(2) Must the requirement that the undertaking to which the supply contract is awarded directly carry out the essential part of its activities with the controlling authority be ascertained by applying Article 13 of Directive 93/38/EC ([2]) and can it be concluded that it has been satisfied where that undertaking derives the majority of its turnover from the controlling public authority or, alternatively, in the territory of that authority?

([1]) Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts.
([2]) OJ 1993, L 199 of 9.8.1993, p. 1.

Reference for a preliminary ruling by the Supreme Court, Ireland, by order of that court dated 27 July 2004, in the matter of Eurofood IFSC Ltd and in the matter of the Companies Acts 1963 to 2003, Enrico Bondi against Bank of America N.A., Pearse Farrell (the Official Liquidator), Director of Corporate Enforcement and the Certificate/Note holders

(Case C-341/04)

(2004/C 251/13)

Reference has been made to the Court of Justice of the European Communities by order of the Supreme Court, Ireland, dated 27 July 2004, which was received at the Court Registry on 9 August 2004, for a preliminary ruling in the matter of Eurofood IFSC Ltd and in the matter of the Companies Acts 1963 to 2003, Enrico Bondi against Bank of America N.A., Pearse Farrell (the Official Liquidator), Director of Corporate Enforcement and the Certificate/Note holders on the following questions:

1. Where a petition is presented to a Court of competent jurisdiction in Ireland for the winding up of an insolvent company and that Court makes an Order, pending the making of an Order for winding up, appointing a provisional liquidator with powers to take possession of the assets of the company, manage its affairs, open a bank account and appoint a solicitor all with the effect in law of depriving the directors of the company of power to act, does that Order combined with the presentation of the petition constitute a Judgment opening of insolvency proceedings for the purposes of Article 16, interpreted in the light of Articles 1 and 2, of Council Regulation (EC) No 1346 of 2000? ([1])

2. If the answer to Question 1 is in the negative, does the presentation, in Ireland, of a petition to the High Court for the compulsory winding up of a company by the Court constitute the opening of insolvency proceedings for the purposes of that Regulation by virtue of the Irish legal provision (section 220(2) of the Companies Act, 1963) deeming the winding up of the company to commence at the date of the presentation of the petition?

3. Does Article 3 of the said Regulation, in combination with Article 16, have the effect that a Court in a Member State other than that in which the registered office of the company is situate and other than where the company conducts the administration of its interests on a regular basis in a manner ascertainable by third parties, but where insolvency proceedings are first opened has jurisdiction to open main insolvency proceedings?

4. 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?

5. Where it is manifestly contrary to the public policy of a Member State to permit a judicial or administrative decision to have legal effect in relation to persons or bodies whose right to fair procedures and a fair hearing has not been respected in reaching such a decision, is that Member State bound, by virtue of Article 17 of the said Regulation, to give recognition to a decision of the courts of another Member State purporting to open insolvency proceedings in respect of a company, in a situation where the Court of the first Member State is satisfied that the decision in question has been made in disregard of those principles and, in particular, where the applicant in the second Member State has refused, in spite of requests and contrary to the Order of the Court of the second Member State, to provide the provisional liquidator of the company, duly appointed in accordance with the law of the first Member State, with any copy of the essential papers grounding the application?

([1]) Of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).