
CRITICAL NOTE ON THE EUROFOOD CASE

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ABSTRACT

The Eurofood case (ECJ, 2006) is a turning point in creating EU international insolvency law. The dispute, which involved Eurofood IFSC Limited, a division of the Italian firm Parmalat, brought attention to jurisdictional conflicts between Italian and Irish courts over the assessment of the start of insolvency procedures and the location of the debtor's center of main interests (COMI). The dispute started when both jurisdictions asserted authority to initiate insolvency procedures, raising doubts about recognizing and coordinating cross-border cases under the EU Regulation on Insolvency Procedures.

The European Court of Justice clarified the interpretation of COMI, stating that a company's registered office is presumed to be its COMI. The only way to refute its COMI is with objective and verifiable evidence to the contrary, visible to third parties. The ECJ reaffirmed the significance of legal certainty, creditor protection, and the consistent application of insolvency legislation throughout member nations by supporting Ireland's jurisdiction over Eurofood.

The case also highlighted the function of the public policy exception, the possibility for temporary liquidation, and the necessity for collaboration between courts in international insolvencies. However, it also brought to light practical difficulties such as delays, discrepancies in national court rulings, and conflicts between protecting creditors' interests and upholding the independence of EU law.

This paper argues that the ECJ's judgment has increased clarity in the definition of COMI and the identification of main proceedings. However, it has also raised concerns about the ramifications of Eurofood. Additional changes are needed to improve the uniformity and predictability of insolvency legislation within the EU system. Better harmonization, simpler processes, and enhanced mechanisms for judicial cooperation would further strengthen cross-border insolvency resolution and reduce jurisdictional disputes in upcoming cases.

Keywords: Provisional Liquidation, Jurisdictional Conflict, Public Policy Exception, Cross-Border Insolvency, Eurofood IFSC Ltd, EC Regulation on Insolvency Proceedings, Center of Main Interests (COMI).

INTRODUCTION

In a time of increasing global economic integration, the legal field of cross-border insolvency has become highly intricate. The collapse of multinational corporations is no longer confined to single nations, presenting difficulties for judges, lenders, and regulators across different legal territories. The European Union, with its varied markets and legal traditions, has taken the lead in tackling these issues with unified legal systems. The European Commission's Regulation 1346/2000 governing insolvency processes¹, later succeeded by Regulation 2015/848². Establishing consistent guidelines for managing insolvencies that cross national lines within the EU required a significant effort. Nevertheless, the regulations' dependence on COMI, which is described as the place "accessible to creditors" where a debtor manages its affairs, resulted in interpretative uncertainty, especially concerning subsidiaries in corporate structures. These issues were effectively outlined in the Eurofood IFSC Ltd case.³ A pivotal ruling from the European Court of Justice involved a jurisdictional dispute between the courts of Ireland and Italy regarding the insolvency of Parmalat's subsidiary in Ireland.

Previously, the different interpretations of COMI raised the risk of forum shopping, allowing parent companies or creditors to choose to start cases in jurisdictions that would be more favourable to them. The Eurofood case compelled the ECJ to tackle vital questions about determining jurisdiction in cross-border insolvencies. Additionally, the case examined the limits of mutual recognition of insolvency proceedings, which is a crucial principle for the EU's insolvency system.

The Eurofood ruling established that the presumption of the registered office is fundamental under Article 3 of the EC Regulation⁴, dismissing Italy's argument that parental authority could challenge this presumption. The ECJ clarified that provisional liquidation proceedings initiated in Ireland amounted to the "opening" of insolvency proceedings under Article 16⁵, giving them precedence over Italy's subsequent administrative actions. The decision limited forum shopping and bolstered legal certainty for investors operating across borders by emphasizing procedural fairness and ensuring creditor access. However, the downside of this ruling is that the ECJ's

¹ Council Regulation 1346/2000 of May 29, 2000, on Insolvency Proceedings, 2000 O.J. (L 160) 1

² Regulation (EU) 2015/848 of the European Parliament and of the Council of May 20, 2015, on Insolvency Proceedings, 2015 O.J. (L 141) 19

³ Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813.

