Reports of Cases

OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 9 June 2016 [1]

Case C-212/15

ENEFI Energiahatekonysagi Nyrt
v
Direcția Generală Regională a Finanțelor Publice Brașov (DGRFP)

(Request for a preliminary ruling from the Tribunalul Mureș, Secția civilă (Regional Court, Mureș, Civil Chamber, Romania))

(Insolvency proceedings — Effects provided by the law of the State of the opening of proceedings as regards a tax claim that has not been registered in that proceedings and that is subject to enforcement in another Member State)

I – Introduction

1. The present case concerns the enforcement of a tax claim in Romania against a company which is based, and became subject to, insolvency proceedings in Hungary. That tax claim was not registered in those insolvency proceedings and, pursuant to Hungarian law, it is now forfeited.

2. The Court is asked to ascertain whether Regulation (EC) No 1346/2000 on insolvency proceedings [2] permits a national rule providing for the forfeiture or suspension of the enforcement of such an unregistered claim. The Court is also invited to determine whether the fiscal nature of that claim has any significance for that assessment. These questions raise the ancillary issue of whether the national law applicable to insolvency proceedings opened in one Member State should also govern the impact that the opening of those insolvency proceedings has on an enforcement action involving the same debtor in another Member State.

II – Legal framework

A – *EU law*

3. Pursuant to Article 3(1) of Regulation No 1346/2000 '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'.

1 — Original language: English.

2 — Council Regulation of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

4. Article 4 of Regulation No 1346/2000 lays down rules on applicable law. As a general rule, Article 4(1) states that 'save as otherwise provided in [the] Regulation, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. [That Member State is] referred to as the "State of the opening of proceedings"'.

5. According to Article 4(2) of Regulation No 1346/2000, the law of the State of the opening of proceedings, referred to as the *lex concursus* in recital 23 of the regulation, 'shall determine the conditions for the opening of those proceedings, their conduct and their closure'. That provision contains a non-exhaustive list of matters which are governed by the *lex concursus*, including, among other things, in subparagraph (f) 'the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending' and, in subparagraph (k), 'creditors' rights after the closure of insolvency proceedings'.

6. Article 15 of Regulation No 1346/2000 states that 'the effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending'.

7. Under Article 20(1) of Regulation No 1346/2000, in principle, 'a creditor who, after the opening of the proceedings … obtains by any means, in particular through enforcement, total or partial satisfaction of his claim on the assets belonging to the debtor situated within the territory of another Member State, shall return what he has obtained to the liquidator …'.

8. Finally, Article 39 of Regulation No 1346/2000 recognises the right of 'any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, including the tax authorities and social security authorities of Member States … to lodge claims in the insolvency proceedings in writing'.

B – *National law*

9. Article 20(3) of the Hungarian law on insolvency, Law XLIX of 1991, provides that a creditor who has failed to observe the time limit for the declaration of his claims under Article 10(2) of that law loses the possibility to participate in the agreement concluded between the debtor and the creditors at the end of the insolvency proceedings. This effectively means that a creditor, who has failed to register a claim, can, in principle, no longer pursue that claim against the debtor.

III – Facts, national proceedings and questions referred

10. ENEFI Energiahatekonysagi Nyrt ('the claimant') is a company with its registered seat in Hungary and with an establishment in Romania.

11. On 13 December 2012, insolvency proceedings were commenced against the claimant in Hungary.

12. On 7 January 2013, Direcția Generală Regională a Finanțelor Publice Brașov (Regional General Directorate of Public Finance of Brasov) ('the respondent'), was notified about the commencement of the insolvency proceedings in Hungary and about the possibility of registering claims against the claimant in those proceedings.

13. In January 2013, the respondent attempted to register two claims in the insolvency proceedings ('the initial claims'). However, it failed to respect the applicable deadline and to pay the applicable registration fees. Therefore, those claims could not be registered and considered in the insolvency proceedings, as stated by the liquidator on 2 May 2013.

