



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

24 March 2022*

(Reference for a preliminary ruling – Regulation (EU) 2015/848 – Insolvency proceedings – Article 3(1) – International jurisdiction – Moving of the centre of a debtor’s main interests to another Member State after a request to open main insolvency proceedings has been lodged)

In Case C-723/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 17 December 2020, received at the Court on 29 December 2020, in the proceedings

Galapagos BidCo. Sàrl

v

DE, in its capacity as liquidator of Galapagos SA,

Hauck Aufhäuser Fund Services SA,

Prime Capital SA,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, I. Jarukaitis (Rapporteur), M. Ilešič, D. Gratsias and Z. Csehi, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Galapagos BidCo. Sàrl, by W. Nassall, Rechtsanwalt,
- DE, acting as liquidator of Galapagos SA, by C. van de Sande, Rechtsanwalt,
- Hauck Aufhäuser Fund Services SA and Prime Capital SA, by R. Hall, Rechtsanwalt,

* Language of the case: German.

– the German Government, by J. Möller, M. Hellmann and U. Bartl, acting as Agents,
– the European Commission, by S. Grünheid and S. Noë, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ 2015 L 141, p. 19).
- 2 The request has been made in proceedings between Galapagos BidCo. Sàrl, on the one hand, and DE, in its capacity as liquidator of Galapagos SA, Hauck Aufhäuser Fund Services SA and Prime Capital SA, on the other, concerning a request to open insolvency proceedings in respect of Galapagos in Germany.

Legal context

European Union law

The Withdrawal Agreement

- 3 Article 67(3) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7; ‘the Withdrawal Agreement’) provides:

‘In the United Kingdom [of Great Britain and Northern Ireland], as well as in the Member States in situations involving the United Kingdom, the following provisions shall apply as follows:

...

- (c) [Regulation 2015/848] shall apply to insolvency proceedings, and actions referred to in Article 6(1) of that Regulation, provided that the main proceedings were opened before the end of the transition period;

...’

- 4 Article 126 of the Withdrawal Agreement provides:

‘There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.’

Regulation (EC) No 1346/2000

- 5 Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (O) 2000 L 160, p. 1), which was repealed by Regulation 2015/848, provided:

‘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.’

Regulation 2015/848

- 6 Recitals 1, 3, 5, 8, 23, 27, 29, 33 and 65 of Regulation 2015/848 state:

‘(1) On 12 December 2012, the [European] Commission adopted a report on the application of [Regulation No 1346/2000]. The report concluded that the Regulation is functioning well in general but that it would be desirable to improve the application of certain of its provisions in order to enhance the effective administration of cross-border insolvency proceedings. Since that Regulation has been amended several times and further amendments are to be made, it should be recast in the interest of clarity.

...

(3) The proper functioning of the internal market requires that cross-border insolvency proceedings should operate efficiently and effectively. ...

...

(5) 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 (forum shopping).

...

(8) In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States.

...

(23) This Regulation enables the main insolvency proceedings to be opened in the Member State where the debtor has the centre of its main interests. Those proceedings have universal scope and are aimed at encompassing all the debtor’s assets. ...

...

(27) Before opening insolvency proceedings, the competent court should examine of its own motion whether the centre of the debtor's main interests or the debtor's establishment is actually located within its jurisdiction.

...

(29) This Regulation should contain a number of safeguards aimed at preventing fraudulent or abusive forum shopping.

...

(33) In the event that the court seised of the request to open insolvency proceedings finds that the centre of main interests is not located on its territory, it should not open main insolvency proceedings.

...

(65) This Regulation should provide for the immediate recognition of judgments concerning the opening, conduct and closure of insolvency proceedings which fall within its scope, and of judgments handed down in direct connection with such insolvency proceedings. Automatic recognition should therefore mean that the effects attributed to the proceedings by the law of the Member State in which the proceedings were opened extend to all other Member States. The recognition of judgments delivered by the courts of the Member States should be based on the principle of mutual trust. To that end, grounds for non-recognition should be reduced to the minimum necessary. This is also the basis on which any dispute should be resolved where the courts of two Member States both claim competence to open the main insolvency proceedings. The decision of the first court to open proceedings should be recognised in the other Member States without those Member States having the power to scrutinise that court's decision.'

7 According to Article 2(7) of that regulation, for the purposes of that regulation, the 'judgment opening insolvency proceedings' means a judgment which includes the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings and the decision of a court to appoint an insolvency practitioner.

