



**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.**
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- 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**.

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## **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.

You did not answer this question. C was the correct answer.

#### 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 marks: 9 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."

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

Statement 1: Article 36 – The right to give an undertaking in order to avoid secondary insolvency proceedings.

Statement 2: Article 42 – Cooperation and communication between courts.

**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 EIR Recast was conceptualized out of a need for improvement in the efficiency and effectiveness of insolvency proceedings across different international jurisdictions, thereby ensuring the protection of creditors' rights and creating certainty of transactions and stability of markets. Establishing a set of rules in relation to international insolvency and having those rules adopted by all territorial jurisdiction proved to be impossible, thus pure universalism was not achieved. However, the EIR Recast contains provisions which have been adopted by some Member States of the European Union that promote modified universalism.

Article 3(1) provides the jurisdiction of the courts to open insolvency proceedings in a member state will be determined by the debtor's center of economic interests (COMI). This proceeding is regarded as the main proceeding and provides the lex concursus of this proceeding, that is, the laws generally governing the insolvency proceedings, with some exceptions. It also outlines the conditions for determining the COMI.

Article 19 (2) provides for that recognition of the main proceeding according to Article 3(1) does not prohibit the opening of secondary proceedings by a court in the territory of another member state if an establishment of the same debtor resides with the territory of that Member state.

Article 2 (10) states the meaning for an establishment. Any establishment is a place where the operation of a debtor is executed, or has been executed in the three month before the commencement of an insolvency proceeding. The presence on an establishment in the territory of a member state allows for a second proceeding to be opened. Secondary proceedings limit the lex concursus of the main proceeding and its

universality, as the assets in the secondary proceeding are relegated to that proceeding. It creates a *lexi concursus secundarii*, laws applicable to a separate insolvency 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.

Article 42 – Cooperation and communication between the courts

Article 6- Jurisdiction for actions deriving directly from insolvency proceedings and those closely linked them.

Article 57- Cooperation and communication between the courts (in the context of a group of companies)

**Question 2.4 [maximum 2 marks] 2**

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.

Two legal instruments that can be used to avoid or alter the effects of the opening of secondary proceedings are a stay of the opening of secondary proceedings and an undertaking.

A stay of proceedings may be granted by the court in which an insolvency proceeding has been commenced upon the application of a debtor-in-possession or insolvency practitioner in accordance with Article 38(3) of the EIR Recast. It is a temporary stay that is typically granted for a period of up to 3 months if the court is convinced that the creditors' interest are protected. The stay of enforcement actions must have been granted by the courts in the jurisdiction of the main proceeding for the courts in the secondary proceedings to considered imposing the stay.

Article 36 of the EIR Recast allows for an insolvency practitioner in the main proceeding to make an application to the courts, for the granting of an undertaking. The insolvency practitioner commits to comply with laws of distribution and priority of rights for the local creditors that would apply if secondary proceedings were opened locally, thus ensuring the protection of the creditors' interest. Approval by the body of known creditors in the secondary proceeding is necessary for the granting to the undertaking.

**Total marks: 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 European Commission conducted a review of the insolvency regulations, and made several recommendations which were adopted in the 2015 as the EIR Recast and became applicable on 26 June 2017. These recommendations address issues such as:

- 1) Increase in the scope of the regulations to include restructuring proceeding. Article 1 of the EIR Recast referenced public collective proceedings, and interim proceedings aim at rescue, debt adjustment and reorganization.
- 2) Stricter ruled for cooperation between insolvency practitioners and courts. Article 43 EIR Recast introduced specific situations in which there are obligations between insolvency practitioners and the courts to cooperate and communicate.
- 3) The ability to have proceedings regarding to members of the same group of companies. Chapter Five is EIR Recast is dedicated exclusively to groups. It contains provisions for cooperation and communication between practitioners, the courts and both. Article 68 addresses how the decision to open group proceeding is made by the courts.
- 4) Improvement in Creditor Information with the introduction of national registers and standardized forms of the filing of claims. Article 24 EIR Recast provides the member state should create and maintain insolvency registers where active insolvency proceeding are published. Article 55(1) EIR Recast permits any foreign creditor to a claim using the uniformed form which was introduced in Article 88 of the EIR Recast.
- 5) Chapter Six of the EIR Recast outlines rules for the protection of data gathered in insolvency proceedings. Article 79 EIR Recast addresses the responsibilities of member state to protect the personal data kept in their national insolvency registers.

**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.

The EIR Recast was regarded as an improvement on the EIR 2000 regulations because it introduced several new concepts and addressed problems identified with the implementation of the EIR 2000. The streamlining of the concept of a debtor's centre of main economic interest and the presumptions surrounding the same; the introduction of specific provisions in relation to insolvency of multinational group of companies, and the requirement for the establishment of insolvency registers in Member States where the regulation was been adopted are examples of key changes introduced by the EIR Recast.

Article 3 of the EIR Recast provided more specific guidelines for the ascertaining the debtor's COMI. The COMI is "the place where the debtor conducts the administration of its interest on a regular basis and which is ascertainable by third parties". The Eurofood IFSC case. The presumption that the registered office of the debtor its centre of main interests (COMI), is only applicable if the registered office was not changed to another member state within three months prior to the petition to open insolvency proceedings.