14. Between 5 and 25 June 2013, while the insolvency proceedings were still ongoing, the respondent carried out a tax control at the premises of the claimant's establishment in Romania. On 25 June 2013, the respondent issued a tax notice concerning the claimant's additional VAT obligations ('the post-insolvency tax notice'). The respondent registered no claim relating to the post-insolvency tax notice in the insolvency proceedings. Instead, it started enforcement proceedings regarding the post-insolvency tax notice in Romania.

15. The post-insolvency tax notice was initially not challenged by the claimant. Consequently, an enforcement order was issued against the claimant on 7 August 2013 by the Romanian authorities.

16. The insolvency proceedings in Hungary were closed on 7 September 2013.

17. On 3 September 2013, the claimant initiated proceedings to oppose the enforcement order in Romania. The claimant is of the view that it is not obliged to pay the sum requested therein and considers its enforcement illegal. It points out that when the tax control leading to the issuance of the post-insolvency tax notice occurred, the claimant was already subject to the insolvency proceedings in Hungary. Therefore, to enforce the claimant's payment obligations under the post-insolvency tax notice, the respondent should have registered its enforcement claim in the insolvency proceedings. The claimant states that Hungarian law is the law governing the insolvency proceedings pursuant to Regulation No 1346/2000 and Hungarian law states that claims that have not been registered in insolvency proceedings are forfeited. Therefore, according to the claimant, the respondent's right to payment under the post-insolvency tax notice is now forfeited.

18. In these circumstances, the Tribunalul Mureș, Secția civilă (Regional Court, Mureș, Civil Chamber) suspended proceedings and referred the following questions to the Court of Justice:

'(1) For the interpretation of Article 4(1) and Article 4(2)(f) and (k) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, may the effects of the insolvency proceedings governed by the law of the State in which proceedings are opened include forfeiture of the right of a creditor, which has not taken part in the insolvency proceedings, to pursue its claim in another Member State or suspension of the enforcement of that claim in that other Member State?

(2) Is it relevant that the claim pursued by means of enforcement in a Member State other than the State in which the proceedings are opened is a fiscal claim?'

19. Written observations were submitted by the Hungarian and Dutch Governments as well as by the Commission. The Hungarian Government and the Commission presented oral arguments at a hearing held on 14 April 2016.

IV – Assessment

20. The second question posed by the referring court aims, essentially, at ascertaining the scope of applicability of Regulation No 1346/2000. The first question is concerned about its effects once it has been confirmed that Regulation No 1346/2000 is indeed applicable to fiscal claims.

21. The question of applicability of Regulation No 1346/2000 logically precedes the discussion of its effects. Therefore, I shall start my analysis by answering the second question first, namely whether the fiscal nature of the post-insolvency tax notice is in any way relevant for the applicability of Regulation No 1346/2000 (A). Secondly, I will examine whether Regulation No 1346/2000 allows a national law providing for the forfeiture of claims not registered in insolvency proceedings or for the suspension of the enforcement of such claims in a different Member State (B).

A – *Question 2*

22. By its second preliminary question the referring court wishes to know whether the specific nature of the claim based on the post-insolvency tax notice is relevant for the assessment of the applicability of Regulation No 1346/2000.

23. The referring court uses the notion of 'fiscal claim' to refer to the claimant's tax obligations arising under Romanian law. It would thus appear that in this context 'fiscal' essentially means 'tax'. The referring court seems to assume that a fiscal claim should be treated differently because the respondent is a tax authority.

24. Similar to the position expressed by the Hungarian and Dutch Governments as well as by the Commission, I do not share that view.

25. The text of Regulation No 1346/2000 states quite clearly that it is applicable to both private and public law creditors without distinction. Article 39 recognises the right of 'any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, *including the tax authorities and social security authorities of Member States*, … to lodge claims in the insolvency proceedings in writing'.[3] The same is repeated in recital 21 of the regulation.[4]

26. Moreover, in factual terms, it is apparent from the order for reference that the respondent attempted to act (as regards the initial claims) and could have acted (as regards the post-insolvency tax notice) as a creditor within the usual meaning of that term in insolvency proceedings, that is, with a claim of its own to be lodged against the insolvent debtor.[5]

27. Therefore, I suggest that the answer that the Court should give to the second preliminary question is that the fiscal nature of an enforcement action which is pursued in a Member State other than the State in which insolvency proceedings are opened has no bearing on the applicability of Regulation No 1346/2000 to that enforcement action.

