceedings. The paper deals with the analysis of the concept of COMI, including the presentation of the case-law of the Court of Justice of the European Union.

Keywords

Centre of main interests; Recast Insolvency Regulation; main insolvency proceedings; Court of Justice of the European Union.

1 Introduction

Every year, an average of 200 000 companies in the European Union ("EU") face insolvency, resulting in approximately 1,7 million people losing their jobs.[1] Many of these companies, depending on the scale of their business, operate in the territory of several countries. The EU itself creates

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1 Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [online]. *Publications Office of the EU*. Published in December 2012 [cit. 4. 8. 2019]. https://publications.europa.eu/en/publication-detail/-/publication/3cf7daf5-f82c-4b24-b14eefd36d814f82/language-en

the conditions for such international business. Therefore, it is natural that the EU also seeks a way to prevent the negative effects of cross-border business, since the insolvency of such companies undermines the proper functioning of the EU's internal market.[2]

The close legal and economic relations and links between Member States in the EU enable the migration of legal and natural persons within the internal market in search for the most favourable legal framework. Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings ("Insolvency Regulation") had created a concept of the debtor's centre of main interests, in an attempt to reduce this legal migration. This concept was subsequently revised in Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (hereinafter referred to as the "Insolvency Regulation Recast"). Centre of main interests – by its very name implies that a debtor might have his interests situated in more than one Member State. The fact that the debtors can take advantage of the different legal systems is seen as a natural consequence of the free movement of goods, persons and capital in the EU, as well as a result of the absence of harmonization of substantive insolvency law in the Member States.

The concept of "centre of main interests" is known in international legal practice as COMI ("COMI"). The term COMI itself was specified by the Insolvency Regulation and it is therefore of an autonomous nature and must be interpreted uniformly. Although, the judicial interpretation of the term COMI has been provided by national courts of the Member States, the Court of Justice of the EU ("CJEU") must ensure that the interpretation of this term is consistent and independent of the legislations of the Member States.

2 According to Ibid. – about one-quarter of these bankruptcies contained the cross-border element and was therefore subject to the Insolvency Regulation.

2 Regulation (EU) 2015/848 of the European Parliament and of the Council on insolvency proceedings

The creation of the EU's internal market is closely linked to the emergence of cross-border insolvency. The free movement of goods, persons, services and capital within the internal market is ensured in accordance with the provisions of the Treaty on the Functioning of the EU ("TFEU") (Art. 26). These four freedoms create the scope for international business which is also associated with the risk of bankruptcy/insolvency. Since these cases of insolvency often occur in several countries, it is not a surprise that adequate attention has to be paid to the regulation of "cross-border insolvency".

In regards of national legislation on the cross-border insolvency proceedings in Slovakia has great significance *Act No 7/2005 Coll. on Bankruptcy and Restructuring (Slovak Republic)* ("Act on Bankruptcy and Restructuring") – specifically its fifth part called, "Cross-border insolvency proceedings". This part of the Act regulates the insolvency proceedings in relation to the (Member) States of the EU.

According to § 172 of Act on Bankruptcy and Restructuring – In the cross-border insolvency proceeding related to the European Member State or any Contracting state of Agreement on the European Economic Area are applied, in accordance with the principle *lex specialis derogat legi generali*, the provisions of special legislation, whereas the provisions of Act on Bankruptcy and Restructuring are applied in a subsidiary manner (i.e. in cases where *a special legislation* does not provide otherwise or does not regulate the issue at all).

This *special legislation* on cross-border insolvency proceedings is the Insolvency Regulation Recast. In general, when there is the primacy of European law over national law there is no need for a reference of standards in the individual laws of Member States. As stated in Art. 288 (1), (2) of TFEU: "*A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.*" §172 of Act on Bankruptcy and Restructuring was included as a reference standard in this Act on Bankruptcy and Restructuring

only for the purpose of drawing attention to the existence of the Insolvency Regulation.