⁴ Council Regulation 1346/2000, art. 3, 2000 O.J. (L 160) 1, 5

⁵ Council Regulation 1346/2000, art. 16, 2000 O.J. (L 160) 1, 8.

strict focus on the registered office ignored how subsidiaries operate within corporate groups, leaving some complexities in corporate structures unaddressed. The refusal to acknowledge Italian proceedings due to insufficient involvement from creditors set a precedent that introduced procedural challenges in cross-border insolvency cases.

LEGAL FRAMEWORK: EU INSOLVENCY REGULATION AND COMI

The European Council Regulation (EC) No 1346/2000 concerning insolvency proceedings was implemented on May 31, 2002⁶. It introduced the first detailed system for handling cross-border insolvencies within the EU. This Regulation resulted from many years of discussions to solve the difficulties caused by insolvencies that impacted assets, creditors, and businesses across several Member States. Its main goals were to improve cross-border insolvency processes' efficiency and effectiveness, stop forum shopping, and provide certainty for creditors.

The Regulation covered collective insolvency procedures that included either partial or complete dispossession of a debtor, along with the designation of a liquidator, as detailed in its annexes⁷. Importantly, it only applied to debtors whose "center of main interests" (COMI) was within the EU, excluding credit institutions, insurance companies, and some investment firms that operated under distinct rules.

According to Article 3(1)⁸ A company's COMI is considered its registered office unless "objective and verifiable" proof shows that its proper management occurs elsewhere. This assumption holds only if the registered office has not been moved in the three months following the insolvency filings, which helps prevent strategic forum shopping. To overturn this assumption, evidence is required to prove where management decisions are made, interactions with creditors happen, or financial transactions occur, all of which should be clear to outsiders.

The Regulation set out a key rule stating that "the courts of the Member State where the center of a debtor's main interests is found shall have the authority to start insolvency proceedings." These proceedings, referred to as "main proceedings," would carry universal consequences throughout the EU. Therefore, the idea of COMI became vital for determining jurisdiction, even

⁶ Council Regulation (EC) No 1346/2000 of May 29, 2000, on Insolvency Proceedings, 2000 O.J. (L 160) 1

⁷ Council Regulation 1346/2000, art. 1, 2000 O.J. (L 160) 1, 4; Council Regulation 1346/2000, Annex A, 2000 O.J. (L 160) 1, 19-24

⁸ Council Regulation 1346/2000, art. 3, 2000 O.J. (L 160) 1, 5

as the Regulation did not give a detailed definition.

The Regulation differentiates between main proceedings (initiated in the COMI location, covering all assets universally) and secondary proceedings (restricted to assets in another member state where the debtor operates an “establishment”). Secondary proceedings, which often focus on liquidation, protect local creditors but can lead to fragmentation of insolvency assets⁹. The 2015 recast (Regulation 2015/848) introduced “synthetic proceedings” to address this by enabling main liquidators to avoid splitting assets through agreements with creditors.¹⁰ The duties under Article 31¹¹ mandate that administrators exchange information and coordinate efforts in parallel proceedings, though challenges in harmonizing diverse national procedures remain.

Article 16¹² laid the groundwork for the Regulation with the automatic recognition principle, which obligated all Member States to acknowledge insolvency processes initiated in other Member States. This principle of mutual trust was essential for the effective operation of the Regulation, although Article 26¹³ included a limited public policy exception regarding recognition. Furthermore, Article 4¹⁴ discussed the relevant laws governing these proceedings, indicating that the law of the state where the proceedings began would apply to most aspects of the insolvency. However, Articles 5-15 offered significant exceptions to safeguard certain rights and legitimate expectations, which included third-party rights in rem and contracts associated with immovable property. The Regulation contained many unclear points, especially about how to define COMI and how to deal with corporate groups. These unclear points paved the way for court interpretations in the Eurofood case and later rulings, which eventually resulted in the revised Regulation in 2015¹⁵.

CASE ANALYSIS: EUROFOOD IFSC LTD (C-341/04)¹⁶

A. FACTUAL BACKGROUND

Eurofood IFSC Ltd was set up in Ireland in 1997 as a fully-owned branch of the Italian dairy

⁹ Council Regulation 1346/2000, art. 27, 2000 O.J. (L 160) 1, 9.

¹⁰ Regulation (EU) 2015/848, art. 36, 2015 O.J. (L 141) 19, 47-48.

¹¹ Council Regulation 1346/2000, art. 31, 2000 O.J. (L 160) 1, 10.