Article 6 (2) EIR Recast introduced a provision that provides that where an insolvency action is opened against the same debtor in relation to a civil and commercial matter, the

insolvency practitioner has the power to bring both the civil and insolvency action before the courts of the Member State where the defendant is domiciled. In the case of more than one defendants, then both actions can be brought before the courts of the member state of where any of the defendants is domiciled. The ability to use this provision is dependent on whether the court of the domicile has jurisdiction under the Brussels regulation. These reasons for this provision, is to promote procedural and material efficiency

Article (18) EIR Recast address an exception to the general rule that the effects of an insolvency proceeding on a proceeding brought by a creditor will be determined by the *lex concursus*. The provision of Article 18 states that it is the law of the member state in which the lawsuit or arbitration is pending that governs the effects of insolvency proceedings on the pending lawsuit or arbitration relating to an asset or right that forms part of the debtor's estate. Nevertheless, while the lawsuit or arbitration may proceed, it does not affect any enforcement on a judgement. The effects of the individual enforcement action will still be derived from the law of state opening the insolvency proceeding, therefore where a stay under an of insolvency proceeding is in effect, it will also affect that individual creditor's ability to enforce the judgement. The efficiency of the administration of the insolvent's estate is preserved as no fragmentation of the estate is allowed.

**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.

EIR Recast though generally welcome by insolvency practitioner was not with a perfect regulation. Critics have commented on weaknesses observe in relation voluntary nature of group proceeding and rights in rem.

The EIR Recast introduced the concept of group- coordinated proceedings in relation the members of group of companies. This provision is aimed at improving the coordination in a group wide restructuring plan. However, the provision is procedural and participation of members of the group is in voluntary, and the results of the group-coordinated proceedings are non-binding, since each company maintains its right to treated as separate the legal entity. Critics have argued that for provisions to be meaningful it needs to be less procedural and more substantive in nature. The right of every insolvency practitioner to object to the inclusion the in group-coordination proceeding is a weakness of this provision, especially since no formal requirement to provide reasons for the objection. Arguments have been put forward that a having a single independent insolvency practitioner with the power to make binding recommendations across the jurisdiction of all the members of group would result in a more effective administration of the various insolvency proceedings.

Rights in rem is the security right afforded over a property or asset to ensure payment of a debt or obligation. They are shielded from the effects of the insolvent proceedings and are governed by the national courts that apply the law of that particular member state. The EIR Recast provides no clear definition as what is considered at right in rem. Thus, clarification from the courts may be necessary in some situations. This can impact the cost and efficient administration of an insolvency proceeding.

**Total marks: 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] 4**

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.

Ireland is member of the European Union, the EIR 2000 was a binding agreement for all members states of the European Union, except Denmark. Under the EIR 2000 provides that the courts of member state where the debtor has its centre of main interest (COMI) have jurisdiction to open insolvency proceeding. However, unlike the EIR Recast, the EIR 2000 specific presumption about a debtor's COMI. In the absence of a statutory definition, case law is useful in determining the COMI of a debtor. The ruling of European Court of Justice in the case of Eurofood IFSC Ltd can provide some guidance. The court confirmed that the meaning of COMI is autonomous and that it must be identified by criteria that is objective and ascertainable by third parties. Recital 13 EIR 200 similarly provided that a debtor's COMI should be interpreted as a place of the economic activity of a debtor regularly occurs and which can be clearly observed a third parties. Based on the legal provision and the case law, Cardinal House's COMI may be determined to be in Ireland. The debtor has a store (economic activity that is ascertainable to third parties) in Ireland. The presence of warehouses in other member states does not necessary suggest that economic activity is happening. In those territories. Therefore, the Dublin High Court, an Irish Court could proceed with the n application for the opening of an insolvency proceeding.

You did not mention examinership listed or not in the EIR.

**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.

. The scope EIR Recast may be examined by answering certain questions. The establishment of the scope is broken down into categories, such as material, geographical, personal and temporal.

Firstly, the material scope must be assessed. This is determined by reviewing Annex A of the EIR Recast. If the respective processing is included as an insolvency proceeding, then the material scope is met.

Secondly, if the debtor has its centre of main interest (COMI) in a Member State, another than Denmark, then the geographical scope is satisfied. Cardinal House had its registered office in Ireland, under the EIR Recast the registered office is presumed to be the COMI of the debtor. Here the material scope is satisfied.

Thirdly, one should examine the personal scope. If the debtor is not a bank, insurance company, credit institution, investment firms or other firms as outlined in Article 1(2) then the personal scope is met. Cardinal Home is furniture company; therefore the persona scope is satisfied.

Finally, the timing of the insolvency proceeding must be considered. The EIR Recast was adopted in 2025 and took effect on 26 June 2017. Since the respective proceeding commenced on 30 June 2017, it is possible to use the provisions therein.

**Question 4.3 [maximum 5 marks] 3.5**

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.

EIR Recast allows for the opening of a secondary proceeding in relation the same debtor where the debtor an establishment in the Member State requesting the petition. Article 3(2) of the Recast outlines this provision. The presence of an establishment is critical; therefore, it must be sufficient evidence before the petition is granted. It is regarded as any place of operations where non-transitory economic activity involving human means and assets of the debtor presently are being utilized or had been use in three months period before the commencement of an insolvency main proceeding. Based on the facts presented Italian Court would not be permitted to open a secondary insolvency proceeding since an establishment were was clearly identifiable.

While you are correct, you do not provide any engagement with CJEU jurisprudence. The presence of assets (leased-out warehouse) in isolation, contractual relations with a local bank (including maintenance of a bank account) and *occasional* negotiations with local distributors do not qualify as 'non-transitory economic activity with human means and assets.' The requisite minimum level of 12rganization and a degree of stability (see para. 64 in *Interedil*) is missing.

**Total marks: 12.5 out of 15.**

**\* End of Assessment \***

**Total marks: 46.5 out of 50.**