Insolvency Regulation has a similar legal effect as the national laws.[3] Its legal effects are simultaneously, automatically and uniformly binding in all the national legislations of all the Member States of the EU. Regulation automatically establishes rights and obligations in the Member States from the date of its entry into force. Insolvency Regulation Recast has replaced the original Insolvency Regulation. The adoption of the Insolvency Regulation was the result of a long-standing effort within the EU (or European Communities) to coordinate on-going cross-border insolvency proceedings in the Member States.[4] Recital 3 in the preamble to the Insolvency Regulation stated: "*the activities of undertakings have more and more cross-border effects and are therefore increasingly being regulated by Community law. While the insolvency of such undertakings also affects the proper functioning of the internal market, there is a need for a Community act requiring coordination of the measures to be taken regarding an insolvent debtor's assets.*"[5]

Although the Insolvency Regulation had been functioning well in general, it was desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. In the interest of clarity, it was recast by the new Insolvency

3 According to Art. I-33 para. 1 Treaty establishing a Constitution for Europe, "a regulation" was even to be called "European law".

4 The unification of European insolvency law first began as early as 1963 with the initiative to adopt the European Convention on Insolvency Proceedings. However, Convention did not come into force as a result of the UK's refusal to sign it up seeking to lift the European Communities' embargo on English meat issued on grounds of the mad cow disease. See Carballo, L. 'Brexit' and International Insolvency Beyond the Realm of Mutual Trust: Brexit and International Insolvency. *International Insolvency Review*. 2017, Vol. 26, No. 3, p. 271.

5 Insolvency Regulation and Insolvency Regulation Recast did not harmonise insolvency laws used for national insolvency cases. Regulation applies whenever the debtor has assets or creditors in more than one Member State, irrespective of whether he is a natural or legal person. The Regulation determines which court has jurisdiction to open insolvency proceedings and ensures the recognition and enforcement of the ensuing decision throughout the Union. This Regulation include provisions governing jurisdiction for opening insolvency proceedings and actions which are directly derived from insolvency proceedings and are closely linked with them. This Regulation also contain provisions regarding the recognition and enforcement of judgments issued in such proceedings, and provisions regarding the law applicable to insolvency proceedings.

Regulation.[6] Insolvency Regulation Recast reinforces and extends scope of the recognition and enforcement of judgments and cooperation, established by the original Insolvency Regulation. One of the main aims of the Insolvency Regulation Recast is to improve the efficiency and effectiveness of insolvency proceedings having cross-border effects through coordination of national legislation.[7]

In order to achieve this aim, certain of the Insolvency Regulation's provisions have been amended several times, including the amendment of the COMI concept (Centre of main interests of a debtor). COMI is a central concept of the Insolvency Regulation. It is the sole determinant for establishing international jurisdiction for the opening of the main insolvency proceedings.

3 COMI as a tool to prevent "insolvency forum shopping"

Since substantive Insolvency law is not unified in the EU and the Insolvency Regulation Recast enables the Member States to freely regulate its national legislation on insolvency proceedings a debtor is often tempted to misuse differences in the national legislation in order to achieve the most favourable legal position. In accordance with recital 5 in the preamble to the Insolvency Regulation, it is necessary for the proper functioning of the internal market to avoid incentives for parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position to the detriment of the general body of creditors. However, the need thus defined cannot be sufficiently achieved at national level, and applicable law in this area is therefore contained in a Union measure.

The fraudulent or abusive tactics of a debtor in the selection between the courts is being referred to as so-called "forum shopping"[8] in Insolvency

6 Communication from the commission to the European parliament, the Council and the European economic and social Committee, A new European approach to business failure and insolvency [online]. *EUR-Lex*. Published on 12 December 2012 [cit. 4. 8. 2019]. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0742&from=EN

7 Recital 9 Insolvency Regulation Recast.

8 This term was first used in the case-law in the year 1951. See *CoveyGas Oil Co. v. Checketts*, U.S. Court of Appeals for the Ninth Circuit of 26 February 1951 187 F.2d 561 (C.A. 9th Cir. 1951).

