Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

11 June 2015*

(Reference for a preliminary ruling — Regulation (EC) No 1346/2000 — Articles 2(g), 3(2) and 27 — Regulation (EC) No 44/2001 — Judicial cooperation in civil matters — Main insolvency proceedings — Secondary insolvency proceedings — Conflict of jurisdiction — Exclusive or concurrent jurisdiction — Determination of the applicable law — Determination of the debtor's assets falling within the secondary insolvency proceedings — Determination of the location of those assets — Assets situated in a third State)

In Case C-649/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal de commerce de Versailles (France), made by decision of 21 November 2013, received at the Court on 6 December 2013, in the proceedings

**Comité d'entreprise de Nortel Networks SA and Others**

v

**Cosme Rogeau**, acting as court-appointed liquidator in the secondary insolvency proceedings in respect of Nortel Networks SA,

and

**Cosme Rogeau**, acting as court-appointed liquidator in the secondary insolvency proceedings in respect of Nortel Networks SA,

v

**Alan Robert Bloom,**

**Alan Michael Hudson,**

**Stephen John Harris,**

**Christopher John Wilkinson Hill,**

acting as joint administrators in the main insolvency proceedings in respect of Nortel Networks SA,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, M. Berger (Rapporteur) and F. Biltgen, Judges,

* Language of the case: French.

Advocate General: P. Mengozzi,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 6 November 2014,

after considering the observations submitted on behalf of:

— comité d'entreprise de Nortel Networks SA and Others, by R. Dammann and M. Boché-Robinet, avocats,

— Mr Rogeau, acting as court-appointed liquidator in the secondary insolvency proceedings in respect of Nortel Networks SA, by A. Tchekhoff and E. Fabre, avocats,

— Mr Bloom, Mr Hudson, Mr Harris and Mr Wilkinson Hill, acting as joint administrators in the main insolvency proceedings in respect of Nortel Networks SA, by C. Dupoirier, avocat,

— the French Government, by F.-X. Bréchot and D. Colas, acting as Agents,

— the United Kingdom Government, by L. Christie, acting as Agent, and B. Kennelly, Barrister,

— the European Commission, by M. Wilderspin, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 29 January 2015,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2(g), 3(2) and 27 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1).

2 The request has been made in the context of (i) an action brought by comité d'entreprise de Nortel Networks SA ('NNSA') (the works council of NNSA) and others against Mr Rogeau, acting as court-appointed liquidator in the secondary insolvency proceedings opened in France in respect of NNSA ('the secondary proceedings'), seeking, inter alia, the making of a severance payment, and (ii) an action brought by Mr Rogeau, acting as court-appointed liquidator in the secondary proceedings, seeking that Mr Bloom, Mr Hudson, Mr Harris and Mr Wilkinson Hill, acting as joint administrators ('the joint administrators') in the main insolvency proceedings opened in the United Kingdom in respect of NNSA ('the main proceedings'), be joined as third parties.

## Legal context

*Regulation No 1346/2000*

3 Recitals 6 and 23 in the preamble to Regulation No 1346/2000 state:

'(6) In accordance with the principle of proportionality this Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings. In addition, this Regulation should contain provisions regarding the recognition of those judgments and the applicable law which also satisfy that principle.

...

(23) This Regulation should set out, for the matters covered by it, uniform rules on conflict of laws which replace, within their scope of application, national rules of private international law. Unless otherwise stated, the law of the Member State of the opening of the proceedings should be applicable (*lex concursus*). This rule on conflict of laws should be valid both for the main proceedings and for local proceedings; the *lex concursus* determines all the effects of the insolvency proceedings, both procedural and substantive, on the persons and legal relations concerned. It governs all the conditions for the opening, conduct and closure of the insolvency proceedings.'

4 Article 2 of Regulation No 1346/2000, headed 'Definitions', provides:

'For the purposes of this Regulation:

...

(g) "the Member State in which assets are situated" shall mean, in the case of:

— tangible property, the Member State within the territory of which the property is situated,

— property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept,

— claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1);

...'

5 Article 3 of the regulation, headed 'International jurisdiction', provides:

'1. 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.

2. Where the centre of a 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 he 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.