8 Article 3 of Regulation No 1346/2000, headed 'International jurisdiction', provides:

'1. 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.

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. ...

2. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if it possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

3. Where insolvency proceedings have been opened in accordance with paragraph 1, any proceedings opened subsequently in accordance with paragraph 2 shall be secondary insolvency proceedings.

...’

9 Article 4 of that regulation, headed ‘Examination as to jurisdiction’, provides, in paragraph 1:

‘A court seised of a request to open insolvency proceedings shall of its own motion examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2).’

10 Article 19(1) of Regulation No 2015/848 provides:

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

The dispute in the main proceedings and the questions referred for a preliminary ruling

11 Galapagos is a holding company with its registered office in Luxembourg. In June 2019, it decided to move its central administration to Fareham (United Kingdom). On 22 August 2019, its directors, who had been appointed on 13 June 2019, lodged a request to open insolvency proceedings before the High Court of Justice (England and Wales), Chancery Division (Business and Property Courts, Insolvency and Companies List), United Kingdom (‘the High Court’). However, the following day, those directors were removed at the instigation of a group of creditors holding a share pledge and were replaced by a new director. The latter set up an office in Düsseldorf (Germany) for Galapagos and instructed the lawyers representing Galapagos to withdraw the request to open insolvency proceedings. However, that withdrawal did not take place because a group of creditors had joined that request. The High Court was yet to deliver a decision on that request on 17 December 2020, the date on which the request for a preliminary ruling was lodged.

12 On 23 August 2019, Galapagos lodged another request to open insolvency proceedings, this time before the Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany), which, by order made on the same day, appointed DE as the temporary insolvency administrator and ordered preservation measures. However, on 6 September 2019, that court, hearing an immediate appeal brought by creditors, revoked its order and dismissed Galapagos’s request as inadmissible on the ground that it lacked jurisdiction.

13 On 6 September 2019, Hauck Aufhäuser Fund Services and Prime Capital, two other companies which are creditors of Galapagos, lodged another request to open insolvency proceedings with the Amtsgericht Düsseldorf (Local Court, Düsseldorf). By order of 9 September 2019, that court again appointed DE as temporary insolvency administrator and issued an order for interim measures, taking the view that the centre of Galapagos’s main interests was in Düsseldorf when that request was made.

- 14 Galapagos Bidco., which is both a subsidiary and a creditor of Galapagos, brought an immediate appeal before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) in its capacity as creditor by which it sought to have the order of 9 September 2019 set aside, arguing that the Amtsgericht Düsseldorf (Local Court, Düsseldorf) did not have international jurisdiction, since Galapagos's central administration had been transferred to Fareham in June 2019. That appeal was dismissed by order of 30 October 2019, and Galapagos BidCo. then brought an appeal before the Bundesgerichtshof (Federal Court of Justice, Germany), the referring court.
- 15 That court states that the appellate court concluded that the Amtsgericht Düsseldorf (Local Court, Düsseldorf) was correct in accepting that it had international jurisdiction, as it found that the centre of Galapagos's main interests was in Germany on 9 September 2019. That appellate court also took the view that the request to open insolvency proceedings brought before the High Court did not prevent it from having such jurisdiction, since, in its opinion, the principle that the international jurisdiction of a court may not be avoided by transferring the centre of main interests to another Member State between the request to open insolvency proceedings and the opening of such proceedings relates only to the court originally seised continuing to have jurisdiction and has no effect on the jurisdiction of other courts seised subsequently.
- 16 The referring court states that the outcome of the appeal before it depends on the interpretation of Article 3(1) of Regulation 2015/848. In the first place, in its view, the appeal court erred in law in finding that the centre of Galapagos's main interests was located in Germany if Article 3(1) of that regulation must be interpreted as meaning that a company that has its registered office in a first Member State must be regarded as not having the centre of its main interests in a second Member State within the territory of which its central administration is situated, in the case where the company has moved its central administration from a third Member State to the second Member State at a time when a request to open insolvency proceedings has been lodged previously in the third Member State and a decision on that request has not yet been delivered.
- 17 It notes, in that regard, that the second sentence of the first subparagraph of Article 3(1) of Regulation 2015/848 states that the centre of main interests is to be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. It observes that, in its case-law on Regulation No 1346/2000, the Court concluded that preference should be given to the identifiable place of the central administration of the company concerned. Therefore, it takes the view that the finding of the appeal court that Galapagos had its centre of main interests in Germany at the beginning of September 2019 should be upheld.
- 18 The referring court is uncertain, however, whether, following the recast of Regulation No 1346/2000 by Regulation No 2015/848, it is necessary, when determining the centre of main interests of a debtor company and in order to prevent abusive conduct in circumstances such as those of the dispute before it, to impose specific requirements in order to consider that the moving of the centre of main interests to another Member State must be taken into account.
- 19 In the second place, according to the referring court, the appeal court erred in law in finding that the international jurisdiction of the German courts stems from the fact that the centre of main interests of Galapagos was situated on German territory in September 2019, if Article 3(1) of Regulation 2015/848 must be interpreted as meaning that, first, the courts of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the request to open insolvency proceedings is lodged retain international jurisdiction to open those proceedings if the debtor moves the centre of its main interests to the territory of another Member State after lodging that request but before the decision those insolvency proceedings are