¹² Council Regulation 1346/2000, art. 16, 2000 O.J. (L 160) 1, 8.

¹³ Council Regulation 1346/2000, art. 26, 2000 O.J. (L 160) 1, 9.

¹⁴ Council Regulation 1346/2000, art. 4, 2000 O.J. (L 160) 1, 5.

¹⁵ Regulation (EU) 2015/848 of the European Parliament and of the Council of May 20, 2015, on Insolvency Proceedings, 2015 O.J. (L 141) 19.

¹⁶ Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813.

giant Parmalat SpA. Functioning within the Irish Financial Services Centre framework, Eurofood's primary role was offering financing options to Parmalat companies. Although based in Dublin, Eurofood employed no staff and carried out its activities through a management firm, Bank of America. The situation developed from Parmalat's downfall in December 2003, when the company disclosed a €14 billion gap in its financial reports, resulting in one of the largest corporate bankruptcies in Europe.¹⁷ The Parmalat incident involved serious allegations of financial misconduct, culminating in the detention of several key executives in Italy, with related accusations surfacing globally. In light of this turmoil, the Italian government introduced urgent legislation, known as the "Marzano Law."¹⁸ This created special procedures for large failing enterprises. On December 24, 2003, Parmalat SpA was placed under extraordinary administration by the Italian Ministry of Production Activities, which designated Mr Bondi as the 'extraordinary administrator' following the Italian amministrazione straordinaria rules detailed in Annex A of the EIR and its Recast.¹⁹

B. JURISDICTIONAL CONFLICT

On January 27, 2004, Bank of America requested the Irish High Court initiate compulsory liquidation of Eurofood. The court appointed a temporary liquidator, who was given the authority to control all company assets and manage its business affairs.²⁰ A winding-up order for Eurofood was issued, and an official liquidator took over on March 23. At the same time, on February 9, 2004, the Italian Minister for Production Activities allowed Parmalat to enter extraordinary administration under the Marzano Law and extended this to Eurofood. On February 10, 2004, the Court in Parma, Italy, declared Eurofood insolvent, deciding that its center of main interests was in Italy.²¹ Despite being registered in Ireland, Eurofood's strategic control was influenced by Parmalat in Italy. This conflicted with the Irish legal process since both jurisdictions claimed to have started the main insolvency cases. Nonetheless, on March 23, 2004, the Irish High Court concluded that the center of main interests for Eurofood was in

¹⁷ In re Eurofood IFSC Ltd, [2004] IESC 45, at ¶ 6 (Ir.).

¹⁸ Decreto Legge 23 dicembre 2003, n.347, G.U. Dec. 24, 2003, n.298 (It.) (Urgent Measures for the Industrial Restructuring of Large Enterprises in State of Insolvency)

¹⁹ Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813, ¶ 20; Council Regulation (EC) No 1346/2000 of May 29 2000 on Insolvency Proceedings, Annex A, 2000 O.J. (L 160) 1, 19-24; Regulation (EU) 2015/848 of the European Parliament and of the Council of May 20 2015 on Insolvency Proceedings, Annex A, 2015 O.J. (L 141) 19, 61-76.

²⁰ Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813, ¶ 21; In re Eurofood IFSC Ltd, [2004] IESC 45, at ¶ 9 (Ir.).

²¹ Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813, ¶ 25; Tribunale di Parma, 19 febbraio 2004, Eurofood IFSC Ltd, 2004 (It.).

Ireland, thus validating Irish proceedings as the principal ones according to the Regulation. The Court criticized the Italian process for not providing adequate notice to the major creditors, raising concerns about fairness. The central issue was whether the proceedings concerning Eurofood IFSC would be recognized, depending on which was the definitive 'opening of proceedings' per the EIR 2000 guidelines.²²

This matter faced opposition from the Italian officials, who described a provisional liquidator as a 'temporary administrator' with 'limited powers' and not a true 'liquidator' under the EIR's definitions. The extraordinary administrator from Italy, who took part in the High Court discussions, brought the case to the Supreme Court, which subsequently referred it to the ECJ. The ECJ concluded that Eurofood's center of main interests matched its place of registration, based on a direct interpretation of Article 3 of the Regulation. It stated that the presumption in Article 3 could only be countered by proving minimal interaction with a parent company located in another Member State. Furthermore, once jurisdiction was established in this manner, the responsibility to acknowledge the rulings of a Member State court was triggered. As Bufford summarized, the issues in this case included:

