



**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).***
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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 2023. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2023. 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 2023 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2023. If you elect to submit by 1 March 2023, you may not***

***submit the assessment again by 31 July 2023 (for example, in order to achieve a higher mark).***

- 7. Prior to being populated with your answers, this assessment consists of 10 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 was the first European initiative to ever attempt to harmonise the insolvency laws of EU Member States.**

**Select the correct answer from the options below:**

- (a) True, before the EIR 2000, the EU has not sought to harmonise the insolvency laws of EU Member States.**
- (b) False, there was another EU Regulation regulating insolvency law at EU level before the EIR 2000.**
- (c) False, an EU Directive regulating insolvency law at EU level existed before the EIR 2000.**
- (d) 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.**

Question 1.2

**According to Article 1(1) of the EIR 2015, proceedings fall within the scope of the EIR if:**

- (a) they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; are public; are collective.**
- (b) they are based on laws relating to insolvency for the purpose of liquidation; are public; are collective.**
- (c) they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; are public.**

**(d) they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; are collective.**

Question 1.3

**In 2017, the EIR Recast replaced the EIR 2000. Recasting the EIR 2000 was deemed necessary by various stakeholders. Why?**

**(a) Through its case law, the CJEU had altered the literal meaning of several provisions of the EIR 2000. Newly formulated rules, in line with the CJEU interpretation, were therefore needed.**

**(b) The EIR 2000 was generally regarded as a successful instrument in the area of European insolvency law by the EU institutions, practitioners and academics. However, a number of its shortcomings were identified by an evaluation study and a public consultation.**

**(c) The fundamental choices and underlying policies of the EIR 2000 lacked support from the major stakeholders (businesses, public authorities, insolvency practitioners, etc.). A new Regulation was therefore needed to meet their expectations.**

**(d) The EIR 2000 proved to be inefficient and incapable of promoting co-ordination of cross-border insolvency proceedings in the EU.**

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

**The EIR Recast is an instrument of a predominantly procedural nature (including private international law issues). Nevertheless, it contains a number of substantive**

**provisions. Which one of the following provisions constitutes a harmonised (stand-alone) rule of substantive law?**

- (a) Article 18 EIR Recast ("Effects of insolvency proceedings on pending lawsuits or arbitral proceedings").**
- (b) Article 40 EIR Recast ("Advance payment of costs and expenses").**
- (c) Article 7 EIR Recast ("Applicable law").**
- (d) Article 31 EIR Recast ("Honouring of an obligation to a debtor").**

Question 1.6

**The EIR 2015 does not provide a definition of "insolvency" or "likelihood of insolvency". What are the consequences of this?**

- (a) The ECJ has provided a definition of "insolvency" in recent case law.**
- (b) The European Commission has provided a definition of "insolvency" in its Recommendation on a "New Approach to Business Failure" published in 2014.**
- (c) Each Member State will define "insolvency" in national legislation.**
- (d) Deciding whether a debtor is "insolvent" or not is a matter for the ECJ to determine.**

Question 1.7

**The EIR Recast introduced the concept of "synthetic proceedings". What are they?**

- (a) "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.**
- (b) "Synthetic proceedings" means that for the case at hand, several main proceedings can be opened, in addition to several secondary proceedings.**
- (c) "Synthetic proceedings" means that when secondary proceedings are opened, these are automatically rescue proceedings, as opposed to liquidation proceedings.**

**(d) "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.**

Question 1.8

**The EIR Recast kept the concept of the "centre of main interests" (COMI) of the debtor, which already existed in the EIR 2000. What were the amendments adopted in relation to this concept?**

- (a) The COMI of the debtor is not presumed to be "at the place of the registered office" anymore and the debtor will need to confirm where his COMI is before the beginning of each case.**
- (b) Although the COMI of a debtor is still presumed to be "at the place of the registered office", it is now possible to rebut this presumption, albeit only by the courts.**
- (c) The rule that a company's COMI conforms to its registered office is now an irrefutable presumption.**
- (d) Although the COMI of a debtor is still presumed to be "at the place of the registered office", it should now be possible to rebut this presumption based on Article 3 EIR Recast and Recital 31.**

Question 1.9

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

- (a) 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.**
- (b) The judgment, subject to recognition, was passed with incorrect application of the applicable substantive law.**
- (c) The court, which has opened insolvency proceedings (originating court), most certainly did not have international insolvency jurisdiction to do so under the EIR Recast.**
- (d) The rule applied by the court, which has opened insolvency proceedings (originating court), is unknown or does not have an equivalent in the law of the jurisdiction in which recognition is sought.**

Question 1.10

***In a cross-border dispute, the main proceedings before the German court concerns Schatz GmbH (registered in Germany) and Canetier SARL (registered in France). The case deals with an action to set aside four contested payments that amount to EUR 900,000. These payments were made pursuant to a sales agreement dated 29 December 2021, governed by Italian law. The contested payments have been made by Schatz GmbH to Canetier SARL before the former went insolvent. The insolvency practitioner of the company claims that the contested payments should be set aside because Canetier SARL must have been aware that Schatz GmbH 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 Canetier 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) The contested payments will not be avoided if Canetier SARL proves that such transactions cannot be challenged on the basis of the insolvency provisions of Italian law (Article 16 EIR Recast).***
- (d) To defend the contested payments Canetier 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*.***

**The correct answer was C.**

**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. The presumptions that the registered office, the principal place of business and the habitual residence are the centre of main interests need to be rebuttable.***