Regulation Recast. "Forum shopping" describes the situation where a debtor engages in regulatory arbitrage by modifying certain criteria that allow them to benefit from a different, more favourable insolvency law or jurisdiction.[9] In simpler terms it can be interpreted as a search for the most favourable legal position. Some countries' insolvency laws are more "debtor-friendly" than others, which can motivate the debtors to choose the jurisdiction of such a state.[10] However, "Forum shopping" is generally a legal and legitimate procedural strategy, unless it is subject to specific restrictions under applicable law.

Such a restriction is represented by the COMI concept, which was built in the Insolvency Regulation Recast. A major reform adopted in 2015 has the specific objective of further restricting abusive versions of forum shopping, in particular by introducing a "suspension period" for forum shopping activities carried out shortly before the filing for insolvency/commencement of insolvency proceedings.

Insolvency Regulation Recast distinguishes between two types of proceedings: main insolvency proceedings (main proceedings) and territorial or secondary proceedings. Such a model is based on the principle of controlled universality[11], as the ideal model based on the principle of universality is almost inapplicable.[12] If an insolvency proceeding is opened in the country where a company has its COMI, those insolvency proceedings will be classified as "main" proceedings. On the occasion that the insolvency proceeding is opened elsewhere (for which purpose an "establishment" in that country is required), the insolvency proceedings will be classified as "territorial"

9 Ringe, W. Insolvency Forum Shopping, Revisited. *In Hamburg Law Review*, 2017, p. 38.

10 The evaluation study revealed cases of evident abusive (temporary) relocation of COMI of individuals for the sole purpose to obtain discharge of residual debts. Especially German and Irish debtors tried to take advantage of the discharge opportunities of English law which provides for a debt release within only one year. See Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings [online]. *Publications Office of the EU*. Published in December 2012 [cit. 4. 8. 2019]. https://publications.europa.eu/en/publication-detail/-/publication/3cf7daf5-f82c-4b24-b14e-efd36d814f82/language-en

11 Any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Art. 3 shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings.

12 See Ďurica, M. *Insolvency Law in the Slovak Republic and in the European Union*. Bratislava: EUROKÓDEX, 2012, p. 695.

or "secondary" proceedings. Secondary proceedings can coexist with main proceedings, and is indeed a key aspect of the Insolvency Regulation Recast is the way in which it governs how main proceedings and secondary proceedings operate in conjunction with one another.[13]

COMI is an independent, transnational concept of European law which is not based on national legislation. Specification of the debtor's centre of main interest constitutes an essential aspect for international insolvency proceedings. This concept predetermines the jurisdiction of the court and, consequently, the applicable law in the proceedings, thus restricting forum shopping. Since the national insolvency law differs in the Member States, the determination of COMI can have a major impact on both – the conduct and the outcome of insolvency proceedings.

Art. 7 of the Insolvency Regulation Recast sets out the basic rule for the law applicable to insolvency proceedings. This law then governs all the conditions for the opening, conduct and closure of the insolvency proceedings. According to Art. 7 the law of the Member State of the opening of insolvency proceedings (*lex concursus*) determines all the effects of those proceedings, unless the Insolvency Regulation Recast provides otherwise.[14] The concept of COMI is based on Art. 3 (1) of Insolvency Regulation Recasts, which states: "*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.*"[15] This is relevant given that some Member

13 Understanding "Centre of Main Interests" Where Are We? [online]. *Jones Day*. Published in September/October 2017 [cit. 1. 8. 2019]. https://www.jonesday.com/Understanding-Centre-of-Main-Interests-Where-Are-We/

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15 To the original draft of the European Convention on Insolvency Proceedings was annexed the report of *Professors Miguel Virgos* and *Etienne Schmit* ("Virgós-Schmit Report") [online]. *Archive of European Integration, University of Pittsburg*. Published on 3 May 1996 [cit. 1. 8. 2019]. http://aei.pitt.edu/952/1/insolvency_report_schmidt_1988.pdf; This Virgós-Schmit Report is considered to be one of the main sources of Insolvency Regulation. Point 75 of the Report stated: "*The concept of 'centre of main interests' must be interpreted as the place where the debtor conducts the administration of his interests on a regular basis and is therefore as certainable by third parties.*"

States' courts have interpreted COMI as being at the place where the most important decisions concerning the debtor were taken.[16] The original wording of Art. 3 (1) of the Insolvency Regulation read as follows: "*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.*" COMI has been partially clarified in recital 13 in the preamble to this Insolvency Regulation, which stated: the COMI should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.