opened, and, second, such continuing international jurisdiction of the courts of a Member State initially seised excludes the jurisdiction of the courts of another Member State to hear and determine further requests to open main insolvency proceedings.

- 20 In that regard, the referring court observes, first of all, that the Court, in the judgment of 17 January 2006, *Staubitz-Schreiber* (C-1/04, EU:C:2006:39), interpreted Article 3(1) of Regulation No 1346/2000 as meaning that the court of the Member State within the territory of which the centre of the debtor's main interests was situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor has moved the centre of its main interests to the territory of another Member State after lodging that request but before the proceedings are opened. It is uncertain, however, whether, in view of the recast of that regulation by Regulation 2015/848, that case-law is still relevant.
- 21 Next, the referring court notes that it is apparent from Regulation 2015/848 and the case-law of the Court that only one set of main insolvency proceedings may be opened and that all the Member States are bound by the decision opening such proceedings, with the result that the international jurisdiction provided for in Article 3(1) of that regulation is supposed to constitute exclusive jurisdiction. According to that court, if the continuing jurisdiction of the court originally seised does not exclude the international jurisdiction of the courts of another Member State to hear and determine further requests to open insolvency proceedings, such a court seised at a later stage could open main insolvency proceedings, by a decision which would be binding on the court originally seised, with the result that the latter could no longer open the main insolvency proceedings, which could deprive of its practical effectiveness the continuing exclusive international jurisdiction resulting from Article 3 of Regulation 2015/848 and the case-law of the Court.
- 22 Finally, the referring court states that, in the context of the action before it, it must proceed on the assumption that, on the date on which the request to open insolvency proceedings was brought before the High Court, the international jurisdiction of the United Kingdom courts to open main insolvency proceedings was established under Article 3(1) of Regulation 2015/848, since, according to the facts underlying that action, the centre of Galapagos's main interests was situated in the United Kingdom on that date.
- 23 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
1. Is Article 3(1) of [Regulation 2015/848] to be interpreted as meaning that a debtor company the statutory seat of which is situated in a Member State does not have the centre of its main interests in a second Member State in which the place of its central administration is situated, as can be determined on the basis of objective factors ascertainable by third parties, in the case where, in circumstances such as those in the main proceedings, the debtor company has moved that place of central administration from a third Member State to the second Member State at a time when a request to have the main insolvency proceedings opened in respect of its assets has been lodged in the third Member State and a decision on that request has not yet been delivered?
 2. If Question 1 is answered in the negative: Is Article 3(1) of [Regulation 2015/848] to be interpreted as meaning that:

- (a) the courts of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to have insolvency proceedings opened retain international jurisdiction to open those proceedings if the debtor moves the centre of its main interests to the territory of another Member State after lodging the request but before the decision opening insolvency proceedings is delivered, and
- (b) such continuing international jurisdiction of the courts of one Member State excludes the jurisdiction of the courts of another Member State in respect of further requests to have the main insolvency proceedings opened received by a court of that other Member State after the debtor has moved its centre of main interests to that other Member State?