- The authority to initiate main proceedings, which the Irish Court argued was lacking from the Italian Court in Parma²³;
- Whether the way proceedings were conducted in Italy warranted the Irish courts refusing to recognize a decision from that Court due to public policy reasons;
- Regarding the public policy question, whether the Parma court breached the International Convention on Civil Rights and the European Convention on Human Rights about a party's entitlement to fair procedures and a fair hearing by not supplying the provisional liquidator in Ireland with crucial documents that supported the application.

C. ECJ'S RULING

The Supreme Court of Ireland posed several questions to the European Court of Justice, which

²² Council Regulation (EC) No 1346/2000 of May 29, 2000, on Insolvency Proceedings, art. 2(f), 2000 O.J. (L 160) 1, 4

²³ Samuel L. Bufford, *Center of Main Interests, International Insolvency Case Venue, and Equality of Arms: The Eurofood Decision of the European Court of Justice*, 27 Nw. J. Int'l L. & Bus. 351, 372–373 (2007)

provided its ruling on May 2, 2006. The ECJ reached several important decisions:

The ECJ confirmed Ireland's authority, supporting the Article 3 assumption that the center of main interests coincides with a company's registered office unless there is "objective and verifiable" evidence to challenge this. It dismissed Italy's claim that just having parental control could change this assumption, emphasizing that creditors dealt with Eurofood as if it were an Irish business. The Court explained that Ireland's provisional liquidation met the definition of "opening of proceedings" under Article 16, since the appointment of the liquidator shifted control of Eurofood's assets—an important factor regarding Italy's subsequent administrative actions. Furthermore, the ECJ declined to recognize Italy's legal actions under the public policy exception in Article 26, stating that excluding significant creditors from Italian hearings violated procedural fairness.

COOPERATION AND COORDINATION ISSUES

This choice played a crucial role in shaping the principles of COMI. Bufford pointed out that the nation chosen to manage a primary international insolvency case will decide which laws, both substantive and procedural, will apply during the process²⁴. This decision can significantly influence creditors' rights and results. The critical aspect of this choice is that it acknowledged the existence of various procedures across different Member States. Furthermore, it emphasized that the Insolvency Regulation demands recognition of the initiation of insolvency cases. Hence, the Irish winding-up procedure took precedence in Eurofood IFSC. Advocate General Jacobs explored the timing details of this matter in his opinion, stating that national law specifies when a judgment becomes effective. The ECJ later ruled in the *Staubitz-Schreiber* Case C-1/04 [2006] ECR I-701²⁵ That filing a request to begin proceedings in a Member State limits the debtor's ability to change its center of main interests. Thus, the Member State where the request is submitted retains the authority to evaluate the center of main interests and to decide whether to start main insolvency proceedings.

Alongside the primary arguments, the 'public policy exception' was cited as a reason for not acknowledging the Italian proceedings. This rejection stemmed from the conditions under which the District Court of Parma managed the case, notably that the creditors of Eurofood IFSC and the liquidator were not allowed to present their case in that Court. The critical fifth

²⁴ *supra*

²⁵ Case C-1/04, *Staubitz-Schreiber*, 2006 E.C.R. I-701.

question posed to the ECJ concerned the public policy exception and the claim that the Italian case neglected the right to a fair process and hearing due to a lack of notification to creditors and the failure to provide crucial documents supporting the application. In Italy, the cases were initiated by an 'administrative authority' instead of a court, which caused complications for the parties in Ireland. The term 'provisional' concerning the liquidator was also confusing for the Italian entities. The procedural challenges related to the public policy exception are another significant point. Finally, the principle of mutual trust is discussed, with the ECJ affirming that this principle compels courts from other Member States to acknowledge the ruling of the Member State where the main insolvency proceedings began, without the chance to reconsider that Member State's jurisdictional evaluation as specified in the Regulation. However, affected parties can contest the decision to initiate main proceedings following the national procedural law of the respective Member State. This concern is elaborated upon in the *MG Probud Gdynia sp zoo* Case C-444/07²⁶.