28. For the sake of clarity, it ought to be stressed that the neutrality of Regulation No 1346/2000 as regards its applicability to the claims of public and private law creditors does not affect the potentially preferential rights enjoyed by some categories of creditors in insolvency proceedings pursuant to relevant national law. The applicability of Regulation No 1346/2000, on the one hand, and substantive rights stemming from different national laws, on the other, are two separate issues. This case concerns the former and not the latter.

3 — Emphasis added.

4 — 'Every creditor, who has his habitual residence, domicile or registered office in the Community, should have the right to lodge his claims in each of the insolvency proceedings pending in the Community relating to the debtor's assets. This should also apply to *tax authorities and social insurance institutions*.' Emphasis added. See, by analogy, the Opinion of Advocate General Szpunar in Mulhaupt (C-195/15, EU:C:2016:369), confirming, in points 60 to 73, the applicability of Article 5 of Regulation No 1346/2000 to public law (fiscal) rights in rem and suggesting, in general, that nothing in that regulation allows for distinguishing between public law and private law claims in that particular context.

5 — Judgment of 17 November 2011 in *Zaza Retail* (C-112/10, EU:C:2011:743, paragraphs 31 to 34). In fact, in that judgment, the Court identified particular situations constituting exceptions in which a public authority would not fall under the notion of creditor within the meaning of Regulation No 1346/2000 (*a contrario*, in normal circumstances, it will). In *Zaza Retail* (C-112/10, EU:C:2011:743), the Court concluded that the Belgian Public Prosecution Service could not be classified as creditor empowered to request the opening of territorial insolvency proceedings under Article 3(4)(b) of Regulation No 1346/2000 because that authority intervened *in casu* neither as a creditor nor in the name of or on behalf of the creditors.

B – *Question 1*

29. By its first preliminary question, the referring court wishes to know whether Regulation No 1346/2000 allows for national legislation that provides for the forfeiture of claims that have not been duly registered in insolvency proceedings or for the suspension of enforcement of such claims in a different Member State. I will first assess the issue of forfeiture and suspension (i). Subsequently, I will examine whether Hungarian law, as the *lex concursus*, should also govern the effects of the insolvency proceedings on the enforcement action in Romania (ii).

i) Forfeiture of unregistered claims and suspension of their enforcement

30. The referring court suggests that in the present case, Hungarian law as the *lex concursus* should not provide for the forfeiture of a claim which is pursued in a different Member State. It is suggested that that would be incompatible with the possibility of opening secondary proceedings.[6] It would also allow the debtor to escape its national tax obligations.

31. It should be pointed out that the scope of Regulation No 1346/2000 is limited mainly to conflict of laws rules.[7] It contains only a few uniform rules. Those uniform rules that it does contain do not concern the consequences to be attached to a failure to register a claim in insolvency proceedings.

32. Within that legislative framework, it is for Member States to provide for the applicable rules governing the consequences to be attached to a failure to register a claim in insolvency proceedings, subject to the dual requirements of equivalence and effectiveness.[8] Both of those requirements will now be examined in turn.

33. The requirement of *equivalence* means that the provisions of national law relating to the participation of cross-border creditors in insolvency proceedings opened in Hungary are not less favourable than the conditions of participation applicable to domestic creditors.

34. Pursuant to Article 20(3) of Law XLIX of 1991, the forfeiture of an unregistered claim is triggered by the failure to register a claim within the appropriate time limit. Whether the claim was presented by a domestic or a cross-border creditor bears no significance in this regard.

35. Moreover, the order for reference does not contain any indication that creditors based in a Member State other than Hungary would be subject to less favourable treatment compared to domestic creditors regarding the registration of their claims in insolvency proceedings opened in Hungary or when participating in those proceedings.