**Statement 2. Proceedings covered by the scope of the EIR 2015 should include proceedings promoting the rescue of economically viable debtors, especially at a stage where there is a mere likelihood of insolvency.**

*In the context of statement n.1, the relevant concept refers to Article 3 of the EIR recast, 'International jurisdiction' (Chapter I, General Provisions). The latter particularly elaborates on the rebuttable presumptions laid down in respect of the centre of the debtor's main interests for a company or legal person, an individual, specifically in case of an independent business or professional activity, or any other individual. The assessment of the centre of the debtor's main interests is critical for the determination of the courts competent to open main insolvency proceedings. The presumptions should be rebuttable so to avoid abusive or fraudulent forum shopping. In particular, paragraph 1 of Article 3 stipulates that the centre of main interests is linked to the place where "the debtor conducts the administration of its interests on a regular basis" (Article 3(1) EIR Recast) and to the element of ascertainability by third parties.*

*In the context of statement n.2, the relevant concept refers to Article 1 of the EIR Recast, 'Scope' (Chapter I, General Provisions). This article analyzes the requirements that an insolvency proceeding should have in order for the EIR recast to apply. Noting the innovative approach of the EIR recast, it should be noted that the applicability of the Regulation should further extend to proceedings dealing with financially viable but distressed debtors and to proceedings where the debtor is close to insolvency (as also noted in Recital 10).*

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.**

*As a first example, we could refer to Article 3(2) EIR Recast. If main insolvency proceedings relate to the centre of the debtor's main interests ('COMI of the debtor'), an establishment of the debtor in any EU Member State can justify the opening of secondary insolvency proceedings. In accordance with the EIR Recast, there could be only one main insolvency proceeding and there could eventually be 26 secondary insolvency proceedings reflecting the maximum number of the debtor's establishments across all other EU Member-States. As a result, the eventuality of opening both a main insolvency proceeding and one or more secondary insolvency proceedings in respect of one debtor allows the creation of an intricate situation for the debtor's assets and affairs. In this context, the main proceeding is considered to have a 'dominant' role. Secondary insolvency proceedings depend upon procedures of coordination with the main insolvency proceeding.*

*The second example relates to Article 19(2) EIR Recast. It is linked to the fact that the recognition of main insolvency proceedings should not set obstacles to the opening of secondary insolvency proceedings by a court situated in a different EU Member State.*

*The modified universalism approach may be also identified in Article 34 EIR Recast concerning the modalities of the opening of secondary insolvency proceedings. A court in a EU Member State having jurisdiction under Article 3(2) EIR Recast has the opportunity to open secondary insolvency proceedings. These proceedings will affect only the assets situated in that Member State. The opening of secondary proceedings is thus possible in a Member State when a court of another Member State has opened main insolvency proceedings and those proceedings are subsequently recognized in that first Member State. A re-assessment of the debtor's insolvency by the court opening secondary insolvency proceedings should not be pursued where there is already a requirement of the debtor's insolvency in the main insolvency proceeding. It should be noted that specific circumstances set forth in Article 3(4) permit the opening of secondary insolvency proceedings before the opening of main insolvency proceedings.*

Question 2.3 [maximum 3 marks] **3**

***Because pure universalism has not been adopted under the EIR 2015, main and secondary insolvency proceedings can be opened at the same time against the same debtor. In light of this, it is seminal that proper co-operation between the actors involved in concurrent proceedings takes place. It is therefore not surprising that co-operation has been introduced as an obligation on several actors in the EIR 2015. List three (3) provisions (recitals and / or articles) of the EIR Recast that deal with the obligation to co-operate.***

*First of all, the EIR Recast has developed a significant mechanism for the cooperation and communication between insolvency practitioners pursuant to Article 41. More specifically, Article 41(1) establishes an obligation to cooperate for both the insolvency practitioner involved in main insolvency proceedings and the insolvency practitioner involved in secondary insolvency proceedings, those proceedings relating to the same debtor. It should be noted that the EIR Recast, in contrast to the EIR 2000, takes a step further noting that such cooperation may be realized in any form, such as protocols or the conclusion of an agreement. For instance, Article 41(2)(a) states that cooperation is crucial for the communication of information pertaining to the lodging of claims, the verification of claims, measures directed towards the debtor's rescue or restructuring and the termination of proceedings. Subparagraphs (b) and (c) further specify that cooperation is essential for the development and the implementation of a plan as well as for the coordination of 'the administration of the realization or use of the debtor's assets and affairs' (subparagraph (c) of Article 41(2)).*

*An obligation to cooperate and communicate exists also between courts, in accordance with Article 42 EIR Recast. Paragraph 1 stipulates that a court to whom the opening of an insolvency proceeding has been requested, or that already opened such*

*proceedings, is compelled to cooperate with any court similarly being in the situation of a pending request to open insolvency proceedings or of already opened proceedings. Court-to-court cooperation relates to various types of proceedings. It may take many forms and may be implemented by any appropriate means by the courts. Interestingly, Article 42(3)(c) specifies that cooperation can be relevant to the 'coordination of the administration and supervision of the debtor's assets and affairs' (EIR Recast, subpara. (c), Article 42(3)).*