Consideration of the questions referred

The second question

- 24 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the court of a Member State with which a request to open main insolvency proceedings has been lodged retains exclusive jurisdiction to open such proceedings where the centre of the debtor's main interests is moved to another Member State after that request has been lodged, but before that court has delivered a decision on it.
- 25 As a preliminary point, it should be noted that the Court is not asked to give a ruling on the characterisation or the consequences, for the purpose of applying Article 3(1) of Regulation 2015/848, of moving the centre of the debtor's main interests before lodging the initial request to open insolvency proceedings where that move takes place very shortly before the request is lodged. The referring court stated, as is recalled in paragraph 22 of the present judgment, that it must, in essence, for procedural reasons, proceed on the assumption that, on the date on which the request to open insolvency proceedings in respect of Galapagos was lodged before the High Court, that centre was located in the United Kingdom.
- 26 Since the referring court is uncertain, in the context of that question, specifically whether the Court's case-law on the interpretation of Article 3(1) of Regulation No 1346/2000 and, in particular, the interpretation of that regulation given by the Court in the judgment of 17 January 2006, *Staubitz-Schreiber* (C-1/04, EU:C:2006:39), are relevant for the purpose of interpreting Article 3(1) of Regulation 2015/848, it is appropriate to start by noting that, as is apparent from recital 1 thereof, that regulation is a recast of Regulation No 1346/2000, which had been amended a number of times. First, much like the latter, one of the objectives of Regulation No 2015/848 – as is apparent from recital 8 thereof – is to improve the efficiency and effectiveness of insolvency proceedings having cross-border effects as it contains, in a measure that is binding and directly applicable in all Member States, provisions on jurisdiction, recognition and the applicable law in that area.
- 27 In addition, as was the case with Regulation No 1346/2000, Regulation 2015/848 pursues, inter alia, the objective, set out in recital 5 thereof, of avoiding, for the proper functioning of the internal market, 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 (forum shopping). To that end, it seeks in particular, as is clear from recital 29 thereof, to establish safeguards aimed at preventing fraudulent or abusive forum shopping.

- 28 Second, Article 3(1) of Regulation 2015/848 provides, like Article 3(1) of Regulation No 1346/2000, that the courts of the Member State within the territory of which the centre of the debtor's main interests is situated are to have jurisdiction to open insolvency proceedings.
- 29 Consequently, the Court's case-law on the interpretation of the rules laid down by Regulation No 1346/2000 on international jurisdiction remains relevant for the purpose of interpreting Article 3(1) of Regulation 2015/848 (see, to that effect, judgment of 16 July 2020, *Novo Banco*, C-253/19, EU:C:2020:585, paragraph 20).
- 30 Therefore, it is appropriate to find that Article 3(1) of Regulation 2015/848 confers exclusive jurisdiction to open main insolvency proceedings on the courts of the Member State within the territory of which the centre of the debtor's main interests is situated (see, by analogy, judgments of 15 December 2011, *Rastelli Davide and C.*, C-191/10, EU:C:2011:838, paragraph 27, and of 14 November 2018, *Wiemer & Trachte*, C-296/17, EU:C:2018:902, paragraph 23).
- 31 In addition, as the referring court notes, the Court held, in the judgment of 17 January 2006, *Staubitz-Schreiber* (C-1/04, EU:C:2006:39), that the court of the Member State within the territory of which the centre of the debtor's main interests is situated at the time when the debtor lodges the request to open insolvency proceedings retains jurisdiction to open those proceedings if the debtor moves the centre of his or her main interests to the territory of another Member State after lodging the request but before the proceedings are opened.
- 32 In that regard, the Court recalled, inter alia, in paragraph 25 of that judgment, that the objective of Regulation No 1346/2000, which is identical to that pursued now by Regulation 2015/848, is to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another, seeking to obtain a more favourable legal position, and found that that objective would not be achieved if the debtor could move the centre of his or her main interests to another Member State between the time when the request to open insolvency proceedings was lodged and the time when the judgment opening the proceedings was delivered and thus determine the court having jurisdiction and the applicable law. The Court found, in paragraph 26 of that judgment, that such a transfer of jurisdiction would also be contrary to the objective, now set out in recitals 3 and 8 of Regulation 2015/848, of efficient and effective cross-border proceedings, as it would oblige creditors to be in continual pursuit of the debtor wherever he or she chose to establish himself or herself more or less permanently and would often mean in practice that the proceedings would be prolonged.
- 33 As regards the question whether the fact that the court of a Member State initially seised continues to have jurisdiction has the effect of excluding the jurisdiction of the courts of another Member State to hear new requests to open main insolvency proceedings, it must be found, first of all, that it is apparent from Article 3 of Regulation 2015/848 that only one set of main proceedings may be opened and that those proceedings have effects in all the Member States in which that regulation is applicable (see, by analogy, judgment of 2 May 2006, *Eurofood IFSC*, C-341/04, EU:C:2006:281, paragraph 52).
- 34 Next, in accordance with Article 4(1) of Regulation 2015/848, read in the light of recital 27 thereof, it is for the court of a Member State seised of a request to open main insolvency proceedings to examine of its own motion whether it has jurisdiction and, for that purpose, to verify that the centre of the debtor's main interests, within the meaning of Article 3 of that regulation, is situated in that Member State (see, by analogy, judgment of 2 May 2006, *Eurofood IFSC*,

C-341/04, EU:C:2006:281, paragraph 41). Recital 33 of that regulation states, moreover, that, in the event that the court seised of such a request finds that the centre of main interests is not located on its territory, it is not to open main insolvency proceedings.