…’

6 Article 25 of the regulation, headed ‘Recognition and enforceability of other judgments’, provides:

‘1. Judgments handed down by a court whose judgment concerning the opening of proceedings is recognised … and which concern the course and closure of insolvency proceedings, and compositions approved by that court shall also be recognised with no further formalities. Such judgments shall be enforced in accordance with Articles 31 to 51, with the exception of Article 34(2), of the … Convention [of 27 September 1968] on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters [(OJ 1978 L 304, p. 36), as amended by the successive conventions relating to the accession of new Member States to that convention].

The first subparagraph shall also apply to judgments deriving directly from the insolvency proceedings and which are closely linked with them, even if they were handed down by another court.

…

2. The recognition and enforcement of judgments other than those referred to in paragraph 1 shall be governed by the Convention referred to in paragraph 1, provided that that Convention is applicable.’

…’

7 Article 27 of the regulation, headed ‘Opening of proceedings’, provides:

‘The opening of the proceedings referred to in Article 3(1) by a court of a Member State and which is recognised in another Member State (main proceedings) shall permit the opening in that other Member State, a court of which has jurisdiction pursuant to Article 3(2), of secondary insolvency proceedings ... Their effects shall be restricted to the assets of the debtor situated within the territory of that other Member State.’

*Regulation (EC) No 44/2001*

8 Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) defines the scope of that regulation as follows:

‘1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

2. The Regulation shall not apply to:

…

(b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

…’

**The proceedings before the referring court and the question referred for a preliminary ruling**

9 The Nortel group was a provider of technical solutions for telecommunications networks. Nortel Networks Limited ('NNL'), established in Mississauga (Canada), held the majority of the Nortel group's worldwide subsidiaries, including NNSA, established in Yvelines (France).

10 Almost all the intellectual property resulting from the research and development activities of the Nortel group's specialist subsidiaries was registered, mainly in North America, in the name of NNL, which granted those subsidiaries, including NNSA, free exclusive licences to exploit the group's intellectual property. Those subsidiaries were also to retain beneficial ownership of that intellectual property, in a proportion based on their respective contributions. An intra-group agreement, known as the 'Master R&D Agreement' ('the MRDA'), organised the legal relationships between NNL and those subsidiaries.

11 Since the Nortel group was experiencing serious financial difficulties in 2008, its executives decided to arrange for the opening of insolvency proceedings simultaneously in Canada, the United States and the European Union. By order of 14 January 2009, the High Court of Justice of England and Wales, Chancery Division, opened main insolvency proceedings under English law in respect of all the companies in the Nortel group established in the European Union, including NNSA, pursuant to Article 3(1) of Regulation No 1346/2000.

12 Following a joint application lodged by NNSA and the joint administrators, by judgment of 28 May 2009 the referring court opened the secondary proceedings in respect of NNSA and appointed Mr Rogeau as liquidator in those proceedings.

13 On 21 July 2009, industrial action at NNSA was brought to an end by a memorandum of agreement settling the action ('the memorandum settling the action'). That agreement provided for the making of a severance payment, of which one part was payable immediately and another part, known as the 'deferred severance payment' ('the deferred SP'), was to be paid, once operations had ceased, out of the available funds arising from the sale of assets, after payment of the costs resulting from continuance of NNSA's activities during the main and secondary proceedings and of the administration expenses.

14 On 1 July 2009, a protocol coordinating the main and secondary proceedings was signed by the persons responsible for the two sets of proceedings ('the coordinating protocol'), under which, in particular, the administration expenses had to be paid in full, in priority, wherever the assets sold were situated. By judgment of 24 September 2009, the referring court approved inter alia the coordinating protocol and the memorandum settling the action.

15 In order to secure a better price for the Nortel group's assets, the administrators and liquidators in the various insolvency proceedings throughout the world agreed to sell those assets on a global basis, by branch of activity. Under an agreement entitled 'Interim Funding and Settlement Agreement' ('the IFSA'), concluded on 9 June 2009 between NNL and a number of subsidiaries in the Nortel group, those subsidiaries would at the appropriate time waive their industrial and intellectual property rights covered by the MRDA. On the other hand, the rights which the subsidiaries enjoyed under licences would be preserved until the liquidation and disposal operations were completed, and their rights as beneficial owners of the intellectual property concerned would be preserved.

