



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 2B
THE EUROPEAN INSOLVENCY REGULATION

This is the **summative (formal) assessment** for **Module 2B** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 2**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for Module 2B. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment2B]**. An example would be something along the following lines: 2021122-526.assessment2B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the word “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6.1 If you selected Module 2B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2022**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2022. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 2B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2022** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. If you elect to submit by 1 March 2022, you **may not** submit the assessment again by 31 July 2022 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

The EIR 2000 substantively harmonised the national insolvency law of the Member States.

- (a) False. The objective of an EU regulation is not legal harmonisation.
- (b) True. Since the entry into force of the EIR 2000, the insolvency laws of the Member States are similar.
- (c) False. The objective of the EIR 2000 was not to harmonise aspects of national insolvency laws but to provide non-binding guidelines only.
- (d) False. While the EIR 2000 attempted to harmonise national insolvency laws, its focus was on procedural aspects of insolvency law, not substantive ones.**

Question 1.2

The EIR 2000 was the first ever European initiative to attempt to harmonise the insolvency laws of Member States.

- (a) False. The EU sought to draft Conventions with a view to harmonising the insolvency laws of EU Member States as early as the 1960s, but these initiatives failed.**
- (b) False. There was another EU Regulation regulating insolvency law at EU level before the EIR 2000.
- (c) True. Before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.
- (d) False. An EU Directive regulating insolvency law at EU level existed before the EIR 2000.

Question 1.3

The EIR Recast was urgently needed because the EIR 2000 was considered dysfunctional and ineffective.

- (a) True. The EIR 2000 proved to be inefficient and incapable of supporting the effective resolution of cross-border cases over the years.
- (b) True. As a result, the EIR 2000 lacked the support of major stakeholders such as insolvency practitioners, businesses and public authorities who considered the instrument fruitless.**

- (c) False. While a number of shortcomings were identified by an evaluation study and a public consultation, the EIR 2000 was generally regarded as a successful instrument by most stakeholders, including practitioners, businesses, the EU institutions and insolvency academics.
- (d) False. The EIR 2000 was considered a complete success to support cross-border insolvency cases and, as a result, the wording of the EIR Recast mirrored its 2000 predecessor.

C was the correct answer.

Question 1.4

Why can it be said that the EIR Recast did not overhaul the *status quo*?

- (a) The EIR Recast is a copy of the EIR 2000. Its structure and the wording of all articles are similar.
- (b) Although the EIR Recast includes relevant and useful innovations, it has stuck with the framework of the EIR 2000 and mostly codified the jurisprudence of the CJEU.
- (c) The EIR Recast has not added any new concept to the text of the EIR 2000.
- (d) It is incorrect to say that the EIR Recast has not overhauled the *status quo* at all. On the contrary, the EIR Recast has departed from the text of its predecessor and is a completely new instrument which has rejected all existing concepts and rules.

Question 1.5

Why can it be said that the EIR Recast is more rescue-oriented than the EIR 2000?

- (a) The EIR Recast is more rescue-oriented because all domestic rescue procedures fall within its scope.
- (b) The EIR Recast is more rescue-oriented because it harmonises all substantive aspects of national insolvency laws.
- (c) It is incorrect to say that the EIR Recast is more rescue-oriented than the EIR 2000, as the latter was already heavily rescue-focused.
- (d) The EIR Recast is more rescue-oriented because its scope was extended to cover pre-insolvency proceedings and secondary proceedings can now also be rescue proceedings.

Question 1.6

During the reform process of the EIR 2000, what main elements were identified as needing to be revised within the framework of the Regulation (whether adopted or not)?

- (a) The scope of the Regulation was to be expanded to cover pre-insolvency and hybrid proceedings; the concept of COMI was to be refined; secondary proceedings were to be extended to rescue proceedings; rules on publicity of insolvency proceedings and lodging of claims were to be amended; provisions for group proceedings were to be added.

(b) Rules on co-operation and communication between courts were to be refined; the concept of COMI was to be abandoned and a new jurisdictional concept was to be found; the Recast Regulation was to apply to Denmark.

(c) The Recast Regulation was to apply to private individuals and self-employed; a common European-wide insolvency proceeding was to be added to the Regulation.

(d) The Regulation was meant to fully embrace the universalism principle by abandoning the concept of secondary proceedings; the Regulation was meant to mostly promote out-of-court settlement and abandon all intervention of a judicial or administrative authority in cross-border proceedings.

