



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.

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.

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).

B was the correct answer.

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).

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.’ – Articles 36/38

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

Answer:

Statement 1:

“Synthetic” secondary proceedings, Article 36 read with Article 38 EIR Recast.

Statement 2:

Recital 3 of the EIR Recast.

Question 2.2 [maximum 3 marks] 1.5

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.

Answer:

1) Secondary Insolvency Proceedings

EIR Recast allows for the opening of one or more secondary insolvency proceedings against a debtor in any Member State where it possesses an establishment (Article 3(2) EIR Recast). The effects of secondary proceedings are restricted to the assets of the debtor situated in the territory of the Member State where the secondary proceedings have been opened.¹

The opening of secondary proceedings limits the otherwise universal scope of main insolvency proceedings. The secondary proceedings serve to protect local interests and enhance handling of complex insolvency estate.

Secondary proceedings can only follow after the opening of the main insolvency proceedings with the opening of “territorial” insolvency proceedings being permitted only in exceptional circumstances (Article 3(4) EIR Recast).²

¹ Foundation Certificate in International Insolvency Law, Module 2B Guidance Text, The European Insolvency Regulation 2021/2022 (“**Guidance Text**”) 5.3.3, p 20;

² Guidance Text 5.3.3, p21;

2) Definition of Centre of Main Interest (COMI)

The COMI of a debtor was not defined in EIR 2000 but some guidance was provided in its recital 13 of EIR 2000, EIR Recast however mandates the COMI shall be where the debtor conducts the administration of its interests on a regular basis, which is ascertainable by third parties (Article 3(1) EIR Recast).³

As opposed to EIR 2000 which provided for guidance on the Centre of Main Interest of a debtor at Recital 13 of EIR 2000, Article 3(1) of the EIR Recast mandates the definition, and uses the same wording defining the COMI as guided in Recital 13 of EIR 2000. **How does this relate to modified universalism? You did not explain.**

3) Communication between courts and insolvency practitioners

Articles 41 to 43 regulates the communication between Insolvency Practitioners of member countries (Article 41), courts of member countries (Article 42) and between courts and insolvency practitioners of member countries (Article 43).

This ensures that open communication between courts and between IPs results in a more efficient administration of the insolvent estate.

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.

Answer

Article 41 – Communication between Insolvency Practitioners

Article 42 – Communication between Courts

Article 43 – Communication between Courts and Insolvency Practitioners

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.

Answer:

1) Right to give an undertaking or "synthetic" secondary proceedings.

"According to Article 38(2) EIR Recast, where the 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

³ Guidance Text 5.3.1 p 18;

insolvency practitioner, open them if it is satisfied that the undertaking adequately protects the general interests of local creditors.⁴

This means that if a court is petitioned to open secondary proceedings for a debtor, in a jurisdiction covered by EIR Recast and the insolvency practitioner of the main jurisdiction covered by EIR Recast gives an undertaking to the satisfaction of the court of the proposed secondary proceedings that the interests of its local creditors will be adequately protected and requests that the court not open a secondary proceeding over the same debtor, then the court of the proposed secondary proceedings should not open such secondary proceedings.

2) Stay of the opening of secondary insolvency proceedings

When a temporary stay of individual enforcement proceedings has been granted by the court in the main insolvency proceedings, in order to try to preserve the integrity of the insolvent estate and to allow the debtor some space to negotiate a restructure deal with its creditors, the EIR Recast provides for a possibility for the court of the main proceedings to temporarily stay the opening of secondary insolvency proceedings.⁵

Total : 8.5 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] 1.5

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.

Answer:

Article 46 of EIR 2000 provided that on no later than 1 June 2012, the European Commission had to present on the application of the EIR 2000 with a proposal for its adaptation. The EIR Recast entered into force on 26 June 2017, which responded to the needs of insolvency practice, improved creditor information and modernized legal rules, such as data protection.⁶

Matters of international jurisdiction, applicable law, enforcement and recognition and cooperation between Insolvency Practitioners and courts have been largely harmonized through mandatory EU law, laid down in EIR Recast.⁷

Accordingly, EIR Recast has worked to revise EIR 2000 based on feedback on its operation, this 'fine-tune' regulation of the practical issues such as communication

⁴ Guidance Text 10.1 p 51;

⁵ Guidance Text 10.2 p 53; Recital 45 EIR Recast

⁶ Guidance Text 5.1, p

⁷ Guidance Text 5.3 p17

between courts and insolvency practitioners, jurisdiction, applicable law, enforcement and recognition.

There were other elements discussed in policy documents drafted before the Recast came into force which you could have discussed here.

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.

Answer:

1) Undertaking or “Synthetic proceeding”

Article 38(2) read with Article 36, provides that if an insolvency practitioner in the main proceeding gives an undertaking in accordance with Article 36, the court should not open a secondary proceeding if it is satisfied that the undertaking adequately protects the general interests of its local creditors.⁸

These Articles came about through the result of previous case law, *Re Collins & Aikman Europe SA and other companies* [1006] EWHC 1343 (Ch) which involved an application to the UK Court to open insolvency proceedings of a group that operated through 24 legal entities spread over 10 jurisdictions.⁹ Articles 36 and 38 were absent in the EIR 2000.