*Thirdly, pursuant to Article 43 EIR Recast, cooperation and communication between courts and insolvency practitioners also constitutes an obligation. The insolvency practitioner involved in the main insolvency proceeding is obligated to communicate and cooperate with a court to whom the opening of a secondary insolvency proceeding has been requested or that already opened such proceedings. An insolvency practitioner 'in territorial or secondary insolvency proceedings' is equally obliged to communicate and cooperate with the court to whom the opening of a main insolvency proceeding has been requested or that already opened such proceedings. Finally, cooperation and communication shall also be established between the insolvency practitioner involved in territorial or secondary insolvency proceedings and the court before which a request has been made to open territorial or secondary insolvency proceedings or that has already opened such proceedings.*

*All the aforementioned cooperation and communication scenarios are possible and available, unless such cooperation is not possible due to the incompatibility with the applicable rules to the proceedings concerned.*

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 one to three sentences) explain how they operate.***

*One of the instruments comprised in the EIR Recast concerning the control of secondary insolvency proceedings refers to synthetic proceedings. This scenario is related to the case of an insolvency practitioner involved in a main insolvency proceeding having given an undertaking pursuant to Article 36, in accordance with Article 38(2) EIR Recast. In this context, the court requested to open secondary insolvency proceedings should not proceed with the opening of such proceedings if that court is satisfied that local creditors' rights are protected by the undertaking. Notwithstanding the fact that no secondary proceedings are opened, local creditors receive the advantages of the secondary proceedings even if those don't formally exist. Consequently, this system ensures the centralization of debtor's assets and affairs and the compliance of the insolvency practitioner with distribution and priority rights linked to local insolvency rules in respect of local creditors' rights.*

*A second instrument linked to the control of secondary insolvency proceedings relates to a stay of those proceedings. Pursuant to Article 45 EIR Recast, the court is given the possibility to stay the opening of secondary insolvency proceedings, at the request of an insolvency practitioner or the debtor-in-possession, in case a stay has already been granted in the main insolvency proceeding. This is to protect any negotiation mechanism and to promote the rescue process. In any event, it should be stressed that certain conditions should also be met for staying the secondary proceeding. This mechanism is generally considered weaker when compared to the effectiveness of the 'synthetic proceedings' measure with respect to restraining the effects of secondary insolvency proceedings and safeguarding those of the main proceeding.*

**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**

**During the reform process of the EIR 2000, what main elements were identified by the European Commission as needing revision within the framework of the Regulation (whether adopted or not)?**

*Notwithstanding the overall success of the EIR 2000, some adjustments were considered necessary in light of the new needs and developments in the insolvency domain. These adjustments can be summarized as follows.*

*First of all, broadening the scope of the EIR 2000 in terms of restructuring proceedings was considered imperative. The scope of the new Regulation was extended to proceedings in which the mere likelihood of insolvency is present and to proceedings leaving the debtor fully or partly in control of affairs and assets (see Recital 10). Indeed, during the reform process, the need to include in the scope of the Regulation the restructuring of companies in a "pre-insolvency" situation and "hybrid proceedings" was acknowledged.*

*Secondly, the aspects of informing foreign creditors and facilitating the procedures regarding the lodging of claims and creditors' participation in insolvency proceedings had to be improved. Article 28(1) EIR Recast makes it mandatory for the insolvency practitioner (or the debtor-in-possession) to demand the publication of the notice regarding the opening of insolvency proceedings at the place of the debtor's establishment. The publication processes follow the Member State's local rules. Similarly, the court or the insolvency practitioner involved in the insolvency proceeding is required to subsequently inform the foreign creditors, who are known, of such an event (Article 54 EIR Recast). Paragraphs 2 and 3 of the said Article indicate*

*procedural matters to be taken into account. Most important, the operability of the general mechanism regarding creditor information developed within the EIR Recast is strengthened by Articles 24 and 25. Article 24 stipulates that every Member State should develop one or more registers comprising information on insolvency proceedings. These registers should be made available in an expeditious manner. Article 25 stresses the importance of developing a publicly accessible decentralized system of registers which will serve the purpose of interconnecting insolvency registers.*

*As related thereto, the dimension of data protection has received considerable attention in the context of the EIR Recast. Indeed, the newly added Chapter VI, entitled 'Data protection', regulates the accessibility of data in respect of insolvency registers, creditor notices as well as standard claims forms (see Articles 78-83 EIR Recast).*

*Thirdly, some specific refinements were also crucial for furthering the success of the EIR Recast framework. For instance, within the definition of establishment of Article 2(h) of the EIR 2000 the time period was added and within Article 3(3) EIR 2000 the prerequisite that secondary insolvency proceedings must be winding-up proceedings was deleted. At the same time, it was considered necessary to provide guidance on the determination and interpretation of COMI and on the rebuttal of the presumption of COMI. Most important, improvements to the jurisdictional rules were considered essential.*

*Fourthly, Articles 36 and 38(2) explain the right to give an undertaking with the scope of avoiding the opening of secondary insolvency proceedings. That mechanism was not present in the EIR 2000. It evolved through jurisprudence (see *Collins & Aikman Europe SA and other companies* [2006] EWHC 1343 (Ch)) and was subsequently included in the context of the EIR Recast. The concept of the stay of the opening of secondary insolvency proceedings was also added in the Recast (Article 38(3)). Generally speaking, during the reform process of the EIR 2000, issues concerning the interaction between main and secondary insolvency proceedings were identified, in particular with respect to the fact that the commencement of secondary proceedings may interfere with the administration of the debtor's estate.*

