



## Reports of Cases

**Case C-327/13**

**Burgo Group SpA**  
**v**  
**Illochroma SA**  
**and**  
**Jérôme Theetten**

(Request for a preliminary ruling from the cour d'appel de Bruxelles)

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Insolvency proceedings — Definition of ‘establishment’ — Group of companies — Establishment — Right to request the opening of secondary insolvency proceedings — Criteria — Person empowered to request the opening of secondary insolvency proceedings)

Summary — Judgment of the Court (First Chamber), 4 September 2014

1. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — International jurisdiction to open insolvency proceedings — Secondary proceedings — Debtor having an establishment in the territory of the State in which it has its registered office — Concept of establishment — Establishment which possesses legal personality — Included — Criteria*

*(Council Regulation No 1346/2000, Arts 2(h) and 3(2))*

2. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — International jurisdiction to open insolvency proceedings — Secondary proceedings — Persons empowered to request the opening of secondary proceedings — Assessment in the light of national law — Restricted to creditors who are domiciled or have their registered office in the Member State of establishment concerned or those with a claim that arises from the operation of that establishment — Not permissible*

*(Council Regulation No 1346/2000, Art. 29(b))*

3. *Judicial cooperation in civil matters — Insolvency proceedings — Regulation No 1346/2000 — International jurisdiction to open insolvency proceedings — Secondary proceedings — Opening of proceedings secondary to the main winding-up proceedings — Criteria as to appropriateness to be taken into consideration — Application of national law — Conditions*

*(Council Regulation No 1346/2000)*

1. Article 3(2) of Regulation No 1346/2000 on insolvency proceedings must be interpreted to the effect that, where winding-up proceedings are opened in respect of a company in a Member State other than that in which it has its registered office, secondary insolvency proceedings may also be opened in respect of that company in the other Member State in which its registered office is situated and in which it possesses legal personality.

First, Article 2(h) of Regulation No 1346/2000 does not rule out the possibility that, for the purposes of that provision, an establishment may possess legal personality and be situated in the Member State where its company has its registered office, provided that it meets the criteria set out in that provision.

Second, if the definition of ‘establishment’ were to be interpreted as not encompassing a place in which a debtor company conducts operations and which meets the criteria expressly set out in Article 2(h) of Regulation No 1346/2000, being situated within the territory of the Member State in which that company has its registered office, local interests — including the interests of creditors established in that Member State — would be denied the protection afforded by that regulation, in the form of secondary proceedings which may be opened in that Member State. Finally, such an interpretation may give rise to discrimination against creditors established in the Member State where the registered office of the debtor company is situated, by comparison with, *inter alia*, creditors established in other Member States in which the debtor may have other establishments.

(see paras 32, 35, 38, 39, operative part 1)

2. Article 29(b) of Regulation No 1346/2000 on insolvency proceedings must be interpreted to the effect that the question as to which person or authority is empowered to seek the opening of secondary proceedings must be determined on the basis of the national law of the Member State within the territory of which the opening of such proceedings is sought. The right to seek the opening of secondary proceedings cannot, however, be restricted to creditors who have their domicile or registered office within the Member State in whose territory the relevant establishment is situated, or to creditors whose claims arise from the operation of that establishment.

When adopting national rules governing who is empowered to request the opening of secondary proceedings, the Member States are required to ensure that Regulation No 1346/2000 is effective, bearing in mind its object. On the one hand, the provisions of that regulation regarding the right of a creditor to request the opening of secondary proceedings are intended, *inter alia*, to mitigate the effects of the universal application of the law of the Member State within the territory of which the main proceedings have been opened, by permitting, under certain conditions, the opening of secondary proceedings to protect the diversity of interests, including interests other than local interests.

On the other hand, a clear distinction is drawn by that regulation between territorial proceedings opened prior to the opening of main proceedings and secondary proceedings. It is only in relation to such territorial proceedings that the right to request the opening of proceedings is limited to creditors who have their domicile, habitual residence or registered office within the Member State in which the relevant establishment is situated, or whose claims arise from the operation of that establishment. It follows, *a contrario*, that those limitations do not apply to secondary proceedings.

Lastly, the possibility of limiting the right to request the opening of secondary proceedings to local creditors would constitute indirect discrimination on grounds of nationality, which cannot be justified.

(see paras 46-51, operative part 2)

3. Regulation No 1346/2000 on insolvency proceedings must be interpreted to the effect that, where the main insolvency proceedings are winding-up proceedings, whether the court before which the action seeking the opening of secondary insolvency proceedings has been brought may take account of criteria as to appropriateness is governed by the national law of the Member State within the territory of which the opening of secondary proceedings is sought. However, when establishing the conditions for the opening of secondary proceedings, Member States must comply with EU law and, in particular, its general principles, as well as the provisions of that regulation.

Moreover, the court before which the action seeking the opening of secondary proceedings has been brought must have regard, in applying its national law, to the objectives underlying the possibility of opening such proceedings.

Lastly, after the opening of secondary proceedings, the court that has opened those proceedings must have regard to the objectives of the main proceedings and take account of the overall scheme of Regulation No 1346/2000, in keeping with the principle of sincere cooperation.

(see paras 65-67, operative part 3)