A was the correct answer.

Question 1.7

The EIR Recast introduced the concept of “synthetic proceedings”. What are they?

(a) “Synthetic proceedings” means that for the case at hand, several main proceedings can be opened, in addition to several secondary proceedings.

(b) “Synthetic proceedings” means that when secondary proceedings are opened, these are automatically rescue proceedings, as opposed to liquidation proceedings.

(c) “Synthetic proceedings” means that insolvency practitioners in all secondary proceedings should treat the proceedings they are dealing with as main proceedings for the purpose of protecting the interests of local creditors.

(d) “Synthetic proceedings” means that when an insolvency practitioner in the main insolvency proceedings has given an undertaking in accordance with Article 36, the court asked to open secondary proceedings should not, at the request of the insolvency practitioner, open them if they are satisfied that the undertaking adequately protects the general interests of local creditors.

Question 1.8

In which of the following scenarios may the recognition of a foreign insolvency proceeding be denied under the EIR Recast?

(a) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an analogue in the law of the jurisdiction, in which recognition is sought.

(b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.

(c) Where the decision to open the insolvency proceedings was taken in flagrant breach of the right to be heard, which a person concerned by such proceedings enjoys.

(d) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.

Question 1.9

In a cross-border dispute, the main proceedings before the Italian court opposes Fema SrL (registered in Italy) and Lacroix SARL (registered in France). The case concerns an action to set aside four contested payments that amount to EUR 850,000. These payments were made pursuant to a sales agreement dated 5 August 2020, governed by German law. The contested payments have been made by Fema SrL to Lacroix SARL before the former went insolvent. The insolvency practitioner of the company claims that under applicable Italian law, the contested payments shall be set aside because Lacroix SARL must have been aware that Fema SrL was facing insolvency at the time the payments were made.

Considering the facts of the case and relevant provisions of the EIR Recast, which one of the following statements is the **most accurate**?

- (a) The insolvency practitioner will always succeed in his claim if he can clearly prove that under the *lex concursus*, the contested payments can be avoided (Article 7(2)(m) EIR Recast).
- (b) The contested transactions cannot be avoided if Lacroix SARL can prove that the *lex causae* (including its general provisions and insolvency rules) does not allow any means of challenging the contested transactions, and provided that the parties did not choose that law for abusive or fraudulent ends.
- (c) To defend the contested payments Lacroix SARL can rely solely, in a purely abstract manner, on the unchallengeable character of the payments at issue on the basis of a provision of the *lex causae*.
- (d) The contested payments shall not be avoided if Lacroix SARL proves that such transactions cannot be challenged on the basis of the insolvency provisions of German law (Article 16 EIR Recast).

Question 1.10

The French Social Security authority asserts to have a social security contribution claim against an Irish company, Cupcake Cottage Ltd. Cupcake Cottage is subject to the main insolvency proceeding (Examinership) in Ireland. In addition, a secondary insolvency proceeding (*Concurso*) relating to the same company has been opened in Spain.

Assume that:

- Under French law, creditors (except employees) must file proof of their claim within two (2) months from the publication in the French legal gazette of a notice of the judgment opening the insolvency proceedings.
- Under Spanish law, the period within which creditors must file their claims is one month, as set in the order opening secondary insolvency proceedings against Cupcake Cottage.

The French tax authority intends to file its claim in the Spanish proceedings. Within which time period can the French tax authority do so?

- (a) Within two (2) months following the publication date, as guaranteed by the French law (law applicable to the creditor).
- (b) Within one month, as stipulated in the applicable *lex concursus secundarii* (law of the insolvency proceeding at issue).

(c) Within 30 days following the publication of the opening of insolvency proceedings in the insolvency register of Spain.

(d) Within the time limit prescribed by the *lex concursus* of the main insolvency proceeding (Irish law).

Total: 8 out of 10.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2

The following **two (2) statements** relate to particular provisions / concepts to be found in the EIR Recast. Indicate the name of the provision / concept (as well as the relevant EIR Recast article), addressed in each statement.

Statement 1. "This article introduces a legal regime for the avoidance of secondary insolvency proceedings, based on the unilateral promise given by the main insolvency practitioner to local creditors that they will receive treatment 'as if' secondary proceedings had in fact been open."

- Article 36 of the EIR Recast: Right to give an undertaking in order to avoid secondary insolvency proceedings. This provision deals with the subject "Synthetic" secondary insolvency proceedings.

