



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: 2021122-336.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 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. 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 2024 or by 23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (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

Article 1(1) of the EIR 2015 relates to the scope of the Regulation. Choose the correct statement from the options below:

- (a) Proceedings will fall under the scope of the EIR 2015 if they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; are public; and are collective.**
- (b) Proceedings will fall under the scope of the EIR 2015 if they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; are public; and are collective.
- (c) Proceedings will fall under the scope of the EIR 2015 if they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; and are public.
- (d) Proceedings will fall under the scope of the EIR 2015 if they are based on laws relating to insolvency for the purpose of rescue, adjustment of debt, reorganisation, or liquidation; and 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 gone against the literal meaning of several provisions of the EIR 2000. A new Regulation was needed to codify the new rules created by the CJEU.
- (b) The EIR 2000 was generally regarded as an unsuccessful instrument in the area of European insolvency law by the EU institutions, practitioners and academics.

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

(d) The EIR 2000 was generally considered a successful instrument, but areas of improvement had been identified over the years by practitioners and academics.

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

Article 3 of the EIR 2015 deals with jurisdictional matters. Which statement below is accurate in relation to Article 3?

(a) Article 3 states that the courts of the Member State within the territory of which the debtor has an establishment shall have jurisdiction to open main insolvency proceedings.

(b) Article 3 states that the courts of the Member State within the territory of which the debtor has its centre of main interest (COMI) shall have jurisdiction to open main insolvency proceedings.

(c) Article 3 states that the courts of the Member State within the territory of which the debtor has its centre of main interest shall have jurisdiction to open secondary insolvency proceedings.

(d) Article 3 states that the courts of the Member State within the territory of which the debtor has an establishment shall have jurisdiction to open territorial insolvency proceedings.

Question 1.6

The EIR 2015 does not provide a definition of “insolvency” or “likelihood of insolvency”. What are the consequences hereof?

(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 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 (entitled “Effects of insolvency proceedings on pending lawsuits or arbitral proceedings”).

(b) Article 40 EIR Recast (entitled “Advance payment of costs and expenses”).

(c) Article 7 EIR Recast (entitled “Applicable law”).

(d) Article 31 EIR Recast (entitled “Honouring of an obligation to a debtor”).

The answer was D.

Question 1.8

What are some of the main criticisms which have been voiced against the concept of the “centre of main interest”?

(a) The concept makes it impossible for companies to move jurisdiction, which ultimately, may jeopardise their chances of rescue.

(b) The concept does not have any equivalent in international instruments, which makes it difficult for international creditors to understand.

(c) The concept is too similar to that of an “establishment” which makes it difficult for a court to know whether to open main or secondary proceedings.

(d) The concept is too vague; it may result in higher capital costs; it may lead to manipulation; and it is difficult to assess by creditors.

Question 1.9

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 1.10

Carala SARL is a French-registered company selling jam jars made out of glass. The company had opened its first store in Strasbourg, France in 2018. It has since opened another 10 stores in France. Its main warehouse is located in Cork, Ireland. 95% of its employees are located in France and 5% are located in Ireland. Most of its customers are located in France, yet some online purchases are coming mainly from the Netherlands.

In 2020, Bella SARL entered into a loan agreement with a Spanish bank because it was hoping to expand its reach onto the Spanish jam 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 Covid-19 pandemic. By the end of 2021, the company was in financial difficulty, yet managed to keep afloat for another few years. On 10 January 2022, it wants to file for insolvency. In which country is Carala’s centre of main interest presumed to be located?

- (a) Its centre of main interest is located in Spain because the loan agreement will lead to a presumption of COMI.
- (b) Its centre of main interest is located in Ireland because the warehouse will lead to a presumption of COMI.
- (c) Its centre of main interest is located in France because its registration, stores, customer-base and majority of employees lead to a presumption of COMI.
- (d) Its centre of main interest is located in the Netherlands because online customers lead to a presumption of COMI.

Total : 9/10

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 2 marks] 2/2

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. 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.

Statement 2. Pending lawsuits are not covered by the effects of the *lex concursus* in insolvency proceedings.