*In addition, the EIR Recast devotes, as opposed to the EIR 2000, an entire chapter (Chapter V, "Insolvency proceedings of members of a group of companies") to the insolvency of enterprises as members of groups of companies. It comprises rules pertaining to communication and cooperation among insolvency practitioners and courts (Arts. 56-60 EIR Recast) as well as rules on a new procedure called 'group coordination proceeding' in which the group coordinator plays a pivotal role (Arts. 61-77 EIR Recast). Addressing the concept of group insolvency was considered important so to avoid inefficient results in the group restructuring context and the fragmentation of the enterprise group in separate members when insolvency is concerned.*

*Other than the above-mentioned cases, a number of adjustments have taken place in the EIR Recast in the context of cooperation. Article 41 EIR Recast indicates that*

cooperation among insolvency practitioners, where one may be involved in main proceedings and the other in secondary proceedings, may be implemented in various forms, such as cooperation protocols or agreements (see also *Maxwell* case; *Maxwell Communications Corp.*, [1992] B.C.L.C. 465; 170 B.R. 800 (Bankr. S.D.N.Y. 1994); *Aff'd* B.R. 807 (Bankr. S.D.N.Y. 1995); 593 F.3<sup>rd</sup> 1036 (2<sup>nd</sup> Cir., 1996)). Also, Article 41(2)(a) EIR Recast mandates the insolvency practitioner to transmit relevant information to other insolvency practitioner(s) in a timely fashion in view of any progress regarding the filing and verification of claims *and* [emphasis added] the possible measures intended to rescue or restructure the insolvent or to conclude the proceedings. At the same time, another innovation of the EIR Recast, laid down in Article 42, regards cooperation and communication among courts in insolvency proceedings. In this respect, it is worth noting that the case of *Bank Handlowy* has particularly influenced the cooperation spectrum (Case C-116/11, *Bank Handlowy w Warszawie SA v Christianapol sp. z o.o.*, ECLI:EU:C:2012:739 (Nov. 22, 2012)). Article 42(1) stipulates that a court to whom the opening of an insolvency proceeding has been requested or that already opened such proceedings, is compelled to cooperate with any court similarly being in the situation of a pending request to open insolvency proceedings or of already opened proceedings. Most important, the EIR Recast includes in its Article 43 communication and cooperation obligations between insolvency practitioners and courts. The aforementioned Article also indicates three situations in which these obligations should take place.

What's more, contrary to the EIR 2000, the EIR Recast now also mentions arbitral proceedings in its Article 18 putting the latter on an equal footing with Member States' court decisions. It is a matter of applying the effects of the *lex loci arbitri*, and not of the *lex fori concursus*, to procedural matters of pending arbitral proceedings.

Furthermore, a form of exequatur for insolvency-related judgments was essential in the context of the EIR 2000. This is no longer the case in respect of Article 32(1) which cross-refers to Arts. 39-44 and 47-57 of the Brussels I (Recast). Indeed, "[a] judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required" (Article 39 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012).

Question 3.2 [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.**

*Notwithstanding the success of the European Regulation 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast),*

views have been expressed that particular disadvantages have hindered the effectiveness of the Regulation.

One of those disadvantages relates to the absence of a definition for employment contracts. This absence is particularly felt in the context of the exceptions to the *lex fori concursus*. Article 13 EIR Recast includes an exception to the general rule of the *lex fori concursus*. It specifies that the effects of the opened insolvency proceedings on contracts of employment are governed by the *lex contractus*, i.e. the law of the Member State which applies to the employment contract. This is a specific exception to Article 7(2)(e) EIR Recast applying the *lex fori concursus* to the effects of insolvency proceedings on current contracts. Of course, this principle is in line with the protection of employment and employees. Thus, whether a contract of employment is going to be terminated or continued is a matter for the *lex contractus* under the conflict of law rules to establish (para. 125, Virgós-Schmit Report).

Issues, therefore, may exist in trying to apply Article 13 EIR Recast. The fact that the Regulation does not provide with a definition of employment contracts hampers a harmonized application of the Regulation in this context. In fact, such a problem could be solved either by referring to the national legal systems of the EU Member States or by providing a definition embedded in the text. Undoubtedly, a self-contained definition would respond to the needs of predictability and legal certainty. The CJEU has already pronounced itself on the primary elements of an employment situation in case 66/85, *Lawrie-Blum v. Land Baden-Württemberg* (ECLI:EU:C:1986:284 (July 3, 1986) (para. 17)).

Another shortcoming is linked to the requisite pertaining to separate legal personalities in the light of the coordination in the insolvency proceedings of members of a group of companies. As also identified in Recital 54, this coordination should aim at effective results and at the respect of every member's legal personality. Advocating for the respect of separate legal personalities entails several implications as to the efficiency and practicality of coordination proceedings in the context of enterprise groups. More specifically, group coordination proceedings under the EIR Recast are voluntary and result in non-binding recommendations on behalf of the group coordinator. At the same time, in accordance with the principle of legal separateness of members of a group, the Regulation does not develop any kind of "enterprise center of main interests" that would facilitate coordination proceedings by determining, for instance, the competent court. Moreover, another disadvantageous situation is that *any* [emphasis added] insolvency practitioner has the right to object to the inclusion of the member's insolvency proceeding to which it has been appointed in group coordination proceedings, pursuant to Article 64(1) EIR Recast (also considered an 'opt-out' model). Following such an objection, the group coordinator cannot proceed with the inclusion of the member's insolvency proceeding nor object. Of course, the objector or any insolvency practitioner appointed to a newly commenced proceeding against a new member of the group are given the opportunity to take part in group proceedings. This is possible after an assessment by the group coordinator following consultations with insolvency practitioners of the other members of the group.