16 Pursuant to the IFSA, the proceeds from sale of the Nortel group's assets would be placed in escrow accounts ('the lockbox') with credit institutions established in the United States and none of the sums paid into the lockbox could be distributed without an agreement concluded by all the relevant entities in the group. NNSA became a party to the IFSA by means of an accession agreement concluded on 11 September 2009. The sale proceeds have been blocked as was provided for by the IFSA, but no agreement has yet been reached concerning their allocation.

17 On 23 November 2010, a report drawn up by Mr Rogeau in the context of the secondary proceedings showed a credit balance of EUR 38 980 313 in the bank accounts of NNSA as at 30 September 2010, and it was accordingly possible to consider making a first disbursement of the deferred SP from May 2011. However, after being given notice to proceed by the works council of NNSA, Mr Rogeau informed it, by letter of 18 May 2011, that he was unable to give effect to the terms of the memorandum settling the action as a cash-flow forecast showed a deficit of nearly EUR 6 million, in particular because of several requests for payment from the joint administrators in respect, inter alia, of the costs resulting from continuance of the activities of the Nortel group during the proceedings and from the sale of certain assets.

18 Contesting that state of affairs, the works council of NNSA and former NNSA employees brought an action before the tribunal de commerce de Versailles (Commercial Court, Versailles, France), seeking, first, a declaration that the secondary proceedings give them an exclusive and direct right over the share of the overall proceeds from the sale of the Nortel group's assets that falls to NNSA and, second, an order requiring Mr Rogeau, as court-appointed liquidator, to make immediate disbursement, in particular, of the deferred SP, to the extent of the funds available to NNSA.

19 Subsequently, Mr Rogeau summoned the joint administrators as third parties before the referring court. However, they requested the referring court, in particular, to decline international jurisdiction, in favour of the High Court of Justice of England and Wales, Chancery Division. In the alternative, the joint administrators requested the referring court, in particular, to decline jurisdiction to rule on the assets and rights which were not situated in France for the purposes of Article 2(g) of Regulation No 1346/2000 when the judgment opening the secondary proceedings was delivered.

20 The referring court states that, in order to rule on the claims before it, it will have to rule first on its jurisdiction to determine the scope of the effects of the secondary proceedings. It also considers that it will be required to determine whether the effects of secondary proceedings may extend to the debtor's assets situated outside the European Union.

21 In those circumstances, the tribunal de commerce de Versailles decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the courts of the State in which secondary proceedings have been opened have exclusive jurisdiction, or concurrent jurisdiction with the courts of the State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of the secondary proceedings in accordance with Articles 2(g), 3(2) and 27 of … Regulation … No 1346/2000 … and, in the event that there is exclusive or concurrent jurisdiction, is the applicable law that of the main proceedings or of the secondary proceedings?'

## Consideration of the question referred

22 The question referred may be divided into two parts, which it is appropriate to examine separately. The first part of the question relates to the allocation of international jurisdiction between the court hearing the main proceedings and the court hearing the secondary proceedings, while the second part is intended to identify the law applicable when determining the debtor's assets that fall within the scope of the effects of the secondary proceedings.

### *First part of the question*

23 By the first part of its question, the referring court asks, in essence, whether Articles 3(2) and 27 of Regulation No 1346/2000 must be interpreted as meaning that the courts of the Member State in which secondary insolvency proceedings have been opened have exclusive jurisdiction, or concurrent

jurisdiction with the courts of the Member State in which the main insolvency proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of those secondary proceedings.

24 Although the question relates solely to Regulation No 1346/2000, it should nevertheless be ascertained, first of all, whether the referring court's jurisdiction in that context is governed by Regulation No 1346/2000 or by Regulation No 44/2001. Next, it should be determined whether, on the basis of the provisions of the applicable regulation, the jurisdiction of that court is established in a case such as that at issue before it. Finally, the question whether such jurisdiction must be regarded as exclusive or concurrent will be examined.

The applicability of Regulations No 1346/2000 and No 44/2001

25 The disputes before the referring court fall within the context of the application of a large number of agreements concluded by or between the parties before it, including, in particular, the IFSA, the MRDA, the coordinating protocol and the memorandum settling the action. In a dispute concerning the interpretation of one or more of those agreements, jurisdiction to rule on that dispute may be governed by the provisions of Regulation No 44/2001, even though that dispute is between the liquidators in two sets of insolvency proceedings, one main and the other secondary, each of which falls within Regulation No 1346/2000.