First statement: By contrast to “traditional” liquidation-oriented procedures, this proceeding entails a preventive objective as it is designed to rescue economically viable business which are financially distressed. This is addressed by the first article (“*Scope*”), paragraph 2 of the EIR Recast.

Second statement: This concept relates to an exception to the application of *lex concursus*, according to which the effects of insolvency proceedings on pending lawsuits or pending arbitral proceedings concerning an asset or a right which forms part of the debtor’s insolvency estate, shall be governed solely by the law of the Member State in which the lawsuit is pending or in which the arbitral tribunal has its seat. This rule is set forth in article 7(2)(f) of the EIR Recast, and then is further addressed in article 18 of the EIR Recast.

Question 2.2 [maximum 3 marks] 1.5/3

The EIR Recast’s objective remains, as much as possible, the universality of proceedings. However, several exceptions to this universal vision exist throughout the Regulation. Provide **three (3) examples** of provisions from the EIR Recast which depart from a universal approach to cross-border insolvency.

One exception to the universality of proceedings approach adopted by EIR Recast are the rights *in rem* of creditors or third parties [Article?] in respect of tangible or intangible, movable or immovable assets, both specific assets and collections of indefinite assets as a whole belonging to the debtor and which are situated within the territory of another Member State at the time of the opening of proceedings. This means that rights *in rem* are entirely insulated from the effects of the opening of the insolvency proceedings. A second exception is the rules regarding the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors. [Article?] A third exception are the contracts of employment. In fact, Article 13 of the EIR Recast provides that the effects of insolvency proceedings on employment contracts and relationships shall be governed solely by the law of the Member State applicable to the contract of employment.

Question 2.3 [maximum 3 marks] 1/3

The EIR Recast regulates the material scope of the Regulation in relation to national insolvency proceedings in Member States. List **three (3) elements** of the EIR Recast that deal with this matter and explain how they relate to this.

One element of the EIR Recast that deal with national insolvency proceedings is the Annex 1 that determines, together with Article 2, which are the national insolvency proceedings subject to its regulations. Another element are the provisions related to the “*main insolvency proceedings*” which is intrinsically connected to the debtor’s centre of main interest (COMI) and can only be opened in a jurisdiction of the debtor’s COMI. Finally, a third element are the provisions related to “secondary insolvency proceedings”, which are permissible in a Member State where the debtor have an “establishment”. These proceedings are an important exception to the universalist approach of the EIR Recast and they fulfil a crucial role of creditor protection in the Member State(s) where the debtor has an establishment by allowing for the possibility of local proceedings governed primarily by the *lex fori concursus*. [The latter two elements are not dealing with the material scope. You could have mentioned Recital 9 or Annex A.]

Question 2.4 [maximum 2 marks] 2/2

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 legal instrument introduced by the EIR Recast to avoid or otherwise control the opening, conduct and closure of secondary proceedings is the right to give an undertaking (this is addressed by Articles 36 and 38 -2- of the EIR Recast). This instrument is also known as the "synthetic" secondary proceedings, and prevents secondary proceedings from being opened when the insolvency practitioner in the main insolvency proceedings give a unilateral undertaking in respect of the assets located in the Member State in which secondary insolvency proceedings could be opened, that when distributing those assets or the proceeds received as a result of their realisation, he will comply with the distribution and priority rights under national law that creditors would have if secondary insolvency proceedings were opened in that Member State.

Another instrument is the stay of the opening of secondary insolvency proceedings, which has the aim to provide a breathing space for the debtor to negotiate a restructuring deal with its creditors. To achieve this, the EIR Recast provides for the possibility of the court to temporarily stay the opening of secondary insolvency proceedings, when a temporary stay of individual enforcement proceedings has been granted in the main insolvency proceedings. Finally, it is important to note that this proceedings does not take place automatically (ex officio), but on request from the insolvency practitioner or the debtor in possession.

Total: 6.5/10

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] 5/5

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)?

During the reform process of the EIR 2000, the main elements identified by the European Commission as needing revision within the framework of the Regulation were:

- avoid incentives to forum shopping.
- Provisions related to recognition and enforcements of judgements in insolvency proceedings and the coordination of said proceedings.
- Provisions related to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings.