RESOLUTION

The European Court of Justice determined that the main insolvency proceedings began with the Irish High Court's appointment of a provisional liquidator on January 27, 2004. According to Irish law, a provisional liquidator is granted 'broad powers,' which include taking control of a company's assets, making his responsibilities much greater than those of a 'temporary administrator. In his remarks in *Eurofood*, Advocate General Jacobs stated that 'insolvency proceedings can begin in different ways across various jurisdictions,' typically through a court ruling, and in contrast, the appointment of a liquidator. The EIR provides 'automatic recognition for insolvency actions initiated through either method.

APPLICABILITY TO PREVENTIVE RESTRUCTURING

This situation focused on whether to acknowledge the start of legal actions. As long as the guidelines are included in Annex A, all other areas should automatically accept the earliest process. Nonetheless, if there are variations in the processes in unclear sections of the EIR Recast, this might lead to problematic disputes. Unclear areas, like those mentioned in *Eurofood*, involve defining the insolvency processes that need to be acknowledged, the moment these processes begin, and the procedural details of such processes; all can still be used as

²⁶ Case C-444/07, *MG Probud Gdynia sp zoo*, 2010 E.C.R. I-417.

reasons to refuse recognition. Additionally, the EIR Recast includes a public policy exception in Article 33²⁷, which could also present a valid argument if one area is uneasy with another area's procedures, especially if it is related to a group company, as one of its divisions may rely on Article 63(1)(b)²⁸.

D. ANALYSIS OF THE ECJ DECISION

The decision concerning Eurofood has received commendation for providing clear guidance on determining the Center of Main Interests (COMI), focusing on legal certainty and predictability for creditors. In enhancing the presumption of the registered office, the European Court of Justice (ECJ) has established a more objective test that diminishes the chances for forum shopping. This strategy safeguards creditors who depend on the jurisdiction of incorporation while engaging in transactions with the debtor. Nonetheless, the ruling has faced criticism for adopting a highly formal approach that might not align with economic realities. By minimizing the importance of parental control, the ECJ seemingly established a framework that does not sufficiently tackle the intricate structures of contemporary corporate groups. As Wessels pointed out, "the Court's method appears to detach legal form from economic substance wrongfully²⁹. "

Moreover, the ruling has left significant questions unresolved, especially concerning the specific factors that could challenge the presumption of the registered office. While stressing that these factors should be "objective and ascertainable by third parties," the Court did not offer substantial guidance on what exact evidence would be adequate.

Although the Court's limited interpretation of the public policy exception fosters mutual trust among Member States, it might restrict courts' ability to address serious procedural issues in foreign legal processes. This situation creates a conflict between the ideals of mutual recognition and fundamental procedural rights.

CRITICAL ANALYSIS OF EUROFOOD'S APPROACH TO CORPORATE GROUPS

The ECJ's ruling in Eurofood highlighted a significant limitation in how the EU Insolvency

²⁷ Council Regulation 1346/2000, art. 33, 2000 O.J. (L 160) 1 (EC).

²⁸ Regulation 2015/848, art. 63(1)(b), 2015 O.J. (L 141) 19 (EU)

²⁹ Bob Wessels, *The Place of the Registered Office of a Company: A Cornerstone in the Application of the EC Insolvency Regulation*, 3 Eur. Company L. 183, 186 (2006).

Regulation deals with corporate groups. By recognizing Eurofood as a separate entity despite its role as a financial tool for Parmalat, the Court set a precedent that overlooks the economic reality of interconnected corporate frameworks. This rigid viewpoint leads to a gap between legal concepts and business operations, as multinational companies often use cross-border structures where subsidiaries primarily support the group's goals instead of functioning as independent businesses.

Advocate General Jacobs suggested a "head office functions" test, considering factors like executive decision-making locations, treasury responsibilities, and strategic direction.³⁰ This would have provided a more comprehensive understanding of corporate realities. However, the ECJ dismissed this viewpoint in favor of a stricter assumption based on the registered office, which favored creditor expectations over operational cohesion. This choice risks complicating insolvency processes for corporate groups across different countries.