*Throughout the process specific conditions are taken into account (see Article 69(2) EIR Recast).*

*The intricate consequences of this second consideration might be attenuated by decreasing the effect of the legal separateness principle in some instances so to facilitate the purposes of the coordination proceedings in the group dimension. As a matter of illustration, a certain 'reaction', for example, or even a 'counter-objection' mechanism providing appropriate time limits, could be developed for the group coordinator when an insolvency practitioner objects to the inclusion of an insolvency proceeding in the group coordination system. On the other hand, one might argue, another solution would be to remove the objections' mechanism relating to every insolvency practitioner and make the inclusion within group coordination proceedings compulsory for every member under certain circumstances. Furthermore, specifying or providing indicators as to the competent court or COMI of the group would result in higher legal certainty and predictability in group coordination proceedings.*

Question 3.3 [maximum 5 marks] **5**

***The European Insolvency Regulation is a choice-of-forum instrument, which although aiming at procedural harmonisation, did not harmonise the substantive insolvency laws of the Member States. Because of lingering disparities among the national insolvency regimes across the EU, the European institutions introduced the Directive on Preventive Restructuring Frameworks in 2019, which is meant to dovetail the European Insolvency Regulation. List two (2) ways in which the Regulation and the Directive differ.***

*It is well understood that the EIR Recast did not attempt to harmonize substantive insolvency law. Thus, in the context of resolving the existing differences between national insolvency laws in the European region, the Directive on Preventive Restructuring Frameworks of 2019 was developed ('Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 ("Directive on restructuring and insolvency")'). It should be noted that, pursuant to Article 1 of the EIR Recast, the Regulation does not focus only on 'classic' insolvency proceedings, such as liquidation, but encompasses also procedures in which the mere indication of the likelihood of the insolvency of the debtor suffices. Notwithstanding the fact that the Directive on Preventive Restructuring Frameworks is considered to supplement the EIR Recast, certain differentiations should be mentioned.*

*First of all, Directive 2019/1023 constitutes a first major instrument that tries to harmonize national insolvency laws of EU Member States. Setting a series of minimum standards, it particularly focuses on the material aspects of the restructuring of businesses for the specific period of the very early stages so to avoid insolvency for*



debtors. The directive seeks, *inter alia*, to increase the efficiency of the procedure, enhance the negotiation mechanism, allow the debtor to continue its business operations during the restructuring process, reduce the risk of dissenting minority creditors and shareholders compromising the restructuring effort while protecting their interests, and minimize the cost and duration of the restructuring process. In general, there have been instances of jurisdictions in the European region where restructuring mechanisms have been implemented for the early stages of insolvency, but not in an effective and practical manner. This is where the Directive 2019/1023 steps in, on the one hand, to resolve the 'rigidity' of the Regulation and, on the other hand, to focus on substantive issues rather than on the primarily procedural aspects of the EIR Recast. In fact, the EIR Recast contains mechanisms pertaining to conflict-of-law rules. The EIR Recast includes, for instance, the concept of the center of the debtor's main interests (COMI) in Article 3 as well as the mechanism relating to the recognition of insolvency proceedings originating from a certain EU Member State in all other EU Member States.

Secondly, from a substantive perspective, it may be noted that the EIR Recast addresses collective and public in their nature proceedings, which could involve interim proceedings, including them in an exhaustive manner in Annex A. Contrary to the Regulation, the Directive enables the existence of a variety of restructuring proceedings through its Article 1(1) which lists the procedures to be introduced by the Member States. It follows that Member States that import the Directive to their respective jurisdictions have broader discretion in terms of various preventive restructurings and that the Directive thus "does not require that procedures within its scope fulfil all the conditions for notification under Annex A" (see Recital 13, Directive 2019/1023).

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

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

Scenario

***Bella SARL is a French-registered company selling cosmetic products. The company had opened its first store in Strasbourg, France in 2010 and has warehouses across Europe, including in Germany, Ireland, Italy, Spain and Portugal. Its main warehouse is located in Cork, Ireland. All of its employees are located in these countries and most of its customers are also located in these countries, yet some online purchases are coming mainly from the Netherlands and Poland.***

***In 2011, Bella SARL entered into a loan agreement with a Spanish bank because it was hoping to expand its reach onto the Spanish luxury cosmetic market. It opened a bank account with the bank while also negotiating prices with local suppliers. It signed some (non-binding) memoranda of understanding with three Madrid-based suppliers.***

**Unfortunately for Bella SARL, the timing of this initiative coincided with the Great Economic and Financial crisis which hit Europe in the late 2000s. By 2014 the company was in financial difficulty, yet managed to keep afloat for another few years. On 20 June 2017, it filed a petition to open safeguard proceedings in the Strasbourg High Court in France.**

**Question 4.1 [maximum 5 marks] 5**

**Assume that the timeline is slightly different and, therefore, assume that it is not the EIR 2015 that applies but the EIR 2000.**

*Does the Strasbourg High Court have jurisdiction to open the requested safeguard proceedings under the EIR 2000?*

**You must justify your answer when explaining why it does or does not have jurisdiction. Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.**