Statement 2. "The proper functioning of the internal market requires that cross-border insolvency proceedings should operate effectively. This requires judicial cooperation."

- Recital 3 of the EIR Recast: judicial cooperation and communication in civil matters under the regulations of Article 81 of the Treaty on the Functioning of the European Union.

Question 2.2 [maximum 3 marks] 3

The EIR Recast is built upon the concept of modified universalism, as pure universalism has been deemed idealistic and impractical for the time being. Provide **three (3) examples** of provisions from the EIR Recast, which highlight this modified universalism approach.

- The main insolvency proceedings can be opened before the courts of the Member State within the territory of which the center of main interest (or COMI) of the debtor is located (Article 3 (1) EIR Recast). This reflects the concept of universalism since all assets of the debtor are subject to these main insolvency proceedings even though they are located in another Member State. Further, creditors would have to file their claims before the court competent for the main insolvency proceedings.
- If the debtor has an establishment in another Member State, secondary insolvency proceedings could be opened before the courts of this Member State. This secondary insolvency proceedings would exclusively concern creditors located in this Member State. This aspect reflects the concept of territorialism, which is highlighted in Recital 22 and in (Art. 3 (2) of the EIR Recast).
- Insolvency proceedings opened in one Member State are immediately recognized in all other Member States once the respective opening decision becomes legally effective (Art. 19 of the EIR Recast). Also, all judgements and other decisions of the court that has opened proceedings in accordance with Art. 19 of the EIR Recast are

automatically recognized by the other Member States for enforcement (Art. 32 of the EIR Recast).

Question 2.3 [maximum 3 marks] 3

Cross-border co-operation and communication between courts is now an obligation under the EIR Recast. This was not the case under the EIR 2000. List **three (3) provisions** (recitals and / or articles) of the EIR Recast that deal with this newly introduced obligation.

- Recital 50 of the EIR Recast
- Article 42 of the EIR Recast
- Article 57 of the EIR Recast

These provisions concern the court-to-court duty to co-operate and communicate in order to ensure the effectiveness of the cross-border insolvency proceedings.

Question 2.4 [maximum 2 marks] 3

It is widely accepted that the opening of secondary proceedings can hamper the efficient administration of the debtor's estate. For this reason, the EIR Recast has introduced a number of legal instruments to avoid or otherwise control the opening, conduct and closure of secondary proceedings. Provide **two (2) examples** of such instruments and briefly (in 1 to 3 sentences) explain how they operate.

- Undertaking of the insolvency practitioner: Article 36 of the EIR Recast provides that the insolvency practitioner competent for the administration of the main insolvency proceedings is entitled to give an undertaking to creditors concerned by the opening of possible secondary insolvency proceedings. The undertaking is a statement or a promise, in which the insolvency practitioner guarantees to protect the distribution and priority rights and interests of the local creditors in relation to the assets located in this Member State, even if the secondary insolvency proceedings is not opened. It is basically a promise that such creditors will be treated as if a secondary insolvency proceeding had been opened.
- Stay of the opening of secondary insolvency proceedings: The EIR Recast (Recital 45 and Article 38 of the EIR Recast) provides that the competent court for the opening of the secondary insolvency proceedings is entitled to stay the opening of these proceedings in order to preserve the efficiency of the main insolvency proceedings. This court's decision must be taken under consideration of the creditors' interests.

Total: 10 out of 10.

QUESTION 3 (essay-type questions) [15 marks in total]

In addition to the correctness, completeness (including references to case law, if applicable) and originality of your answers to the questions below, marks may be awarded or deducted on the basis of your presentation, expression and writing skills.

Question 3.1 [maximum 5 marks] 5

In 2012, the European Commission recommended that the European Insolvency Regulation be amended by focusing on specific aspects of the instrument. Explain what these aspects were and how they have been introduced in the EIR Recast.