2) EIR Recast Chapter V – Group Insolvencies

An entirely new chapter with over 20 Articles that provides for two sets of tools, Articles 56 – 60 prescribe cooperation and communication duties, and Articles 61 – 77 introduces the mechanism for group coordination proceeding which includes the concept of a group coordinator.¹⁰

3) Insolvency Registers

Article 25 of their Recast prescribes the creation of a decentralised system for the interconnection of insolvency registers. That system must be composed of the national insolvency registers and the European e-Justice Portal, which serves as a central public electronic access point to information in the system.¹¹

Prior to this, publication was made in the national insolvency register of the member state and in the register where the debtor had an establishment; it was up to the insolvency practitioner to publicise in a state it believed that the debtor had an interest. This of course is a cumbersome and tedious task and would have left open the possibility that the creditor would continue to deal with the insolvent debtor, unaware of the insolvency proceedings.

⁸ Guidance Text 10.1 p 51;

⁹ Guidance Text 10.1 p51;

¹⁰ Guidance Text 11.0 p55;

¹¹ Guidance Text 8.3.2 p 44;

Question 3.3 [maximum 5 marks] 1.5

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.

Answer:

- 1) Duty to inform creditors, Article 54, the requirement for personal notice to each individual creditor should diminish with the fully operational interconnection of insolvency registers.¹²
- 2) EIR Recast does not address form shopping, but harmful and abusive forms causing damage or disadvantage to the debtor’s creditors (Recital 29).¹³

You did not explain how they could be corrected.

Total : 8 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 references to the applicable law and the relevant CJEU jurisprudence.

Answer

The question international jurisdiction of the under EIR 2000 was addressed in the European Court of Justice in *Eurofood IFSC Ltd*.¹⁴ In this matter, Eurofood was registered in Ireland with its wholly owned subsidiary, Parmalat SpA, incorporated in Italy. Both the Italian and Irish courts held that the COMI was in their respective countries. This essentially set out the criteria that sets out the COMI which is that the activity of a debtor of a Member State should be regular and lasting to create a COMI,

¹² Guidance Text 8.3.1, p 43;

¹³ Guidance Text 5.3.1, p 19;

¹⁴ *Eurofood IFSC Ltd* Case C-341/04, ECLI:EU:C:2006:281 (May 2,2006)

the autonomous meaning of the term COMI must be identified by reference to criteria that are both objective and ascertainable by third parties (para 33).¹⁵

Considering that Cardinal Home is an Ireland-registered company which opened in Cork, Ireland in 2009, presumably that company remains operative in Ireland on 22 June 2017 and Ireland was not just a “post box” for the company, Ireland would be able to establish that the COMI for the company falls within its jurisdiction and accordingly would have international jurisdiction in the insolvency proceedings.

Question 4.2 [maximum 5 marks] 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.

Answer:

Application of the EIR Recast has a material, temporal, personal and territorial scope.

On the material scope, it extends beyond “traditional” liquidation oriented procedures to proceedings aiming at rescuing economically viable but financially distressed businesses.¹⁶ The opening of examinership proceedings would be covered by the extended material scope of Article 1 of EIR Recast, provided that it is a proceeding recognised in Annex A of EIR Recast.

As regards to the temporal scope, the EIR Recast applies to all insolvency proceedings opened from 26 June 2017¹⁷. Should the Dublin High Court have opened the proceedings on 30 June 2017, the temporal scope of the EIR Recast is met.

Recital 9 of the EIR Recast provides that it applies to insolvency proceedings, which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person or a trader or a consumer.¹⁸ Accordingly being a legal person, Cardinal Home will meet the personal scope criteria, as it does not fall under the exception in Article 1(2).

EIR Recast is binding on all EU Member States except Denmark¹⁹. As Ireland is a EU Member State, it will meet the territorial scope for applicability of the EIR Recast.

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.

Answer:

¹⁵ Guidance Text 5.3.1, p19;

¹⁶ Guidance Text 5.2.1 p 14;

¹⁷ Guidance Text 5.2.2 p 15; Article 92 EIR Recast

¹⁸ Guidance Text 5.2.3 p 15

¹⁹ Guidance Text 5.2.4 p 16

Article 3(2) of the EIR Recast allows for the opening of one or more secondary insolvency proceedings against a debtor in any Member State where it possesses an establishment. The Effects of the secondary proceedings are restricted to the assets of the debtor situated in the territory of the Member State where secondary proceedings have been opened.²⁰

Article 2(10) of EIR Recast defines “establishment” as any place of operations where a debtor carries out or has carried out in the three-month period prior to the request to open main insolvency proceedings a non-transitory economic activity with human means and assets.²¹

In *Interedil*²² the CJEU examined the concept and concluded that the fact the the definition connects the pursuit of an economic activity to the presence of human resources, shows that a minimum level of organisation and degree of stability are required. The presence alone of goods in isolation or bank accounts does not, in principle, satisfy the requirements for classification as an “establishment” (paragraph 62)²³

Considering that Cardinal Home entered a credit agreement with an Italian bank for use in the Spanish market and entered into some non-binding memoranda of understanding with Italian distributors (which presumably did not go ahead), nothing on the facts shows that there was any pursuit of economic activity and presence of human resources in Italy that could establish an “establishment”, accordingly, secondary proceedings cannot be opened under EIR Recast in Italy.

Total : 15 out of 15.

*** End of Assessment ***

Total : 40.5 out of 50.

²⁰ Guidance Text 5.3.3, p 21;

²¹ Guidance Text 5.3.3, p 22;

²² *Interedil Srl* Case C-396/09, ECLI:EU:C:2011:671

²³ Guidance Text 5.3.3, p 22;