*Within the EIR 2000, the identification of the Member State and subsequently of the court having jurisdiction to open insolvency proceedings is possible via Article 3(1). Pursuant to this Article, the center of the debtor's main interests determines the jurisdiction of the court to open insolvency proceedings ("main proceedings"). Article 3(1) goes on instituting a presumption that the place of the registered office is the COMI of the legal person debtor, absent proof to the contrary. As set forth in Recital 15, the rules established in the EIR 2000 focus only on the international jurisdiction and not on the territorial jurisdiction in the Member State concerned. In this regard, the territorial jurisdiction is determined by domestic law of that Member State. Pursuant to Recital 13, "[t]he "centre of main interests" should correspond to the place where the debtor conducts the administration of his interests on a regular basis and is therefore ascertainable by third parties" (Recital 13, EIR 2000). Important case law by the CJEU has shaped the meaning of COMI. In *Eurofood IFSC Ltd* (Case C-341/04, ECLI:EU:C:2006:281 (May 2, 2006)), the court noted the independent nature of the concept of COMI and the significance of examining the elements of ascertainability by third parties and objectivity. In *Interedil Srl v Fallimento Interedil Srl* (Case C-396/09, ECLI:EU:C:2011:671 (Oct. 20, 2011)), the CJEU stated that if the supervision, decision-making and management are in the same location as the debtor's registered office, then the presumption concerning the registered office is "irrefutable" (see para. 50 of the CJEU judgment).*

*As per the scope of the EIR 2000, the Regulation was adopted in May 2000 and has been made directly applicable in all Member-States of the European Union (except Denmark). The Annexes included in the Regulation serve to guide and assist courts and liquidators as to whether a certain liquidator or insolvency proceeding is covered by the scope of the Insolvency Regulation of 2000. As stated in Article 2 of the EIR 2000, in the context of the relevant definitions, paragraph (a) refers to insolvency proceedings as those are enumerated in Annex A of the European Insolvency*

*Regulation of 2000. In fact, the crucial role of Annex A has been explained in Case C-116/11, Bank Handlowy w Warszawie SA v Christianapol sp. z o. o. (ECLI:EU:C:2012:739) (Nov. 22, 2012). In that case, the CJEU stated that “once proceedings are listed in Annex A to the Regulation, they must be regarded as coming within the scope of the Regulation. Inclusion in the list has the direct, binding effect attaching to the provisions of a regulation”. It is important to note that the authoritative interpretations of the EIR 2000 by the Court of Justice of the European Union (CJEU) remain relevant also in the context of the EIR Recast.*

*According to the facts of the case, Bella SARL is a company registered in France that trades in cosmetic products. In 2010, a first store was opened in Strasbourg (France) and warehouses were established across the European region, notably Germany, Ireland, Italy, Spain and Portugal. A principal warehouse is situated in Ireland (Cork). As far as Bella SARL’s employees are concerned, these are present, namely, in Germany, Ireland, Italy, Spain and Portugal. The majority of its customers are also based in the above mentioned countries. Bella SARL reached a loan agreement with a Spanish banking institution and entered into non-binding memoranda of understanding with three suppliers located in the Spanish capital. However, by 2014 financial difficulties had slowly been hitting the French company and by 2017 an application to open safeguard proceedings had been filed in Strasbourg. For the purposes of this question, we assume a different timeline so that the EIR 2000 applies.*

*Applying the aforementioned rules contained in the EIR 2000, the COMI of the debtor indicates that France is the designated jurisdiction to open insolvency proceedings. Noting the facts of the case, Bella SARL is a legal person registered in France with the center of its main interests in the said country. As previously mentioned, objectivity and ascertainability by third parties as well as the regular administration and management of the debtor’s business in a particular country define the COMI of that debtor which, in this case, is linked to Strasbourg, France. The competent national court in the case at hand is determined by national law and, in particular, by Article L721-8 (“Compétence particulière à certains tribunaux de commerce”) in the context of Chapter I of the French Code of Commerce (“De l’institution et de la compétence”).*

*Nevertheless, Annex A of the EIR 2000 includes a list of all the insolvency proceedings covered by the Regulation. In the section dedicated to French insolvency proceedings, two types of proceedings are mentioned; ‘judicial liquidation’ (“liquidation judiciaire”) and ‘judicial reorganization with the appointment of an administrator’ (“redressement judiciaire avec nomination d’un administrateur”). Safeguard proceedings are not included in the foregoing list. As previously pointed out, the annexes should be utilized to verify whether a proceeding falls within the scope of the 2000 Regulation. Those proceedings are mentioned in the relevant annex in an explicit way. Therefore, the High Court in Strasbourg where a petition to open safeguard proceedings has been filed apparently has jurisdiction to open those proceedings, but, since the (safeguard) proceedings in question are not included in the Annex A list of insolvency proceedings, we do not consider the EIR 2000 applicable to those proceedings.*

**Very good.**

Question 4.2 [maximum 5 marks] **5**

**Assume that the timeline is as explained in the original scenario above and that the French High Court opens safeguard proceedings on 30 June 2017.**

*Will the EIR Recast be applicable to the proceedings?*

**Your answer should address the EIR Recast's scope and contain all steps taken to answer the question.**

*The EIR Recast entered into force on 26 June 2017, succeeded the EIR 2000 and constitutes a private international law instrument. It governs international jurisdiction regarding the commencement of insolvency proceedings and actions that draw on those proceedings. It includes provisions on the recognition and enforcement of judgments and rules with respect to the law applicable to insolvency matters. If Regulation (EU) No. 1215/2012 of December 2012 (Brussels I Recast) addresses jurisdiction as well as recognition and enforcement of judgments in civil and commercial matters excluding, inter alia, bankruptcy, winding-up and other proceedings, the EIR Recast treats specifically these last issues as an exclusive framework of insolvency and insolvency-related law. More specifically, applicability of the EIR Recast to an insolvency proceeding depends upon the assessment of particular elements. In case all answers to that assessment are in the affirmative, then the EIR Recast will be applicable to the insolvency proceedings at issue. The first element concerns the material scope of the EIR Recast.*