Such fragmentation leads to considerable inefficiencies in the insolvency system. The Nortel Networks case illustrates this, as multiple bankruptcy proceedings were started in various jurisdictions for different entities within the same group.³¹ These parallel processes can significantly raise expenses, extend resolution times, and reduce losses for creditors. Research by Mevorach shows that coordinating insolvency efforts across the entire group often leads to 17-25% more asset recoveries than when proceedings are fragmented.³²

Furthermore, the ECJ's focus on creditor expectations as the main factor for determining the Center of Main Interests (COMI) creates a contradiction: it aims to protect creditors but may actually hinder the efficient resolution of group insolvencies, which in turn can lower recoveries for those creditors. This disconnect between the legal system and economic realities has led to demands for a more cohesive strategy for corporate group bankruptcies, which was partly addressed in the 2015 recast Regulation by introducing group coordination proceedings. However, these remain optional rather than compulsory.³³

POST EUROFOOD JURISPRUDENCE: EVOLUTION OF COMI INTERPRETATION

The Eurofood decision established important precedent, but subsequent cases have reinforced

³⁰ Opinion of Advocate General Jacobs, Case C-341/04, Eurofood IFSC Ltd, 2006 E.C.R. I-3813.

³¹ *In re Nortel Networks, Inc.*, 669 F.3d 128 (3d Cir. 2011).

³² Irit Mevorach, *Insolvency within Multinational Enterprise Groups* 122-24 (2009).

³³ Regulation 2015/848, ch. V, 2015 O.J. (L 141) 19 (EU).

and refined its principles, creating a more nuanced judicial landscape for cross-border insolvency in the EU.

A. INTEREDIL (C-396/09): REINFORCING AND REFINING EUROFOOD

In the case of *Interedil Srl v. Fallimento Interedil Srl* (2011)³⁴ The European Court of Justice affirmed the presumption related to the registered office of Eurofood and added further details on how it can be challenged. The Court stated that the Center of Main Interests (COMI) needs to be determined based on clear and objective criteria for other parties, especially creditors. Moreover, it clarified that if a company's management and supervision occur at the exact location of its registered office, the presumption "cannot be disputed." On the other hand, if a business operates in a different Member State, this presumption may be contested if a "thorough evaluation of all significant factors" shows that the real center of management and supervision is situated in that other Member State.

Thus, *Interedil* upheld Eurofood's creditor-focused method while offering more explicit guidance on factors that could challenge the presumption. This ruling was a significant step forward in COMI case law, recognizing that specific business activities could negate the registered office assumption if they are evident enough to third parties. Thus, it responded to a significant critique of Eurofood's formal approach.

B. OLYMPIC AIRWAYS (C-294/02): CHALLENGING EUROFOOD'S PROCEDURAL FOCUS

The situation with Olympic Airways posed a notable difficulty for Eurofood's focus on procedures. In this case, the Greek airline commenced secondary procedures in France while the main procedures were already underway in Greece³⁵. When creditors in France questioned the acknowledgment of the Greek procedures for reasons similar to those in Eurofood, namely inadequate notification and chance to take part, the European Court of Justice adopted a more cautious stance regarding the public policy exception.

The Court determined that procedural issues alone were insufficient to apply the public policy exception unless they represented a clear violation of essential principles.³⁶ This ruling

³⁴ Case C-396/09, *Interedil Srl v. Fallimento Interedil Srl*, 2011 E.C.R. I-9915.

³⁵ Case C-294/02, *Comm'n v. Greece (Olympic Airways)*, 2005 E.C.R. I-9657.

³⁶ Council Regulation 1346/2000, art. 26, 2000 O.J. (L 160) 1 (EC).

effectively raised the bar for denying recognition based on worries about procedural fairness, moving away from Eurofood's focus on creditors' rights to participate. This change indicated a growing judicial awareness of the risks of insolvency procedures becoming fragmented and a preference for unification, even if the procedural safeguards were imperfect.

C. WIND HELLAS (2009): FORUM SHOPPING DESPITE EUROFOOD

The Wind Hellas³⁷ The situation illustrated that even with Eurofood's aim to prevent forum shopping, there are still ways to choose strategic forums. Wind Hellas, a telecommunications firm based in Greece, shifted its Center of Main Interests (COMI) from Luxembourg to the UK just before it filed for administration, specifically to benefit from the more adaptable restructuring laws in the UK. The High Court in England accepted its authority to handle the case, despite signs that the shift in COMI was a strategic move. The Court concluded that the new COMI was still "ascertainable by third parties," which was something Eurofood required.