- The scope of the regulation has been broadened to pre-insolvency proceedings with the purpose to rescue encourage the rescue and successful restructuring of companies in financial distress. Such pre-insolvency procedures were not covered by the initial scope of the EIR because these were enacted by several Member States after the introduction of the EIR in 2012. This new rule is reflected in Article 1 EIR Recast and these new proceedings have been inserted in Annex A of the EIR Recast.
- The opening of secondary proceedings, which necessarily needed to be liquidation or winding-up proceedings, was problematic because restructuring or sale of the debtor on a going concern basis was not possible. This issue was addressed in the regulations of the Article 36 of the EIR Recast (“Synthetic proceedings”).
- Stronger co-operation: the duties to communicate and co-operate, which already was included in the EIR. However, this duty did concern only the relation between insolvency practitioners. The EIR Recast extended this duty to the relation between courts and between insolvency practitioners and courts (Article 42 and 43 EIR Recast).
- Insolvency of a group of companies: The EIR did not set any rules for the insolvency of multinational company groups. A separate and independent insolvency proceeding had to be opened for each entity of a group, which was an obstacle to the coordinated and successful restructuring or sale of the company group as business unit. Therefore, EIR Recast inserted legal disposition related to the insolvency of company groups in the Articles 56 to 78 of the EIR Recast.
- Publication of the proceedings and lodging of claims: There was no specific obligation or process in the Member State of the opening of proceedings or establishment of the debtor for publishing or registering the decisions of the insolvency courts, and there was also no insolvency register on E.U. level. The EIR Recast therefore foresees that the insolvency proceedings shall be interconnected (Articles 24 and 25 EIR Recast). The regulation also foresees that the creditors shall be informed about the rights to file their claims (Art 53 EIR Recast).
- Courts have experienced difficulties in applying the concept of "centre of main interests" (COMI) in practice, so this legal term has been strengthened, particularly in order to avoid forum shopping through abusive COMI-relocation.

Question 3.2 [maximum 5 marks] 5

While the EIR 2000 was considered to work well overall, several innovative concepts and rules were introduced in the EIR Recast to improve the manner in which the Regulation supports the administration of a cross-border case in an efficient manner. Describe **three (3)** improvements / innovations that made their way into the EIR Recast.

- Pre-insolvency proceedings and personal insolvency proceedings: these proceedings were completely excluded in the EIR, which focused on bankruptcy proceedings with the goal of liquidation or winding-up of the debtor.
- Groups of companies: the EIR dealt exclusively with single companies and left issues related to company groups open (see details in the question 3.1 above).
- “Synthetic” secondary insolvency proceedings: the EIR did not contain any provision related to the possibility to avoid the opening of secondary insolvency proceedings. This was addressed by the Article 36 of the EIR Recast.

Question 3.3 [maximum 5 marks] 5

While the EIR Recast was welcomed by most stakeholders, it was also criticised by some as a “missed opportunity” and “modest”. List **two (2) flaws** or shortcomings of the EIR Recast and explain how you consider they could be corrected.

- Several practical problems and shortcomings of the EIR Recast have been discussed extensively in the legal doctrine^[1]. This is, for example, a difficulty in COMI-determination under the current regulations of the EIR Recast with respect to multinational enterprise groups applying new business models and having decentralized management structures. This problem could be addressed by a more formal approach to the determination of the international jurisdiction, e.g through connecting it exclusively to company’s registered office or other formal circumstances and not to the COMI.
- Another issue discussed here is the question of the applicable laws to avoidance actions in cross-border situations, which is regulated in the EIR Recast in a very complex manner. A solution to this could be to introduce a harmonized regime on transaction avoidance in the E.U.

[1] *B. Wessels* provides an overview in his blog article “Improving the EU Insolvency Regulation (Recast)” (16 April 2020) on the review of the recently published book *V. Lazić / S. Stuij*, “Recasting the Insolvency Regulation – Improvements and Missed Opportunities” (2020).

Total: 15 out of 15.

QUESTION 4 (fact-based application-type question) [15 marks in total]

Cardinal Home is an Ireland-registered furniture company. The company opened its first store in Cork, Ireland in 2009 and has warehouses across Europe, including in Milan, Italy. In 2010, Cardinal Home entered into a credit agreement with an Italian bank since it was planning to expand its reach to the Spanish luxury furniture market, expected to grow by over 8% annually. It opened a bank account with the bank and started negotiating with local distributors, thus signing some (non-binding) memoranda of understanding with them.

Cardinal Home grew and performed well for several years. However, the impact of the economic and financial crisis of the late 2000s eventually hit the company who suffered financial difficulties from 2016. On 22 June 2017, it filed a petition to open examinership proceedings in the High Court in Dublin, Ireland.

Question 4.1 [maximum 5 marks] 5

Assume that the EIR 2000 applies. Does the Dublin High Court have international jurisdiction to open the requested insolvency proceeding? (Explain why it does or does not have jurisdiction.) Your answer should contain CJEU references to the applicable law and the relevant CJEU jurisprudence.