36. It is true that in practical terms cross-border creditors may typically have to overcome obstacles stemming from the geographical distance and the linguistic and legal differences between the Member State in which the insolvency proceedings are opened and the Member State in which such creditors are based. However, this is an inherent feature of cross-border insolvency proceedings, similar to difficulties that parties may encounter in cross-border litigation.

6 — According to Recital 12, Article 3(2) and Article 27 of Regulation No 1346/2000, secondary proceedings can be opened in the Member State where the debtor has an establishment. Secondary proceedings run in parallel to the main insolvency proceedings opened in the Member State of the debtor's centre of main interests. Secondary proceedings thus constitute an exception to the universality of effects that the main insolvency proceedings triggers. As such, secondary proceedings have to be winding-up proceedings and their effects are limited to the assets located in the Member State in which they are opened. See also judgment of 11 June 2015 in *Comité d'entreprise de Nortel Networks and Others* (C-649/13, EU:C:2015:384, paragraphs 36 and 48 and the case-law cited).

7 — Judgment of 11 June 2015 in *Comité d'entreprise de Nortel Networks and Others* (C-649/13, EU:C:2015:384, paragraph 49); Opinion of Advocate General Kokott in *van Buggenhout and van de Mierop* (C-251/12, EU:C:2013:295, point 15).

8 — In the context of Regulation No 1346/2000 see judgment of 15 October 2015 in *Nike European Operations Netherlands* (C-310/14, EU:C:2015:690, paragraph 28 and the case-law cited).

37. Regulation No 1346/2000 actually addresses such concerns by requiring that cross-border creditors be notified and informed of the commencement of insolvency proceedings in another Member State (such as under Article 40), thus enhancing the overall efficiency of insolvency proceedings.

38. Finally, the facts of this case show that the respondent was duly informed about the insolvency proceedings and the applicable time limit for registering any claims. This is evidenced by the respondent's attempt to register the initial claims.

39. Under the requirement of *effectiveness*, Member States are prevented from making the exercise of rights conferred by Union law practically impossible or excessively difficult.

40. If the requirement of effectiveness is to be assessed independently from that of equivalence, and it is to be applied while respecting the default procedural autonomy of the Member States, then it ought to be properly limited to two instances: first, genuine impossibility and second, such a degree of inefficiency regarding enforcement of EU-law based rights so as to constitute a violation of the right to an effective remedy provided for in Article 47 of the Charter of Fundamental Rights of the European Union. For the latter category, the threshold is relatively high.

41. The Court has already stated that the existence of a time limit for the registration of a claim in insolvency proceedings is not per se incompatible with the principle of effectiveness. The setting of reasonable time limits satisfies the principle of effectiveness, and also constitutes a practical application of the principle of legal certainty. [9]

42. As already noted, the respondent was notified about the opening of the insolvency proceedings in Hungary. It was furthermore informed about the time limits within which it had to register possible claims such as the one that arose under the post-insolvency tax notice.

43. Again, the information provided for in the order for reference does not contain any element indicating that the respondent faced particular obstacles that would have made it either practically impossible or excessively difficult (in the sense outlined above) to register its claim arising under the post-insolvency tax notice and to participate in the insolvency proceedings opened in Hungary.

44. In light of the above, my first interim conclusion is that Regulation No 1346/2000 does not prevent a provision of national law, such as Article 20(3) of Law XLIX of 1991, providing for the forfeiture of claims that have not been duly registered in insolvency proceedings.

45. In addition, the wording of the first preliminary question refers not only to the *forfeiture* of unregistered claims but also to the *suspension* of the enforcement of such unregistered claims in another Member State. However, the Hungarian legislation outlined in the order for reference only provides for the forfeiture of unregistered claims. The referring Court has not provided any information on specific provisions of Hungarian law which entail the suspension of the enforcement of claims that have not been registered in insolvency proceedings.