This scenario highlighted a significant flaw in Eurofood's method. Although it set up an objective standard for determining COMI, it failed to stop manipulations of COMI if they were done openly. That gap was later filled in the 2015 reform Regulation by adding a three-month review period for any COMI changes before filing for insolvency.³⁸

IMPLICATIONS FOR CROSS-BORDER INSOLVENCY LAW AND THE LEGAL CHALLENGES

A. COMI DETERMINATION POST-EUROFOOD

The Eurofood ruling fundamentally altered how COMI is determined in the European Union by powerfully reinforcing the assumption about the registered office. The ECJ highlighted the need for "factors that are objective and can be verified by third parties," which effectively shifted the proof responsibility to creditors or administrators who want to prove COMI in a place different from where the company was incorporated. These standards require that the actual administrative activities of the company be shown to be carried out elsewhere in a way that is recognizable to third parties, especially to creditors.

³⁷ In re Hellas Telecomms. (Lux.) II SCA [2009] EWHC 3199 (Ch) (Eng.).

³⁸ Regulation 2015/848, art. 3(1), 2015 O.J. (L 141) 19 (EU).

For groups of multinational corporations, this method creates a system that generally prefers to view subsidiaries as independent entities instead of integrated parts of the whole organization. As noted by Mevorach, "Eurofood set a challenging standard for challenging the registered office assumption in the context of corporate groups, which could lead to insolvency cases being spread across many jurisdictions."³⁹ In many instances, this contradicts the economic reality, where subsidiaries usually operate as connected parts of the group rather than truly independent organizations.

The ruling has led corporate groups to rethink their structures. Some have moved their registered offices to better match their actual operations. In contrast, others have kept separate corporate identities to maintain jurisdictional choices in case of possible insolvency issues. As observed by McCormack, "Eurofood encourages corporate groups to carefully analyze where both their registered offices and management functions should be placed when setting up subsidiaries."⁴⁰

B. RECOGNITION OF INSOLVENCY PROCEEDINGS

Eurofood established that the earliest legally initiated insolvency cases take precedence within the EU insolvency system. The European Court of Justice explained that once an insolvency case is started in a Member State with the appropriate authority, other Member States must acknowledge that case according to Article 16 of the Regulation, with only a limited public policy exception.⁴¹ This "first-in-time" principle, while ensuring legal clarity, has resulted in a possible "race to the courthouse" situation that continues to exist in cross-border insolvency issues. The ruling further pointed out that while procedural fairness is crucial, it typically cannot take precedence over mutual recognition obligations, except in situations of "manifest contrariness" to core fairness principles. This stringent standard for applying the public policy exception has faced criticism for possibly compromising the procedural rights of creditors in the name of system efficiency.

C. LEGAL AND PRACTICAL CHALLENGES

Although Eurofood clarified specific elements of cross-border insolvency, it added complexity

³⁹ Irit Mevorach, *Insolvency within Multinational Enterprise Groups* 185 (2009)

⁴⁰ Gerard McCormack, *Jurisdictional Competition and Forum Shopping in Insolvency Proceedings*, 68 *Cambridge L.J.* 169, 178 (2009).

⁴¹ Council Regulation 1346/2000, art. 16, 2000 O.J. (L 160) 1 (EC).

to several real-world issues. Forum shopping continued to be a significant worry, with debtors choosing to start legal actions in locations with more favorable conditions or better control over management. Wessels points out that "by strengthening the presumption of the registered office without offering detailed criteria to counter it, Eurofood unintentionally may have encouraged certain kinds of forum shopping through careful incorporation choices. " ⁴² This case also revealed significant conflicts among national insolvency frameworks, especially between administrative methods (such as Italy's extraordinary administration) and judicial processes led by courts (like Ireland's liquidation system). These distinctions go beyond simple procedural differences and indicate fundamentally different policy goals for protecting creditors versus helping businesses survive.

Following Eurofood, the rights of creditors became a notable issue. The criticism from the Irish Court regarding the Italian process for not adequately informing most creditors and recognizing their rights pointed to broader worries about due process in cross-border situations. Despite these issues, the narrow view taken by the ECJ on the public policy exception limited options for creditors dealing with unfair procedures that do not clearly breach fundamental rights. The functioning of parallel proceedings continued to present challenges, with coordination measures failing to handle the intricacies of today's corporate insolvencies effectively. As Tollenaar remarks, "The framework of primary and secondary proceedings set by the Regulation and interpreted in Eurofood generates built-in tensions between universal goals and territorial restrictions."⁴³ " These tensions frequently lead to heightened expenses, delays, and diminished returns for creditors across different jurisdictions.

