Médiasucre: National rules of law as to jurisdiction restricted by the ECIR

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Case:
Rastelli Davide e C. Snc v Jean-Charles Hidoux, in his capacity as liquidator appointed by the court for the company Médiasucre international. C-191/10, ECJ (1st Chamber) (15 December 2011)

Synopsis:
The decision of the Court of Justice of the European Union (**CJEU**) in *Médiasucre* has confirmed that the EC Insolvency Regulation (**ECIR**) restricts the operation of national laws regarding jurisdiction for insolvency proceedings. The CJEU held that whilst a court of a Member State that has opened main proceedings in respect of a company can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State, it can only do so where that second company has its centre of main interests (**CoMI**) in the first Member State.

Topics covered: ECIR; centre of main interests; establishment; substantive consolidation

Background

Main insolvency proceedings (*liquidation judiciaire*) had been opened in France in respect of a French registered company ("M"). The French liquidator applied to join an Italian registered company ("R") to the French proceedings under French laws. Broadly, these laws provide that where a company's property is intermixed with the property of another company that is already in French insolvency proceedings, that second company can be brought within the insolvency proceedings commenced in respect of the first company.

The French court at first instance found that it lacked jurisdiction to join R to M's insolvency proceedings, as R's registered office was located in Italy and R did not have an establishment in France. Relying on French law the Court of Appeal allowed the appeal, holding that it had jurisdiction to join R to M's main insolvency proceedings on the basis that separate insolvency proceedings were not being opened in respect of R; R was simply being joined to M's insolvency proceedings. R appealed and this resulted in a reference to the CJEU by the French Supreme Court.

The CJEU was asked to determine (i) whether the ECIR restricts the application of a rule of national law which confers jurisdiction to join a company to insolvency proceedings already commenced in that Member State in relation to another company, where the second company has its registered office in another Member State; and (ii) if this is the case, whether the action for joinder constitutes a new proceeding, the opening of which is dependent upon the CoMI of the company which is to be joined to the proceedings being in the Member State where the first company has been placed into insolvency proceedings (if so whether the CoMI could be established solely on the basis that the property of the two companies had been intermixed).

The CJEU's Decision

The ECIR and national laws regarding jurisdiction

The CJEU held that a court of a Member State that has opened main proceedings in respect of a company can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State, only where that second company has its CoMI in the first Member State. The CJEU reached this decision on the grounds that, while under French law joining a separate legal entity to the existing insolvency proceedings did not institute new insolvency proceedings (but has the effect of joining an additional debtor to insolvency proceedings that have been already commenced), in reality this had the same effect as opening insolvency proceedings in respect of the separate legal entity. A decision which produced the same effects as the opening of insolvency proceedings could only be taken by the courts of the Member State that have jurisdiction to open such proceedings and jurisdiction to open insolvency proceedings was governed by the ECIR.

As Art.3(1) of the ECIR confers exclusive jurisdiction to open main proceedings on the courts where the debtor's CoMI is located, to allow a rule of national law to permit that another company can be joined to opened insolvency proceedings, without considering where that company's CoMI was located, would circumvent the jurisdictional rules of the ECIR. This would create conflicting claims to jurisdiction between courts of different Members States that the ECIR was specifically intended to prevent.

CoMI

The CJEU considered the guidance set out in both *Interedil* and *Eurofood*, (see Technical Bulletin 370 and Technical bulletin 62). It held that where a company, whose registered office is situated within the territory of a Member State, is subject to an action that seeks to extend to it the effects of insolvency proceedings opened in another Member State in respect of a company established within the territory of that other Member State, the mere finding that the property of those companies has been intermixed (in particular, in this case, the existence of intermingled accounts and abnormal financial relations between the companies such as the deliberate transfer of assets without consideration) is not sufficient to establish that the CoMI of the company concerned by the action is also situated in that other Member State. In order to reverse the registered office presumption, it is necessary that an overall assessment of all the relevant factors allows it to be established, in a manner ascertainable by third parties, that the actual centre of management and supervision of the company concerned by the joinder action is situated in the Member State where the insolvency proceedings were opened.

In reaching this decision, the CJEU followed both the *Eurofood* and *Interedil* decision in that the debtor's CoMI must be identified by reference to criteria that are both objective and ascertainable by third parties. Further, the CJEU followed the CJEU's decision in *Interedil* on the strength of the registered office presumption (i.e. that the EU's legislature's intention was to attach greater importance to the place in which the company has its central administration when assessing CoMI).

Comment

The CJEU's decision that the ECIR restricts the operation of a rule of national law as to jurisdiction for insolvency proceedings was expected. While it involved a consideration of

French law the decision is likely to be equally applicable in other Member States which have similar rules, in particular where those rules allow (in certain circumstances) separate corporate structures to be disregarded, and creditors recourse to the assets of another entity.

The fact that the CJEU specifically followed *Interedil* is important. We now have two CJEU decisions attaching greater importance when assessing CoMI to the place where the company has its central administration. It is clear that the registered office presumption of CoMI may not be as strong as was set out by the CJEU in *Eurofood*.