The definition of COMI is not overly helpful, and there has been much controversy over its precise scope.[17] For this reason, the concept of COMI is also specified in the case-law of the CJEU. We will focus on the case-law of the CJEU in more detail in the following section of this paper.

4 COMI in the existing case-law of the Court of Justice of the European Union

Since Regulation as a source of EU *law creates rights and obligations for all natural and legal persons of the EU*, it must be uniformly applied in all the Member States and have, as far as possible, the same effect throughout its whole territory.[18] As have been already mentioned above, the revised concept of COMI in Insolvency Regulation Recast has been amended in line with the case-law of the CJEU. The case-law of CJEU addressed COMI issues when it has clarified the role played by the courts in determining the debtor's centre of main interests.

The CJEU in its existing case-law emphasizes that the concept of the centre of main interests under EU law has an autonomous meaning and must therefore be interpreted in a uniform way, independently of national

16 See Judgment of High Court of Justice Leeds of 16 May 2003, Case nr. 861-867/03.
17 Ringe, W. Insolvency Forum Shopping, Revisited. *Hamburg Law Review.* 2017, p. 38.
18 Judgment of *Federal Republic of Germany v Commission of the European Communities* of 14 January 1981, Case no. 819/79, para. 10.

legislation.[19] This means that the same definition applies throughout the EU. If the question of COMI appears before the courts of the Slovak Republic, it's important for these courts to be aware of the procedures and judgments of other courts, so they can contribute to the harmonization of European Insolvency law.

Law of the EU exists and is being carried out at two levels – at level of the EU and at national level, therefore both the CJEU and national courts of the Member States monitor compliance with EU law.[20]

National courts of EU countries are required to ensure EU law is properly applied, but courts in different countries might interpret it differently. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the CJEU for clarification. It's therefore the CJEU that ensures and facilitates the smooth application of the Insolvency Regulation Recast, thus ensuring that this Insolvency Regulation Recast would become a functional instrument of European Insolvency law.

Regarding the clarification of COMI is the most significant (and the most cited) Judgment of the CJEU (Grand Chamber) of 2 May 2006 (*Eurofood IFSC Ltd.*) Case C-341/04, in which the CJEU has ruled that: "*Where a debtor is a subsidiary company whose registered office and that of its parent company are situated in two different Member States, the presumption laid down in the second sentence of Article 3 (1) of Regulation No 1346/2000 on Insolvency Proceedings,*[21] *whereby the centre of main interests of that subsidiary is situated in the Member State where its registered office is situated, 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 location at that registered office is deemed to reflect. That could be so in particular in the case of a company not carrying out any business in the territory of the Member State in which its registered office is situated. By contrast, where a company carries on its business in the territory of the Member State where its*

19 Judgment of the Court of Justice (Grand Chamber) of 2 May 2006, Case C-341/04, para. 31.

20 Siman, M., Slašťan, M. *Law of the European Union*. Bratislava: EUROIURIS – európske právne centrum, 2012, p. 188.

21 Art. 3 para. 1 Insolvency Regulation Recast has expanded COMI presumption as follows: "*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.*".

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 laid down by the regulation." This ruling resulted from the referral by the Supreme Court of Ireland of five questions of EU law, based on the EU Insolvency Regulation. One of these questions read as follows:

Where,

a) the registered offices of a parent company and its subsidiary are in two different Member States,

b) the subsidiary conducts the administration of its interests on a regular basis in a manner ascertainable by third parties and in complete and regular respect for its own corporate identity in the Member State where its registered office is situated and

c) the parent company is in a position, by virtue of its shareholding and power to appoint directors, to control and does in fact control the policy of the subsidiary, in determining the "centre of main interests", are the governing factors those referred to at (b) above or on the other hand those referred to at (c) above?