- 35 Under Article 19(1) of Regulation 2015/848, any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 of that regulation is to be recognised in all other Member States from the moment that it becomes effective in the Member State of the opening of proceedings. That recognition is based, as is stated in recital 65 of that regulation, on the principle of mutual trust, which requires that the courts of the other Member States recognise the decision opening such proceedings, without being able to review the assessment made by the first court as to its jurisdiction (see, by analogy, judgment of 2 May 2006, *Eurofood IFSC*, C-341/04, EU:C:2006:281, paragraph 42).
- 36 It follows from all those findings that the court of a Member State with which a request to open main insolvency proceedings has been lodged retains exclusive jurisdiction to open such proceedings where the centre of the debtor's main interests is moved to another Member State after that request is lodged, but before that court has delivered a decision on that request, and that, consequently, where a request is lodged subsequently for the same purpose before a court of another Member State, that court cannot, in principle, declare that it has jurisdiction to open such proceedings until the first court has delivered its decision and declined jurisdiction.
- 37 In the case in the main proceedings, it appears to be common ground that, before the request was lodged with the Amtsgericht Düsseldorf (Local Court, Düsseldorf), a request to open main insolvency proceedings in respect of Galapagos had been lodged before the High Court. Therefore, in order to assess the validity of the decision of the Amtsgericht Düsseldorf (Local Court, Düsseldorf) to accept that it has international jurisdiction, the referring court will have to take account of the effects of the lodging of that request before the High Court, in the light of the findings set out in the present judgment.
- 38 That said, account must also be taken of the fact that, under Article 67(3)(c) of the Withdrawal Agreement, Regulation 2015/848 is to apply in the United Kingdom, as well as in the Member States in situations involving the United Kingdom, to insolvency proceedings provided that the main proceedings were opened before the end of the transition period laid down in Article 126 of that agreement.
- 39 Consequently, if it were to be held, in the present case, that, on the date on which that transition period ends, namely 31 December 2020, the High Court was still yet to deliver its decision on the request to open main insolvency proceedings, it would follow that Regulation No 2015/848 would no longer require that, as a result of that request, a court of a Member State, within the territory of which the centre of Galapagos's main interests was situated, refrain from declaring that it has jurisdiction to open such proceedings.
- 40 Having regard to all of those findings, the answer to the second question is that Article 3(1) of Regulation 2015/848 must be interpreted as meaning that the court of a Member State with which a request to open main insolvency proceedings has been lodged retains exclusive jurisdiction to open such proceedings where the centre of the debtor's main interests is moved to another Member State after that request has been lodged, but before that court has delivered a decision on it. Consequently, in so far as that regulation is still applicable to that request, the

court of another Member State with which another request is lodged subsequently for the same purpose cannot, in principle, declare that it has jurisdiction to open main insolvency proceedings until the first court has delivered its decision and declined jurisdiction.

The first question

- 41 By its first question, the referring court asks, in essence, whether Article 3(1) of Regulation 2015/848 must be interpreted as meaning that it can be concluded that the centre of a debtor's main interests is situated in the Member State within the territory of which its central administration is situated when that administration was transferred from another Member State after a request to open main insolvency proceedings has been lodged in the latter Member State and a decision has not yet been delivered on that request.
- 42 It follows from the answer provided in response to the second question that the court of a Member State hearing a request to open main insolvency proceedings does not, in such circumstances, have to examine whether the centre of the debtor's main interests is situated in that Member State.
- 43 In those circumstances, there is no need to answer the first question.

Costs

- 44 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 3(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings must be interpreted as meaning that the court of a Member State with which a request to open main insolvency proceedings has been lodged retains exclusive jurisdiction to open such proceedings where the centre of the debtor's main interests is moved to another Member State after that request has been lodged, but before that court has delivered a decision on it. Consequently, in so far as that regulation is still applicable to that request, the court of another Member State with which another request is lodged subsequently for the same purpose cannot, in principle, declare that it has jurisdiction to open main insolvency proceedings until the first court has delivered its decision and declined jurisdiction.

[Signatures]