*With reference to Article 1 of the Regulation, it is stated that 'public collective proceedings', which include interim proceedings, fall under the EIR Recast. In particular, those proceedings must be based on insolvency-related laws and be oriented towards the reorganization, liquidation, financial rescue or adjustment of debt procedures of the debtor. In addition, certain characteristics must be present in the insolvency proceeding: a total or partial displacement of the debtor from its business and the appointment of an insolvency practitioner; the presence of control or supervision by a court of the debtor's affairs and assets; and, the existence of a provisional stay of individual enforcement proceedings. The EIR Recast also applies to proceedings concerning a debtor's restructuring in the context of mere probability of insolvency.*

*As already stated by the CJEU in the *Bank Handlowy w Warszawie SA v Christianapol sp. z o.o.* case (Case C-116/11, *Bank Handlowy w Warszawie SA v Christianapol sp. z o.o.*, ECLI:EU:C:2012:739 (Nov. 22, 2012)), proceedings included in Annex A are considered as falling within the scope of the EIR Recast and having a binding effect. Such proceedings are covered by the EIR Recast in an automatic manner, while others not listed are not. This system that builds upon Annexes certainly offers clarity and efficiency to the entire procedure.*

*The second element refers to the temporal scope of the EIR Recast. Noting that the EIR Recast repeals and succeeds the EIR 2000 as from 26 June 2017, it should be noted that, pursuant to Article 92 of the Regulation, there is no retroactive applicability of the 2015 Regulation, except for some specific situations. Thus, only insolvency proceedings commenced after that date are covered by the EIR Recast. Insolvency proceedings with an earlier date fall within the scope of the EIR 2000. An additional consideration relates to the time of commencement of the proceedings. This temporal element is closely linked to the time when the commencement of insolvency proceedings becomes effective, whether the judgment is final or not (see, definition of judgment opening insolvency proceedings in Article 2(7), “judgment opening insolvency proceedings’ includes: (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”).*

*The third element is related to the personal scope of the Regulation. As per Recital 9, Regulation 2015/848 applies to both natural and legal persons as well as to both traders and consumers. In this regard, proceedings dedicated to debt adjustment or debt discharge for self-employed individuals or generally consumers are also included in the scope of the 2015 Regulation. In contrast, the Regulation does not apply to very specific situations that relate to proceedings of insurance undertakings, investment and other firms, undertakings or institutions (if covered by Directive 2001/24/EC), credit institutions and collective investment undertakings. Those proceedings fall within the scope of special legal frameworks outside the 2015 Regulation.*

*The fourth element concerns the territorial scope of the EIR Recast. Applicability of the 2015 Regulation concerns all EU Member States, except for Denmark. Recital 25 includes a very useful rule directing applicability of the EIR Recast only to proceedings that are initiated where the debtor’s COMI (“center of main interest”) is linked to the EU. Recital 27 makes it mandatory for a court prior to initiating an insolvency proceeding to assess ex officio whether the debtor’s COMI is located in that Member State. There is inapplicability of the EIR Recast in case the COMI of the debtor is situated outside the European Union. In such circumstances, domestic conflict of laws as well as insolvency laws of the Member State or States concerned will govern jurisdictional issues. However, it should be noted that, for instance, in *Ralph Schmid v Lilly Hertel* (Case C-328/12, ECLI:EU:C:2014:6 (Jan. 16, 2014)) and in *Christopher Seagon v Deko Marty Belgium NV* (Case C-339/07, ECLI:EU:C:2009:83 (Feb. 12, 2009)), the CJEU, under the prism of ‘foreseeability’ and universality of main proceedings, expanded the scope of the EIR 2000, and therefore of the EIR Recast, to comprise actions against persons having their place of business in a country outside the EU.*

*In accordance with the facts of the case, Bella SARL, as a French-registered company, has filed an application with the Strasbourg High Court to open safeguard proceedings on 20 June 2017. The High Court opened said proceedings on 30 June 2017.*

*In the context of the safeguard proceedings opened by the High Court of Strasbourg, the following should be stressed. Firstly, with regard to the material scope of the 2015 Regulation, these particular proceedings are comprised in Annex A of the EIR Recast. They are mentioned as “Sauvegarde” in the context of French proceedings and thus are covered by the Regulation. As already mentioned, the EIR Recast applies automatically with no further assessment by courts. Secondly, the proceeding has opened on 30 June 2017 which is after 26 June 2017, making the EIR Recast susceptible to being applicable from this perspective as well. Thirdly, Bella SARL is a company based in France specializing in cosmetic products. It, indeed, does not relate to proceedings focused on insurance undertakings, investment firms or other entities covered by the 2001/24/EC Directive, credit institutions or collective investment undertakings for which special proceedings and frameworks apply. Fourthly, Bella SARL, as per the facts of the case, is registered in France and thus has its COMI in that country. Since France is an EU Member State, insolvency proceedings opened in that State fall within the scope of the EIR Recast.*

*To sum up, given the preceding analysis, the 2015 Regulation will be applicable to the safeguard proceedings commenced in France.*