CJEU in the ruling highlighted recital 13 in the preamble to the Insolvency Regulation (currently it's part of Art. 3 (1) of Insolvency Regulation Recast), which states that the COMI should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties.[22]

Also, worth mentioning is Judgment of the Court of 15 December 2011, C-191/10 *Rastelli Davide e C. Snc v Jean-Charles Hidoux*. The national court decided to stay the proceedings and to refer the judiciary questions to the CJEU for a preliminary ruling. By its first question, the national court is essentially asking whether the Insolvency Regulation is to be interpreted as meaning that a court of a Member State that has opened main insolvency proceedings against a company. On the view that the centre of the debtor's main interests is situated in the territory of that Member State, can, under a rule of its national law, join to those proceedings a second company

22 Judgment of the Court of Justice (Grand Chamber) of 2 May 2006, Case C-341/04, para. 33.

whose registered office is in another Member State solely on the basis that the property of the two companies has been intermixed.

As the answer to this question the CJEU ruled that Insolvency Regulation (specifically its Art. 3 (1) (2)) is to be interpreted as meaning that: "*a court of a Member State that has opened main insolvency proceedings against a company, on the view that the centre of the debtor's main interests is situated in the territory of that Member State, can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State only if it is established that the centre of that second company's main interests is situated in the first Member State.*"

The reverse procedure would mean circumventing the system established by the Insolvency Regulation. The CJEU has already ruled in the above-mentioned case *Eurofood IFSC Ltd.* that in the system established by the Insolvency Regulation for determining the competence of the courts of the Member States. Each debtor constituting a distinct legal entity is subject to its own court jurisdiction.[23]

Even though the next Judgment of the CJEU we mention in this paper is not directly linked to Insolvency Regulation Recast or its concept of COMI but considering the nature of the question asked in the preliminary ruling it is closed related to them. In Case C-461/11 of 6 November 2012, the CJEU referred a question for a preliminary ruling, concerning the interpretation of Art. 45 of the TFEU.[24] The reference has been made in proceedings between *Mr Radziejewski*, a Swedish national who has resided and worked in Belgium since 2001, and the Kronofogdemyndigheten in Stockholm (Enforcement Service, Stockholm; "the KFM") concerning an application for the grant of debt relief.

Between 1971 and 1996, with his wife, *Mr Radziejewski* ran a treatment centre in Sweden. In 1996 the treatment centre became the subject of bankruptcy proceedings, resulting in the *Radziejewskis'* insolvency. Since 1997 they have been subject to an earnings attachment order administered by the KFM. In 2011, *Mr Radziejewski* applied to the KFM for debt relief. That application was rejected by decision of 29 June 2011 on the ground that one of the conditions for the grant of such a measure was that the debtor had to be resident

23 Ibid., para. 30.

24 Art. 45 (1) TFEU: "*Freedom of movement for workers shall be secured within the Union.*".

in Sweden. The KFM did not examine whether *Mr Radziejewski* satisfied the other statutory conditions for debt relief eligibility. *Mr Radziejewski* appealed to the Stockholms tingsrätt (Stockholm District Court) against that rejection decision, arguing, inter alia, that the Swedish law is contrary to the freedom of movement for workers in the EU. He requested the Stockholms tingsrätt to refer the case back to the KFM and to instruct it to open a debt relief procedure. According to Stockholms tingsrätt, the debit relief procedure does not fall within the scope of Insolvency Regulation. Consequently, a measure adopted by a Swedish authority pursuant to that procedure cannot, in principle, be executed outside the Kingdom of Sweden. The Stockholms tingsrätt explains that debt relief can be granted only if the debtor resides in Sweden, although there is no Swedish nationality requirement. A person who has emigrated and resides abroad is not therefore eligible for debt relief in Sweden, even if there is a strong connection with that Member State because the debts arose in Sweden and the employer of that person is Swedish. The Stockholms tingsrätt decided to stay the proceedings and to refer the following question to the CJEU for a preliminary ruling: "*Can the requirement for residence in Sweden in Paragraph 4 of the [Law on debt relief] be regarded as being liable to prevent or deter a worker from leaving Sweden to exercise his right to freedom of movement and thus be regarded as running counter to the principle of the freedom of movement for workers within the Union provided for in Article 45 TFEU?*"[25]