46. Nevertheless, in the spirit of cooperation governing the preliminary ruling procedure, and in order to provide the national court with a full and helpful answer, I would add the following comments. I have already suggested that, in my view, Regulation No 1346/2000 allows for a *lex concursus* rule that has rather important legal effect: forfeiture of unregistered claims. If such a significant effect is permissible, then *a fortiori*, the same regulation should also permit a *lex concursus* rule which merely suspends related enforcement proceedings and which is likely to have a less significant effect on the parties' rights than outright forfeiture.

9 — See, by analogy, judgment of 18 September 2003 in *Pflücke* (C-125/01, EU:C:2003:477, paragraphs 35 to 36 and the case-law cited).

47. Therefore, it is my second interim conclusion that Regulation No 1346/2000 does not prevent a provision of *lex concursus* that provides for the suspension of the enforcement of claims that have not been registered in insolvency proceedings where the Member State in which enforcement will take place is different from the Member State in which insolvency proceedings have been commenced.

ii) Law governing the effects of insolvency proceedings on an enforcement action in a different Member State

48. The referring court has doubts as to whether the interpretation of Article 4(1), Article 4(2)(f) and Article 4(2)(k) of Regulation No 1346/2000 means that Hungarian law, as the *lex concursus*, should also govern the effects of the insolvency proceedings opened in Hungary on the enforcement action pending before it or whether such effects ought to be governed by Romanian law.

49. In order to clarify this issue, I will examine the elements that determine applicable law in the present case.

50. First, it is not contested that the insolvency proceedings in Hungary are the main insolvency proceedings within the meaning of Article 3(1) of Regulation No 1346/2000. As stated in Article 16(1) and confirmed by recital 22 of that regulation, the effects of those proceedings have to be, in principle, recognised in all the other Member States. [10]

51. Second, it can be understood from the order for reference that no secondary proceedings were opened in Romania.

52. Pursuant to Article 4(1) of Regulation No 1346/2000, Hungarian law is therefore the *lex concursus*. It follows from that provision as well as from recital 22 of the same regulation that Hungarian law therefore governs the conditions for the opening, conduct and closure of the insolvency proceedings including, under Article 4(2)(k), post-insolvency creditors' rights. This is an expression of the principle of the universal effects of the main insolvency proceedings. [11]

53. This principle nevertheless has some exceptions. With regard to those exceptions, the referring court points to Article 4(2)(f) of Regulation No 1346/2000 which provides that the law of the State of the opening of proceedings shall determine 'the effects of the insolvency proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending'.

54. Article 4(2)(f) has to be read in conjunction with Article 15 of Regulation No 1346/2000 pursuant to which 'the effects of insolvency proceedings on a lawsuit pending concerning an asset or a right of which the debtor has been divested shall be governed solely by the law of the Member State in which that lawsuit is pending'.

55. Thus, as the referring court suggests, if the enforcement action pending in Romania constitutes a 'lawsuit pending' within the meaning of those provisions, Romanian law rather than Hungarian law would, in the present case, be the applicable law. Romanian law would thus govern the effects of the Hungarian insolvency proceedings on that enforcement action.

56. Article 15 of Regulation No 1346/2000 can only be applied if two cumulative conditions are met: first, there must be a 'lawsuit'. Second, this lawsuit must be 'pending' at the moment the insolvency proceedings are opened.

10 — Subject to limited exceptions under Articles 25(3) and 26 of Regulation No 1346/2000.

11 — See in this sense, judgments of 21 January 2010 in *MG Probud Gdynia* (C-444/07, EU:C:2010:24, paragraphs 22 to 25), and 22 November 2012 in *Bank Handlowy and Adamiak* (C-116/11, EU:C:2012:739, paragraph 40 and the case-law cited).

57. The facts of this case indicate that the enforcement action in Romania was clearly *not* pending when the insolvency proceedings were commenced in Hungary: the enforcement proceedings in Romania started on 7 August 2013, based on the post-insolvency tax notice issued on 25 June 2013. That notice was issued on the basis of a tax control carried out between 5 and 25 June 2013. The insolvency proceedings in Hungary were opened in December 2012, that is, several months before any of those events took place.