CONCLUSION

The Eurofood case is a cornerstone in EU cross-border insolvency regulations, setting important standards for clear jurisdiction while revealing the difficulties of managing insolvencies that cross national borders. By supporting the idea that the Center of Main Interests (COMI) is located at a debtor's registered office, the European Court of Justice (ECJ) placed a higher value on legal certainty and predictability for creditors than on vague claims about control from parent companies. This approach prevents forum shopping and creates consistency in understanding

⁴² Bob Wessels, *The Place of the Registered Office of a Company: A Cornerstone in the Application of the EC Insolvency Regulation*, 3 *Eur. Company L.* 183, 190 (2006).

⁴³ Nicolaes Tollenaar, *The European Commission's Proposal for a Directive on Preventive Restructuring Proceedings*, 26 *Insolv. Intel.* 65, 68 (2017).

COMI across member states. The "creditor-centric" viewpoint, based on clear factors such as public records and opinions of outsiders, helped strengthen the framework of the EU Insolvency Regulation. This ensured that insolvency cases that began in the COMI jurisdiction kept their priority status according to Article 16. The refusal of the Italian proceedings under the public policy exception in Article 26 highlighted the crucial need for fair procedures, especially in notifying creditors about matters in cross-border situations.

Eurofood's influence is significant for resolving jurisdictional disputes by strictly sticking to the presumption of the registered office. This was later supported in the *Interedil* case (C-396/09), which clarified that to contest COMI, evidence must show that a debtor has real business activities in a location other than its registered office area. The updated Regulation from 2015 (2015/848) built upon this foundation by adding mechanisms for coordinating groups. However, it did not solve Eurofood's central issue: the conflict between strict legal forms and the actual management of subsidiaries within multinational companies. For example, although Parmalat clearly controlled Eurofood's finances, the ECJ did not consider this integration without proper visibility for creditors, creating difficulties in handling insolvencies among corporate groups.

As a result, the differences between administrative and legal insolvency processes, such as Italy's extraordinary administration system versus Ireland's court-driven liquidation, reveal ongoing procedural issues. Although the Regulation promotes mutual trust, varying national practices still cause complications in asset distribution and creditors' rights, especially in countries with less developed insolvency registries.

FUTURE DIRECTIONS

Reforms following Eurofood should focus on aligning procedural standards to avoid creditor notification issues and guarantee fair involvement. The insolvency registry established by the 2015 Regulation is still not consistently applied, which affects transparency.⁴⁴ Improved cooperation systems, similar to the protocols of the UNCITRAL Model Law, could address these issues by formalizing the duties for sharing information among administrators.⁴⁵ Moreover, combining Eurofood's creditor-focused COMI standards with detailed evaluations of corporate

⁴⁴ Regulation 2015/848, art. 24, 2015 O.J. (L 141) 19 (EU).

⁴⁵ U.N. Comm'n on Int'l Trade Law, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, U.N. Sales No. E.14.V.2 (2014).

group dynamics—like centralized cash management or collective governance—would better represent economic realities while maintaining predictability. Courts have continued to shape COMI case law after the 2015 revision, frequently confronting Eurofood's influence. The cases of NIKI Luftfahrt⁴⁶, Ocean Rig⁴⁷, and H&M Hennes⁴⁸ There is a persistent conflict between Eurofood's strict approach to COMI and the requirements of complicated cross-border insolvencies, especially for corporate groups. Even as courts must adhere to Eurofood's fundamental principles, judges increasingly acknowledge the importance of flexibility and economic realism in applying these principles.

⁴⁶ Landesgericht Korneuburg [LGK] [Regional Court] January 20, 2018, 36 S 5/18i (Austria).

⁴⁷ In re Ocean Rig UDW Inc., 570 B.R. 687 (Bankr. S.D.N.Y. 2017).

⁴⁸ Rb. Amsterdam 15 februari 2018, ECLI:NL:RBAMS:2018:869 (H&M Hennes) (Neth.)

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