- Provisions to promote the rescue of economically viable but distressed businesses and which give a second chance to entrepreneurs.
- Provisions regarding procedures which grant a temporary stay on enforcement actions brought by individual creditors where such actions could adversely affect negotiations and hamper the prospects of a restructuring of the debtor's business.
- Provisions related to the main insolvency proceedings (including definition of COMI) and territorial proceedings (including the instruments that prevent this proceedings from being opened).
- Provisions related to agreements and protocols (for the purpose of facilitating cross-border cooperation of multiple insolvency proceedings in different Member States concerning the same debtor or members of the same group of companies) that could be entered into by insolvency practitioners and courts should be able to enter into agreements.
- Provisions related to the insolvency proceedings relating to different companies forming part of a group of companies.
- Provisions related to the exceptions of the application of the *lex concursus*.
- Minimum amount of information to be published in the insolvency registers.

Question 3.2 [maximum 5 marks] 5/5

The concept of the “centre of main interest” has been both praised and criticised by EU institutions, academics, and practitioners. List **two (2) praises and / or shortcomings** and explain why they are considered praises / shortcomings.

One praise to the COMI is grounded in its capacity of reflecting a jurisdiction where the debtor “*has a genuine connection rather in the one chosen by the incorporators*”. Among the advantages of this criteria, creditors should be placed in a better situation than if the main proceedings were to be opened according to other criteria, because de creditors should be more familiar with the COMI and should expect this jurisdiction to be the place where the mains proceedings take place. However, COMI has also been criticized on the grounds of being too vague and thus allowing a margin of legal uncertainty and lack of predictability.

Question 3.3 [maximum 5 marks] 5/5

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.

First, the European Insolvency Regulation is a choice-of-forum instrument. Therefore, this Regulation did not harmonise the substantive insolvency laws of the Member States. However, the Directive on Preventive Restructuring Frameworks is directly aimed to create harmonized restructuring frameworks throughout the Member States, including commonalities with the processes from these jurisdictions.

Second, the Directive on Preventive Restructuring aims to promote the development of a new culture of preventive restructuring with viable companies experiencing financial difficulties. This aspect also differentiates the Directive and the Regulation, even though the latter has also included some provisions designed to rescue economically viable business which are financially distressed.

Total: 15/15

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

Scenario

Dinosaurus SARL is a company selling children stuffed animals. It is incorporated in France and has opened its first store in La Flèche in 2015 and another 10 stores across France since. 80% of its employees work in France. It also has an office in Cork, Ireland, as well as three stores around Ireland. 20% of its employees are located in Ireland. Its main warehouse is in Spain. Most of its customers come from France, and some online purchases are coming mainly from the United Kingdom.

In 2020, Dinosaurus SARL entered into a loan agreement with a Spanish bank because it was hoping to expand its reach onto the Spanish children toys 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 Dinosaurus SARL, the timing of this initiative coincided with the Covid-19 pandemic which hit the world in 2020. By 2021, the company was in financial difficulty, yet managed to keep afloat for another two years. On 20 June 2023, it filed a petition to open safeguard proceedings in the Commercial Court in Le Mans, France.

Question 4.1 [maximum 5 marks] 0.5/5

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 EIR 2000 apply to this case and to the opening of safeguard proceedings?

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.

I believe that the Commercial Court in Le Mans, France, will have jurisdiction under the EIR 2000 to handle the main insolvency proceedings. In this regard, it is important to note that the EIR 2000 established that (main) insolvency proceedings could be initiated at the place of the debtor's centre of main interest, or COMI (Article 3(1) of the EIR 2000). Such proceedings had universal scope and encompassed all debtor's assets throughout the EU.

In this case, I believe that the debtor has its COMI in France and, therefore, the main proceedings should be opened in such jurisdiction. In fact, the debtor is a company incorporated in France and has opened its first store in La Flèche in 2015 and another 10 stores across France since. Moreover, 80% of its employees work in France. This conclusion is in line with the case law *Eurofood IFSC Ltd*, where the court stressed that the concept of COMI is peculiar to the regulation (EIR 2000). In that case, the court also added that the COMI has an autonomous meaning and must therefore be interpreted in a uniform way, independently of what a similar term may mean in a national legislation. In the

mentioned case, the court concluded that the COMI is the place where the company has its registered office.