58. That alone justifies the conclusion that the enforcement action in the present case does not fall under the exception carved out in Article 15 and Article 4(2)(f) of Regulation No 1346/2000.

59. However, for the sake of completeness, and taking into account the relative importance of the issue, a few concluding remarks will be made on the first condition, namely, the notion of 'lawsuit' used in Article 4(2)(f) and Article 15 of the Regulation No 1346/2000. In particular, should 'lawsuit' be understood as covering just 'proceedings on the substance', and/or also 'enforcement proceedings'?[12]

60. The importance of this interpretative issue is clear: if it is concluded that the notion of 'lawsuit' extends only to proceedings on the substance, then enforcement proceedings could never fall under the exception in Article 15 (and Article 4(2)(f) of Regulation No 1346/2000).

61. As to the text, Article 15 of Regulation No 1346/2000 is not the best example of clarity. Indeed, the wording of Article 15 is broad and, on its face, covers all court proceedings. The term 'lawsuit' could be understood as being generic,[13] referring to any kind of judicial proceedings, thus encompassing both proceedings on the substance and enforcement proceedings.

62. However, I consider that there are several reasons for which the assessment of the scope of Article 15 of Regulation No 1346/2000 should not stop with its ambiguous text. I would suggest interpreting the notion of 'lawsuit' under Article 15 as referring only to proceedings on the substance, but not covering enforcement proceedings.

63. First, there is the systemic argument. Article 15 is not a completely free-standing provision. Systematically, it is connected to Article 4(2)(f). The notion of 'lawsuit' must be therefore construed in the light of the relationship that exists between those two provisions.

64. Article 4(2)(f) distinguishes between 'proceedings brought by individual creditors', on the one hand, and 'lawsuits pending', on the other.[14] That distinction should also be of relevance for the interpretation of Article 15: if 'lawsuit' under Article 4(2)(f) excludes 'individual enforcement proceedings', this ought also to be the case for the interpretation of the same notion of 'lawsuit' in Article 15.

65. Second, it follows from Article 4(2) of Regulation No 1346/2000 that, as a general rule, only one applicable law (that is, the *lex concursus*) shall govern insolvency proceedings. That includes, by virtue of the first part of Article 4(2)(f), 'proceedings brought by individual creditors'.

12 — By the notion 'on the substance' I mean law-finding (or declaratory) proceedings whose object is to ascertain the rights and obligations of the parties concerned. These kinds of proceedings are referred to as being 'on the substance', thus using the same terminology as the Court in the judgment of 24 October 2013 in *LBI* (C-85/12, EU:C:2013:697, paragraph 54). Proceedings on the substance are distinct from enforcement proceedings — the latter occurring later in time and consisting of the mere execution of an already established title.

13 — Also confirmed by other language versions of the provision, which are equally generic: for example 'instance en cours' in French, 'anhängiger Rechtsstreit' in German, or 'probíhající soudní řízení' in Czech.

14 — The French, German and Czech language versions of that provision read respectively as follows: 'les effets de la procédure d'insolvabilité sur les poursuites individuelles, à l'exception des instances en cours'; 'wie sich die Eröffnung eines Insolvenzverfahrens auf Rechtsverfolgungsmaßnahmen einzelner Gläubiger auswirkt; ausgenommen sind die Wirkungen auf anhängige Rechtsstreitigkeiten'; 'účinky úpadkového řízení na řízení zahájená jednotlivými věřiteli, s výjimkou probíhajících soudních řízení'.

66. The wording of Article 4(2)(f) of Regulation No 1346/2000 ('*with the exception of* lawsuits pending') makes it clear that Article 15 constitutes an exception to the rule set forth in the first part of Article 4(2)(f). Therefore, being an exception, Article 15 ought to be interpreted narrowly and strictly. [15]

67. Third, Regulation No 1346/2000 aims at assembling the totality of the debtor's assets into one insolvency estate, thus preserving the system of the collective resolution of insolvency proceedings and the equal treatment of all creditors which underpins any insolvency proceeding. Subject to explicit exceptions provided for in Regulation No 1346/2000, that aim is incompatible with individual attempts by creditors to obtain satisfaction of their claims by means of procedural avenues outside of the insolvency proceedings.