26 In that regard, the Court has already held that Regulations No 44/2001 and No 1346/2000 must be interpreted in such a way as to avoid any overlap between the rules of law that those instruments lay down and any legal vacuum. Accordingly, actions excluded, under Article 1(2)(b) of Regulation No 44/2001, from the scope of that regulation in so far as they come under 'bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings' fall within the scope of Regulation No 1346/2000. Correspondingly, actions which fall outside the scope of Article 3(1) of Regulation No 1346/2000 fall within the scope of Regulation No 44/2001 (judgment in *Nickel & Goeldner Spedition*, C-157/13, EU:C:2014:2145, paragraph 21 and the case-law cited).

27 The Court has also held that the scope of Regulation No 1346/2000 must not be interpreted broadly, and that only actions which derive directly from insolvency proceedings and are closely connected with them ('related actions') are excluded from the scope of Regulation No 44/2001. Consequently, only those actions fall within the scope of Regulation No 1346/2000 (see judgment in *Nickel & Goeldner Spedition*, C-157/13, EU:C:2014:2145, paragraphs 22 and 23 and the case-law cited).

28 Finally, the Court has adopted as the decisive criterion for identifying the area within which an action falls not the procedural context of that action, but its legal basis. According to that approach, it must be determined whether the right or the obligation which forms the basis of the action has its source in the ordinary rules of civil and commercial law or in derogating rules specific to insolvency proceedings (judgment in *Nickel & Goeldner Spedition*, C-157/13, EU:C:2014:2145, paragraph 27).

29 In the present instance, while it is for the referring court to assess the content of the various agreements concluded by the parties to the proceedings before it, it is nevertheless apparent that the rights or obligations on which the actions before the referring court are founded derive directly from insolvency proceedings, are closely connected with them and have their source in rules specific to insolvency proceedings.

30 The outcome of the disputes before the referring court depends, in particular, on how the proceeds from the sale of NNSA's assets are allocated between the main proceedings and the secondary proceedings. As appears to follow from the coordinating protocol, and as the parties to the proceedings before the referring court confirmed at the hearing, those proceeds will in essence have

to be allocated by applying Regulation No 1346/2000, without that protocol or the other agreements at issue before the referring court being intended to modify its content. The rights or obligations on which the actions before the referring court are founded therefore have their source in Articles 3(2) and 27 of Regulation No 1346/2000, so that that regulation is applicable.

The rules on jurisdiction laid down by Regulation No 1346/2000

31 As regards the jurisdiction of the court which has opened secondary insolvency proceedings to rule on the determination of the debtor's assets falling within the scope of the effects of those proceedings, it is settled case-law that Article 3(1) of Regulation No 1346/2000 must be interpreted as conferring international jurisdiction to hear and determine related actions on the Member State within the territory of which the insolvency proceedings have been opened (see, in particular, judgment in *F-Tex*, C-213/10, EU:C:2012:215, paragraph 27 and the case-law cited).

32 Whilst the Court, until now, has acknowledged only that international jurisdiction to rule on a related action is enjoyed by the Member State whose courts have jurisdiction under Article 3(1) of Regulation No 1346/2000, Article 3(2) of that regulation must be interpreted analogously.

33 In the light of the scheme and practical effect of Regulation No 1346/2000, Article 3(2) thereof must be regarded as conferring international jurisdiction to hear and determine related actions on the courts of the Member State within the territory of which secondary insolvency proceedings have been opened, in so far as those actions relate to the debtor's assets that are situated within the territory of that State.

34 First, as the Advocate General has observed in point 32 of his Opinion, the first subparagraph of Article 25(1) of Regulation No 1346/2000 imposes an obligation on the Member States to recognise and enforce judgments concerning the course and closure of insolvency proceedings that are handed down both by courts which have jurisdiction under Article 3(1) of that regulation and by those whose jurisdiction is founded on Article 3(2), whilst the second subparagraph of Article 25(1) states that its first subparagraph applies also to 'judgments deriving directly from the insolvency proceedings and which are closely linked with them', that is to say, judgments ruling, in particular, on related actions.