At the hearing, the Swedish Government claimed that the condition of residence provided for under the legislation in question is necessary in order to ensure the effective application of Insolvency Regulation. However, The CJEU ruled (referring to Case C-341/04 Eurofood IFSC Ltd. of 2 May 2006, para. 46) that the Swedish debt relief procedure does not entail the divestment of the debtor, with the result that it cannot be classified as an insolvency procedure within the meaning of Art. 1 of Insolvency Regulation. In the light of the foregoing, the answer to the question referred is that Art. 45 TFEU must be interpreted as precluding national legislation,

25 Judgment of the Court of Justice (Third Chamber), 8 November 2012, Case C461/11, para. 22.

such as that at issue in the main proceedings, which makes the grant of debt relief subject to a condition of residence in the Member State concerned.

Finally, we cannot overlook one more Judgment of the CJEU. Although it does not concern directly the interpretation of COMI, it is one of the most cited in this subject of matter. It's Judgment of the Court (Grand Chamber) of 17 January 2006 in Case C-1/04 (*Staubitz-Schreiber*). The importance of this case is that the CJEU defined the moment of location of the COMI which is an essential fact determining the jurisdiction and the law applicable to the insolvency proceedings. A decisive moment of the location of the COMI is the time when the debtor lodges the request to open insolvency proceedings. This means that the transfer of COMI to the territory of another Member State after the request to open insolvency proceedings was already lodged (even if it was done before the opening of the proceedings) wouldn't have any relevance. One of the arguments put forward by CJEU was, that: "*Retaining the jurisdiction of the first court seized ensures greater judicial certainty for creditors who have assessed the risks to be assumed in the event of the debtor's insolvency with regard to the place where the centre of his main interests was situated when they entered into a legal relationship with him*"[26]

In addition to the CJEU, the interpretation of the term COMI is also provided by the national courts. While individual cases must be always considered separately in the light of the specific circumstances of the case, the interpretation of the term COMI should maintain a certain unity from a Union perspective. It can be stated that COMI is not a purely formal category (unlike, "the registered office"). COMI is a concept that represents a real bond between the debtor and the forum before which insolvency proceedings are to be held.

5 Conclusion

A codification of the method of determination of COMI is undoubtedly an important step for European Insolvency law. However, it can be assumed that as long as will exist the different substantive Insolvency

26 Judgment of the Court of Justice (Grand Chamber) of 17 January 2006, Case C-1/04, para. 27.

laws in the Member States of the EU, debtors' incentives to try to transfer their centre of main interests to other countries will remain as well. They will try to achieve a more favorable legal position and better outcome of the proceedings, while harming creditors and mislead third parties and state authorities.

Despite some initial doubts about its effectiveness, Insolvency Regulation has proven to be an effective tool in addressing cross-border insolvencies within the EU, even though the interpretation of the term COMI was uncertain in practice when this Insolvency Regulation came into force. This allowed for a relatively wide range of COMI interpretations, so a judge was (and still is) the main body in this case to determine the centre of the debtor's main interest in a particular case.[27]

The CJEU has played an active role in ensuring the effectiveness of the Insolvency Regulation, particularly by clarifying many of its concepts, including COMI. Insolvency Regulation Recast revised the COMI concept in line with the CJEU previous case-law on related issues. At present, the uncertainties associated with the definition of COMI are also successfully addressed in the decision-making activities of the national courts of the Member States. Nevertheless, the unity of statutory seat and COMI represents the legally most certain situation. In such a case the application of only one legal order is possible – *lex fori concursus* – i.e. the national law of COMI, as the applicable law. Therefore, it is strongly recommended that taking into account legal certainty and predictability, COMI and the statutory seat shouldn't be divided in the course of the business activity.

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