While some of your reasoning is correct, the answer is not. The Commercial Court in France does not have international insolvency jurisdiction to open insolvency proceedings.

According to Article 3 EIR Recast, COMI shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties. The place of the registered office shall be presumed to be the COMI in the absence of proof to the contrary = France.

However, Article 1 of the EIR 2000 states that ‘this Regulation shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator. Article 2 EIR 2000 states that “insolvency proceedings” shall mean the collective proceedings referred to in Article 1(1). These proceedings are listed in Annex A. Annex A of the EIR 2000 only listed two French insolvency proceedings which came under the scope of the EIR 2000: (i) liquidation; (ii) *redressement judiciaire* (rehabilitation).

Therefore, the EIR 2000 **would not** apply to safeguard proceedings.

Question 4.2 [maximum 5 marks] 3.5/5

Assume that the timeline is as explained in the original scenario above and that the French High Court opens safeguard proceedings on 23 June 2023.

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.

I believe the EIR Recast would be applicable to the proceedings, as long as the French High Court would open a proceeding included in Annex A of the EIR Recast. This answer is grounded on the following reasons:

- 1) The facts occurred after the EIR Recast entered into force (26 of June of 2017).
- 2) The debtor (corporation) is covered by the personal scope of the EIR Recast.
- 3) The French High Court belongs to a Member State to which the EIR Recast is binding.
- 4) The French High Court would have competence to open proceedings as that would be the place where the debtor’s COMI is located.

References missing from your answer. The EIR Recast will be applicable. The logical order of the steps to be taken is the following:

- Article 3(1) EIR Recast. COMI of Dinosaurus SARL is in the EU (and not in Denmark), i.e. in France. YES
- Article 1(2) EIR Recast. Dinosaurus SARL is not a credit institution, insurance undertaking or any other ‘excluded’ entity. YES

- Article 2(4), Recital 9, Annex A EIR Recast. The opened proceeding ‘Safeguard’ is listed in Annex A to the EIR Recast. YES
- Article 2(7), 84(1), 92 EIR Recast. The proceedings in question were opened on 23 June 2023, i.e. after the EIR Recast has entered into force. The filing date is not determinative for the temporal scope. YES

Question 4.3 [maximum 5 marks] 4/5

A Spanish bank files a petition to open secondary insolvency proceedings in Spain with the purpose of securing a Spanish insolvency distribution ranking.

Given the facts of the case, can such proceedings be opened in Spain under the EIR Recast?

Your answer should contain references to the applicable law and the relevant CJEU jurisprudence.

To answer the question is important to consider that Dinosaurus SARL’s main warehouse is in Spain. Moreover, such company entered into a loan agreement with a Spanish bank because it was hoping to expand its reach onto the Spanish children toys 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. We do not have further information with respect to additional economic activities of Dinosaurus SARL in Spain.

In this context, the Spanish bank’s petition to open secondary insolvency proceedings in Spain could be grounded in the fact that Dinosaurus has an establishment located in such country. In this respect, Article 3(2) of the EIR Recast allows for secondary proceedings to be opened in a Member State where the debtor has an “establishment”.

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

It is also relevant to note that, according to the *Interedil* case law, the presence alone of goods in isolation or bank accounts does not, in principle, satisfy the requirements for classification as an “establishment”.

In view of those considerations, the bank account that Dinosaurus opened in Spain would not be considered enough to satisfy the requirements for classification as “establishment”. Nevertheless, the secondary proceedings could be grounded on the fact that the main warehouse of the company is in Spain. This warehouse does not appear to be only isolated goods in the terms of *Interedil* case law, but an economic activity that also involved human activity in a non-transitory basis.

- Not quite. The facts of the case do not support the finding of an establishment of Dinosaurus SARL in Spain. 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.

Total: 8/15

*** END OF ASSESSMENT ***

Total: 38.5/50