35 In imposing an obligation to recognise 'related' judgments delivered by courts which have jurisdiction under Article 3(2) of Regulation No 1346/2000, that regulation appears to confer at least implicitly on those courts jurisdiction to deliver such judgments.

36 Second, one of the fundamental objectives of the possibility, provided for in Article 27 of Regulation No 1346/2000, of opening secondary insolvency proceedings consists, in particular, in the protection of local interests, notwithstanding the fact that those proceedings may also pursue other objectives (see, to that effect, judgment in *Burgo Group*, C-327/13, EU:C:2014:2158, paragraph 36).

37 A related action, such as that before the referring court, seeking a declaration that specified assets fall within secondary insolvency proceedings is designed specifically to protect those interests. That protection and, therefore, the practical effect, in particular, of Article 27 of Regulation No 1346/2000 would be appreciably weakened if that related action could not be brought before the courts of the Member State within the territory of which the secondary proceedings have been opened.

38 It must therefore be concluded that the courts of the Member State in which secondary insolvency proceedings have been opened have jurisdiction, on the basis of Article 3(2) of Regulation No 1346/2000, to rule on the determination of the debtor's assets falling within the scope of the effects of those proceedings.

Exclusive or concurrent international jurisdiction to rule on the determination of the debtor's assets falling within the scope of the effects of secondary insolvency proceedings

39 As regards, finally, the issue whether the courts of the Member State in which secondary insolvency proceedings have been opened have exclusive, or concurrent, jurisdiction to rule on the determination of the debtor's assets falling within the scope of the effects of those proceedings, it should be noted that the Court's case-law acknowledging the jurisdiction of courts, under Article 3(1) of Regulation No 1346/2000, to rule on related actions is founded principally on the practical effect of that regulation (see, to this effect, judgments in *Seagon*, C-339/07, EU:C:2009:83, paragraph 21, and *F-Tex*, C-213/10, EU:C:2012:215, paragraph 27). As is apparent from paragraph 37 of the present judgment, the same applies to the analogous jurisdiction of courts possessing jurisdiction under Article 3(2) of the regulation.

40 Consequently, for the purpose of determining whether international jurisdiction to rule on related actions is exclusive or concurrent, and therefore of establishing the scope of both Article 3(1) and Article 3(2) of Regulation No 1346/2000, the practical effect of those provisions should likewise be ensured.

41 Thus, as regards an action seeking a declaration that certain assets of the debtor fall within the scope of the effects of the secondary insolvency proceedings, such as the actions before the referring court, it must be stated that the action quite obviously has a direct effect on the interests administered in the main insolvency proceedings, since the declaration sought would necessarily mean that the assets at issue do not fall within those proceedings. However, as the Advocate General has observed, in essence, in point 57 of his Opinion, the courts of the Member State in which the main proceedings have been opened also have jurisdiction to rule on related actions and therefore to determine the scope of the effects of the latter proceedings.

42 Accordingly, exclusive jurisdiction of the courts of the Member State in which secondary insolvency proceedings have been opened to rule on the determination of the debtor's assets falling within the scope of the effects of those proceedings would deprive Article 3(1) of Regulation No 1346/2000 of its practical effect in so far as that provision confers international jurisdiction to rule on related actions and, therefore, cannot be upheld.

43 Furthermore, the provisions of Regulation No 1346/2000 do not show that the regulation confers jurisdiction to rule on a related action on the court first seised. Nor, contrary to the submissions of the works council of NNSA, does such conferral follow from the judgment in *Staubitz-Schreiber* (C-1/04, EU:C:2006:39), which relates to a different case, namely that of the conferral of jurisdiction to open main insolvency proceedings, and therefore to the conferral of jurisdiction which, under that regulation, is exclusive.

44 It is true that, as several interested parties have submitted, the recognition, in this context, of concurrent jurisdiction entails the risk of concurrent and, potentially, irreconcilable judgments.

45 However, as the Advocate General has observed in point 60 of his Opinion, Article 25(1) of Regulation No 1346/2000 will enable the risk of concurrent judgments to be avoided, by requiring any court before which a related action, such as those before the referring court, has been brought to recognise an earlier judgment delivered by another court with jurisdiction under Article 3(1) or, as the case may be, Article 3(2) of that regulation.