- Article 3(1) of the EIR 2000 provides that the courts of the Member State within the territory of which the centre of a debtor’s main interests is situated (COMI) 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.

- It could be assumed in the present case that the COMI of Cardinal Home is located in Ireland, since we have no information with regard to (i) the place where the COMI of Cardinal home is located, (ii) the place where management decisions are taken; (iii) the place where third parties considered to be the COMI of Cardinal Home. In fact, the sole information that we have is the place of incorporation of Cardinal Home, which is Ireland. Based on this assumption and facts, it could be argued that the COMI of Cardinal Home is located in Ireland and therefore Irish courts shall be competent for the opening of the main insolvency proceedings.
- As mentioned by the CJEU in the case Eurofood IFSC Ltd, the criteria used to determine the COMI must be objective and ascertainable by third parties. The above mentioned information that are missing represent important information that permit to determine the COMI. Since this information are not available to us, the COMI of the company is presumed to be the jurisdiction of the country where the company has been registered, which is in the present case Ireland.

Question 4.2 [maximum 5 marks] 2.5

Assume that the Dublin High Court opens the respective proceeding on 30 June 2017. Will the EIR Recast be applicable? Your answer should address the EIR Recast's scope and contain **all** steps taken to answer the question.

- The petition of the opening of the insolvency proceedings has been filed on 22 June 2017, meaning four prior the entering into force of the EIR Recast (26 June 2017).
- As mentioned in item 5.2.2 of the "Module 2B Guidance Text, European Insolvency Regulation 2021/2022", provisions of the EIR Recast shall apply only to insolvency proceedings opened after this date. This means that insolvency proceedings opened before 26 June 2017 shall be governed by the EIR 2000.
- The term "time of opening" as mentioned in the same source means the time at which the judgment opening the insolvency proceedings becomes effective, regardless of whether the judgement is final or not. Such a judgement includes according to Article 2(7) of the EIR recast (i) the decision of any court to open insolvency proceedings or to confirm the opening of such proceedings; and (ii) the decision of a court to appoint an insolvency practitioner.
- Since the judgment to open the insolvency proceedings over the assets of Cardinal Home has been issued after the entering into force of the EIR Recast, meaning after 26 June 2017, these proceedings shall be conducted on basis of the EIR Recast.

Some information missing –

- The EIR Recast will be applicable. The logical order of the steps to be taken is the following:
- Article 3(1) EIR Recast. COMI of Cardinal Home is in the EU (and not in Denmark), i.e. in Ireland (as stated in the answer to Question 4.1.). YES
- Article 1(2) EIR Recast. Cardinal Home is not a credit institution, insurance undertaking or any other 'excluded' entity. YES
- Article 2(4), Recital 9, Annex A EIR Recast. The opened proceeding 'Examinership' is listed in Annex A to the EIR Recast. YES

Article 2(7), 84(1), 92 EIR Recast. The proceeding in question was opened on 30 June 2017, i.e. after the EIR Recast has entered into force. The filing date (22 June 2017) is not determinative for the temporal scope. YES

Question 4.3 [maximum 5 marks] 5

An Italian bank files a petition to open secondary insolvency proceedings in Italy with the purpose of securing an Italian insolvency distribution ranking. Given the facts of the case, can such proceedings be opened in Italy under the EIR Recast? Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

- Recital 23 of the EIR Recast provides that secondary insolvency proceedings may be opened in the Member State where the debtor has an establishment. The effects of secondary insolvency proceedings are limited to the assets located in that Member State.
- Art 2 (10) of the EIR Recast defines the term establishment as any place of operations where a debtor carries out or has carried out in the 3-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets.
- As mentioned in the judgment of the Court (First Chamber) of 4 September 2014 in the case *Burgo Group SpA v Illochroma SA and Jérôme Theetten*, „the presence alone of goods in isolation or bank accounts does not, in principle satisfy the requirement for classification as an establishment.“” a minimum level of organization and a degree of stability are required”.
- Assuming that Cardinal Home only has a bank account and a warehouse in Italy and nothing else (no employees for example), it could not be stated that Cardinal Home does have an establishment in the meaning of the EIR Recast and therefore secondary insolvency proceedings could not be opened. If the bank can prove that Cardinal Home does have a sort of “legal structure” in Italy, than it could successfully filed for the opening of secondary insolvency proceedings.

Total: 12.5 out of 15.

*** End of Assessment ***

Total: 45.5 out of 50.