68. The aim of maintaining the unity of the insolvency estate until the end of the insolvency proceedings is also reflected in Article 20(1) of Regulation No 1346/2000. That provision requires the creditor who obtains satisfaction of his claim on the assets belonging to the debtor situated within the territory of a Member State that is different from the State of the opening of proceedings to return what he has obtained to the liquidator.

69. An *enforcement action* consists of the realisation of the rights of one or more creditors and thus may harm the universality and collective resolution of insolvency proceedings. An *action on the substance* does not entail such a risk. It simply determines the rights and obligations relating to the debtor's assets without involving their realisation. [16]

70. Fourth, the suggestion that 'lawsuit' under Article 15 should be understood as referring only to proceedings on the substance but not enforcement proceedings is supported by the intent of the legislator evidenced in point 142 of the Virgos-Schmit Report on the Convention on Insolvency Proceedings ('the Convention'). [17] This document (which is considered as an unofficial guide on the interpretation of Regulation No 1346/2000) states that Article 4(2)(f) of the Convention (which corresponds to the same provision of Regulation No 1346/2000) distinguishes between the effects of insolvency proceedings on individual *enforcement* actions and those on lawsuits pending. It indicates that the effects of insolvency proceedings on individual *enforcement* actions are governed by the *lex concursus* so that the main insolvency proceedings prevent any individual enforcement action being brought by creditors against the debtor's assets. Conversely, the effects of the insolvency proceedings on other legal actions relating to the debtor's estate are governed by the law of the State where those actions are pending.

71. Fifth, the same legislative intent seems to be confirmed by Article 18 of Regulation (EU) 2015/848 [18], which constitutes the recast of Regulation No 1346/2000. That provision reproduces, in substance, Article 15 of Regulation No 1346/2000. The new wording of Article 15 (now Article 18) has extended its applicability also to arbitral proceedings. [19]

72. Similar to what the Hungarian Government pointed out at the hearing, I consider that this modification may be understood as reiterating the legislator's intention to limit the concept of 'lawsuit pending' to proceedings on the substance.

15 — See, by analogy, judgment of 24 October 2013 in *LBI* (C-85/12, EU:C:2013:697, paragraph 52).

16 — See, for example, Virgós, M., and Garcimartín, F., *The European Insolvency Regulation: Law and Practice*, Kluwer Law International, The Hague, 2004, p. 140, points 253 and 254. Similarly Pannen, K. (Ed.), *European Insolvency Regulation*, De Gruyter Recht, Berlin, 2007, p. 299.

17 — Virgos-Schmit, Report on the Convention on Insolvency Proceedings, available in Moss, G., Fletcher, I.F., and Isaacs S., *The EC Regulation on Insolvency proceedings A Commentary and Annotated Guide*, Second Edition, Oxford University Press, 2009, p. 381 et seq.

18 — Regulation of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19).

19 — Article 18 of Regulation 2015/848 reads as follows: 'The effects of insolvency proceedings on a pending lawsuit or *pending arbitral proceedings* concerning an asset or a right which forms part of a debtor's insolvency estate shall be governed solely by the law of the Member State in which that lawsuit is pending or in which *the arbitral tribunal has its seat*.' Emphasis added.

73. Finally, broader analogies can be drawn with other insolvency-related EU legislation to support this reading of Article 15. In the *LBI* case, the Court interpreted the notion of 'lawsuit pending' contained in Article 10(2)(e) of Directive 2001/24/EC [20] as covering only proceedings on the substance but not enforcement proceedings. The Court held that considering the latter as being covered by the notion of 'lawsuit pending' would call into question the effectiveness of the principle of the universality established by Directive 2001/24 because an enforcement action would reduce the availability of the assets of the credit institutions concerned. [21]

74. The same is true also for the interpretation of Article 15 of Regulation No 1346/2000. Article 10(2)(e) of Directive 2001/24 [22] is analogous to Article 4(2)(f) of Regulation No 1346/2000, while Article 32 of Directive 2001/24 [23] is similar to Article 15 of Regulation No 1346/2000.