Question 4.3 [maximum 5 marks] **2**

***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.***

*In accordance with the facts of the case, Bella SARL, a French-registered company specialized in cosmetic products, among other countries, maintains a warehouse in Italy. Its main warehouse is situated in Ireland. In 2017, Bella SARL filed a petition to open safeguard proceedings in the High Court of Strasbourg. Those proceedings, according to the facts given in question 4.2, are opened by the Strasbourg High Court on 30 June 2017. A filing of a petition to open secondary insolvency proceedings in Italy is also undertaken by an Italian bank. For the purposes of this question, we assume that the proceedings opened in the Strasbourg Court are main insolvency proceedings given that these are opened in the company’s seat, Strasbourg (France).*

*With reference to the material, temporal, territorial and personal scopes of the EIR recast, the only elements that can be successfully taken into consideration for the applicability of the Regulation concern the territorial and personal scopes. The (secondary) insolvency proceeding fulfils the personal scope, as it refers to a company specialized in cosmetic products and does not concern any of the exclusions set out in Article 1(2) EIR Recast, and the territorial scope, as it is a proceeding opened in Italy,*

*an EU Member State. As per the material and temporal scopes, the facts of the case do not elaborate on pertinent information.*

*Pursuant to Article 3(2) of the EIR Recast, it is permitted to open several secondary insolvency proceedings against the same debtor across EU Member States. Pursuant to the same Article, for the opening of secondary proceedings the debtor should have an establishment in the territory where these proceedings are to be opened. Secondary insolvency proceedings aim at promoting protection of local creditors' interests, including by preserving the expectations as to local creditors' ranking and the applicable insolvency law. Legal experts agree that an additional advantage of secondary insolvency proceedings lies in the participation of micro and small creditors in the procedure. In addition, pursuant to Article 37 paragraph 1 of the EIR Recast, "[t]he opening of secondary insolvency proceedings may be requested by: (a) the insolvency practitioner in the main insolvency proceedings; (b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within the territory of which the opening of secondary insolvency proceedings is requested." As per the facts of the present case, the Italian bank is authorized to request the opening of secondary insolvency proceedings in Italy.*

*A crucial question relates to the nature of the secondary proceedings. According to the facts, secondary proceedings are envisaged to be opened through the filing of a petition in Italy "with the purpose of securing an Italian insolvency distribution ranking". Article 34 of the EIR Recast stipulates that in the event main insolvency proceedings have been opened in a particular EU Member State and recognized in another EU Member State, secondary insolvency proceedings can be opened in that other EU Member State as long as the requirements set out in Article 3(2) are fulfilled. It is important to underscore that the effects of secondary insolvency proceedings are limited to the debtor's assets located in the Member State's territory where the opening of those proceedings has occurred (see also Recital 23). In this context, the *lex concursus secundarii* is the applicable law as opposed to the *lex concursus* which is relevant to the main insolvency proceedings. As per the concept of establishment, this has been reflected in Article 2(10) of the EIR Recast and has been shaped through CJEU jurisprudence. According to Article 2(10), the meaning of establishment encompasses an operational place in which the debtor pursues or has pursued an activity, non-transitory and economic in nature, for the three months prior to the filing of the opening of insolvency proceedings. This activity should be undertaken through human means and assets. In a seminal CJEU decision, *Interedil (Interedil Srl v Fallimento Interedil Srl*, case C-396/09, ECLI:EU:C:2011:671 (Oct. 20, 2011)), the concept of establishment was thoroughly observed and assessed by the court. The CJEU stated that this concept is linked to the existence of human resources and a certain level of organization and stability. Therefore, the mere existence of bank accounts or goods without any organizational or human element does not justify the determination of the proceeding as being opened in a location where the debtor has an establishment. The ascertainability factor should be considered for the determination of the debtor's "establishment". Foreseeability and legal certainty are primary elements to be also taken into consideration in this regard. What's more,*

*within the EIR Recast there is no requirement for the establishment to comply with any corporate form. The perspectives previously laid down suffice.*

*In the case at hand, a warehouse is situated in Italy and Bella SARL has employees and customers in France, Germany, Ireland, Spain, Portugal as well as Italy. Concerning the main components of the concept of establishment, the requirements of an operational, non-transitory and economic activity are fulfilled. The facts of the case give the impression that the warehouses, including the one in Italy, have been opened around 2010, a consideration that meets the requirement of the relevant time period included in Article 2(10). Human means and assets are also present in the case at issue because of the existence of employees, on the one hand, and because of the presence of a “warehouse” in Italy, on the other hand, which is intended to store materials and goods. A certain degree of stability and organization can be identified from the presence of customers and employees linked to that country. How the activity is perceived by third parties, i.e. the concept of ascertainability, is also fulfilled in the present context due to the presence of customers in the location of that warehouse. Therefore, the warehouse located in Italy can be considered an establishment in the context of the EIR Recast and can thus justify the opening of secondary proceedings.*

**While your reasoning is sound, the answer is incorrect.**

- The facts of the case do not support the finding of an establishment of Bella SARL in Italy. The presence alone of assets (leased-out warehouse) in isolation, contractual relations with a local bank (including maintenance of a bank account) and occasional negotiations (whether individual or collective) with local distributors do not qualify as ‘non-transitory economic activity with human means and assets’. The requisite minimum level of organisation and a degree of stability (see para. 64 in *Interedil*) is evidently missing.**
- Therefore, under the EIR Recast, secondary insolvency proceedings cannot be opened in Italy, nor Spain.**

**Total marks : 12 out of 15.**

**\*\*\* END OF ASSESSMENT \*\*\***

**Total marks : 46 / 50**