



Reports of Cases

Case C-723/20

Galapagos BidCo. S.a.r.l.

v

DE, as liquidator of Galapagos S.A. and Others

(Request for a preliminary ruling from the Bundesgerichtshof)

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)

Judicial cooperation in civil matters – Insolvency proceedings – Regulation 2015/848 – International jurisdiction to open insolvency proceedings – Courts of the Member State of the centre of a debtor’s main interests when the request to open proceedings is lodged – Moving of the centre of main interests to another Member State before a decision on the opening of those proceedings has been delivered – Court of another Member State with which another request is lodged subsequently for the same purpose – Continuing exclusive jurisdiction – Agreement on the withdrawal of the United Kingdom – Consequence of the transition period ending

(European Parliament and Council Regulation 2015/848, Art. 3(1))

(see paragraphs 29-31, 33-36, 38-40, operative part)

Résumé

Galapagos, a holding company with its registered office in Luxembourg, moved its central administration to Fareham (United Kingdom) in June 2019. On 22 August 2019, its directors lodged a request to open insolvency proceedings before a court of the United Kingdom.¹ The following day, those directors were replaced by a new director, who set up an office in Düsseldorf (Germany) for Galapagos and sought, unsuccessfully, to have that request withdrawn.

Subsequently, Galapagos lodged another request to open insolvency proceedings in respect of itself, this time before the Amtsgericht Düsseldorf (Local Court, Düsseldorf, Germany), which was held to be inadmissible on the ground that that court did not have international jurisdiction. Another request to open insolvency proceedings, this time from two other companies that are creditors of Galapagos, was then lodged with that same court. Further to that request, the Amtsgericht Düsseldorf (Local Court, Düsseldorf) appointed a temporary insolvency administrator and ordered interim measures, taking the view that the centre of Galapagos’ main interests was in Düsseldorf when that request was lodged.

¹ In the present case, the High Court of Justice (England and Wales), Chancery Division (Business and Property Courts, Insolvency and Companies List), United Kingdom.

Galapagos Bidco., which is both a subsidiary and a creditor of Galapagos, brought an immediate appeal before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany) seeking to have the order of the Amtsgericht Düsseldorf (Local Court, Düsseldorf) set aside on the ground that the German courts did not have international jurisdiction. That appeal having been dismissed, Galapagos BidCo. brought an appeal before the Bundesgerichtshof (Federal Court of Justice, Germany), the referring court.

The referring court states that the outcome of the appeal before it depends on the interpretation of Regulation 2015/848² and, in particular, on the article thereof relating to the rules covering the international jurisdiction of the courts of Member States to hear and determine insolvency proceedings.³ Stating that, on the date on which it lodged the request for a preliminary ruling with the Court, the court of the United Kingdom was still yet to deliver its decision on the first request, the referring court is uncertain, in particular, whether the court of a Member State initially seised continues to have exclusive jurisdiction over a request to open main insolvency 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 it.

By its judgment, the Court interprets Regulation 2015/848 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. Thus, in so far as that regulation is still applicable to the first request, a 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.

Findings of the Court

At the outset, the Court finds, as regards the international jurisdiction of the courts of Member States to hear and determine insolvency proceedings, that Regulation 2015/848, which is applicable in the present case, pursues in the same terms the same objectives as the preceding Regulation No 1346/2000.⁴ Consequently, the Court's case-law on the interpretation of the rules established by Regulation No 1346/2000 regarding international jurisdiction remains relevant for the purpose of interpreting the corresponding article of Regulation 2015/848, which is the subject of the reference for a preliminary ruling.

Thus, the exclusive jurisdiction conferred by those regulations on the courts of the Member State within the territory of which the debtor has the centre of its main interests remains with those courts where that debtor moves the centre of its main interests to another Member State after a request has been lodged, but before the proceedings are opened. The Court arrives at that conclusion by making reference to the findings made in its earlier case-law.⁵

² 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).

³ Article 3(1) of Regulation 2015/848. In essence, that provision provides that the courts with jurisdiction to open main insolvency proceedings are the courts of the Member State within the territory of which the centre of the debtor's main interests is situated.

⁴ Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1), which was repealed by Regulation 2015/848.

⁵ Judgment of 17 January 2006, *Staubitz-Schreiber* (C-1/04, EU:C:2006:39).

Next, the Court examines the consequences of the court of a Member State initially seised continuing to have jurisdiction on the jurisdiction of the courts of another Member State to hear and determine further requests to open main insolvency proceedings. It states that it is apparent from Regulation 2015/848 that only one set of main insolvency proceedings may be opened and that they are effective in all the Member States in which that regulation is applicable. Moreover, it is for the court initially seised 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 is situated within the territory of its own Member State. If it is not, the court initially seised must not open main insolvency proceedings. On the other hand, if that verification confirms that it does have jurisdiction, any decision to open insolvency proceedings delivered by that court is, in accordance with the principle of mutual trust, to be recognised in all the other Member States from the moment that it becomes effective in the Member State of the opening of proceedings. Therefore, the courts of those Member States cannot, in principle, declare that they have jurisdiction to open such proceedings until the first court has delivered its decision and declined jurisdiction.

However, where the court initially seised is a court in the United Kingdom, if, at the end of the transition period provided for in 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,⁶ that court has not yet delivered its decision, Regulation 2015/848 no longer requires a court of a Member State, within the territory of which the centre of Galapagos' main interests is situated, to refrain from declaring that it has jurisdiction to open such proceedings.

⁶ OJ 2020 L 29, p. 7.