75. It should nevertheless be acknowledged that the Court's interpretation in the *LBI* case relied on recital 30 of Directive 2001/24, which explicitly refers to 'lawsuits pending' as being distinct from 'individual *enforcement* actions'. [24]

76. While there is no such explicit distinction made in Regulation No 1346/2000, I do not think that the absence of a similar recital should lead to a different interpretation. Both Regulation No 1346/2000 and Directive 2001/24 use the term 'lawsuit pending' in the comparable circumstances of insolvency, on the one hand, and reorganisation and winding up of credit institutions, on the other.

77. In light of these arguments, I consider that the notion of 'lawsuit' under Article 15 of Regulation No 1346/2000 should be understood as referring only to proceedings on the substance but not to enforcement proceedings.

78. For the case at hand, this means that Hungarian law as the *lex concursus* should govern the effects of the opening of the insolvency proceedings on the enforcement action pending before the referring court.

79. By a way of a postscriptum, I add that if the *lex concursus* applicable in the present case leads indeed to the suspension of the enforcement action pending before the referring court, which is for that court to verify, such a consequence is hardly surprising given that the applicable laws of many Member States provide for some form of suspension or stay of enforcement actions relating to the debtor's assets upon the initiation of insolvency proceedings. [25]

20 — Directive of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (OJ 2001 L 125, p. 15).

21 — Judgment of 24 October 2013 in *LBI* (C-85/12, EU:C:2013:697, paragraphs 54 to 55).

22 — Article 10(2)(e) states that '[the law of the home Member State shall determine in particular] the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32'.

23 — Article 32 provides that 'the effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending'.

24 — 'The effects of reorganisation measures or winding-up proceedings on a lawsuit pending are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the *lex concursus*. The effects of those measures and proceedings *on individual enforcement actions* arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by this Directive.' Emphasis added.

25 — Cf. for example Article 89(1) Insolvenzordnung (Germany); Article 55(2) Ley Concursal 22/2003 (Spain); Articles L.622-21, II, L.631-14 and L.641-3 Code de commerce (France); Article 9(1), 11(2)(c), 38(1) A csődeljárásról és a felszámolási eljárásról szóló 1991. évi XLIX. törvény (Hungary); Articles 51, 168, 182bis and 201 Regio Decreto 16 marzo 1942, n. 267, 'Disciplina del fallimento, del concordato preventivo, dell'amministrazione controllata e della liquidazione coatta amministrativa'. (GU No 81 of 6 April 1942) (Italy). This general rule laying down a prohibition on the continuation of enforcement proceedings may be subject to exceptions depending on the type of insolvency proceedings, stage of enforcement and on the nature of the claim or the creditor. As noted in point 28 of this Opinion, this is a matter to be determined by each national system.

80. In light of the above, I suggest that the Court responds to the first preliminary question by holding that Regulation No 1346/2000 does not oppose a provision of *lex concursus* providing for the forfeiture of a claim that has not been registered by a creditor in insolvency proceedings opened in one Member State, or the suspension of the enforcement of that claim in another Member State.

V – Conclusion

81. In light of the foregoing considerations, I propose that the Court answer the questions referred to it by Tribunalul Mureș, Secția civilă (Regional Court, Mureș, Civil Chamber) as follows:

(1) Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings does not oppose a provision of *lex concursus* providing for the forfeiture of a claim that has not been registered by a creditor in insolvency proceedings opened in one Member State, or the suspension of the enforcement of that claim in another Member State.

(2) The fiscal nature of an enforcement action which is pursued in a Member State other than the State in which insolvency proceedings are opened has no bearing on the applicability of Regulation No 1346/2000.