46 In the light of all the foregoing considerations, the answer to the first part of the question referred is that Articles 3(2) and 27 of Regulation No 1346/2000 must be interpreted as meaning that the courts of the Member State in which secondary insolvency proceedings have been opened have jurisdiction,

concurrently with the courts of the Member State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of those secondary proceedings.

*Second part of the question*

47 By the second part of its question, the referring court asks, in essence, which law is applicable to determination of the debtor's assets that fall within the scope of the effects of secondary insolvency proceedings.

48 It should be noted that the effects of secondary insolvency proceedings are restricted, as follows from Articles 3(2) and 27 of Regulation No 1346/2000, to the assets of the debtor which, on the date of the opening of the insolvency proceedings, were situated within the territory of the Member State in which the secondary proceedings were opened.

49 It should also be noted that it is apparent from recitals 6 and 23 in the preamble to Regulation No 1346/2000, first, that that regulation sets out uniform rules on conflict of laws which replace national rules of private international law and, second, that that replacement is limited, in accordance with the principle of proportionality, to the field of application of the rules laid down by that regulation. Thus, the regulation does not preclude, in principle, all application, in the context of a related action, such as those before the referring court, of the legislation of the Member State of the court before which that action is pending, relating to the private international law of that State, in so far as Regulation No 1346/2000 does not contain a uniform rule governing the situation at issue.

50 However, in relation to whether, for the purposes of applying Regulation No 1346/2000, assets must be regarded as situated within the territory of a Member State on the date of the opening of the insolvency proceedings, that regulation does lay down uniform rules, excluding, to that extent, any recourse to national law.

51 It is apparent from Article 2(g) of Regulation No 1346/2000 that, for the purposes of that regulation, the 'Member State in which assets are situated' is, in the case of tangible property, the Member State within the territory of which the property is situated, in the case of property and rights ownership of or entitlement to which must be entered in a public register, the Member State under the authority of which the register is kept and, finally, in the case of claims, the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1) of that regulation. Despite the complexity of the legal situation at issue before the referring court, that rule must enable the referring court to determine the location of the property, rights or claims concerned.

52 It should be added in this connection that, although Article 2(g) of Regulation No 1346/2000 refers expressly only to property, rights and claims situated in a Member State, that provides no ground for inferring that that provision is not applicable if the property, right or claim in question must be regarded as situated in a third State.

53 In order to identify the assets falling within secondary insolvency proceedings, it is sufficient to establish whether, on the date of the opening of the insolvency proceedings, the assets were situated, within the meaning of Article 2(g) of Regulation No 1346/2000, within the territory of the Member State in which those proceedings were opened, and it is not relevant in that regard to determine, as the case may be, in what other State those assets were situated at a subsequent stage.

54 Consequently, as regards the disputes before it, the referring court will have the task of establishing, first, whether the assets at issue, which do not appear capable of being regarded as tangible property, are property or rights ownership of or entitlement to which must be entered in a public register, or

whether they must be regarded as being claims. Next, that court will have the task of determining, respectively, whether the Member State under the authority of which the register is kept is the Member State in which the secondary insolvency proceedings have been opened, namely the French Republic, or whether, as the case may be, the Member State within the territory of which the third party required to meet the claims has the centre of his main interests is the French Republic. It is only if one of those checks has a positive outcome that the assets at issue will fall within the secondary insolvency proceedings opened in France.

55 Accordingly, the answer to the second part of the question referred is that the debtor's assets that fall within the scope of the effects of secondary insolvency proceedings must be determined in accordance with Article 2(g) of Regulation No 1346/2000.

## Costs

56 Since these proceedings are, for the parties to the proceedings before the referring court, a step in the actions pending before it, 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 (First Chamber) hereby rules:

**Articles 3(2) and 27 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State in which secondary insolvency proceedings have been opened have jurisdiction, concurrently with the courts of the Member State in which the main proceedings have been opened, to rule on the determination of the debtor's assets falling within the scope of the effects of those secondary proceedings.**

**The debtor's assets that fall within the scope of the effects of secondary insolvency proceedings must be determined in accordance with Article 2(g) of Regulation No 1346/2000.**

[Signatures]