ECJ: Judgment on International Jurisdiction in Respect of Actions to set a Transaction aside by Virtue of Insolvency

On 12th February, the ECJ delivered its judgment in case C-339/07 (*Christopher Seagon in his capacity as liquidator in respect of the assets of Frick Teppichboden Supermärkte GmbH v Deko Marty Belgium N.V.*).

The questions referred to the ECJ concern the international jurisdiction of courts in respect of actions to set a transaction aside by virtue of insolvency. Thus, the case raises the question of the delimitation of Regulation (EC) No. 1346/2000 (Insolvency Regulation) and Regulation (EC) No. 44/2001 (Brussels I Regulation) or – more precisely – the question of whether Art. 3 (1) Insolvency Regulation covers actions to set a transaction aside in the context of insolvency, although they are not mentioned explicitly.

See for a short summary of the background of the case our previous post on the AG's opinion which can be found here and our post on the referring decision which can be found here.

The German Federal Court of Justice (*BGH)* had referred the **following questions** to the ECJ for a preliminary ruling:

> *(1) Do the courts of the Member State within the territory of which insolvency proceedings regarding the debtor's assets have been opened have international jurisdiction under Regulation [No 1346/2000] in respect of an action in the context of the insolvency to set a transaction aside that is brought against a person whose registered*

> *office is in another Member State?*
>
> *(2) If the first question is to be answered in the negative:*
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> *Does an action in the context of the insolvency to set a transaction aside fall within Article 1(2)(b) of Regulation [No 44/2001]?*

Now, the **ECJ** followed the opinion given by *Advocate General Ruiz-Jarabo Colomer* and held in its **judgment** that

> *Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted as meaning that the courts of the Member State within the territory of which insolvency proceedings have been opened have jurisdiction to decide an action to set a transaction aside by virtue of insolvency that is brought against a person whose registered office is in another Member State.*

In its reasoning, the Court referred to its case law on the Brussels Convention (*Gourdain*) where the Court has held that an action similar to that at issue in the main proceedings is related to bankruptcy or winding-up if it derives directly from the bankruptcy or winding-up and that such an action does not fall within the scope of the Convention (para. 19). The Court emphasises that it is exactly this criterion – i.e. the strong connection to insolvency proceedings – which is used by Recital 6 of the Insolvency Regulation to delimit its purpose (para. 20). According to Recital 6 of the Insolvency Regulation "the Regulation should be confined to provisions governing jurisdiction for opening insolvency proceedings and judgments which are delivered directly on the basis of the insolvency proceedings and are closely connected with such proceedings."

The Court concludes that "concentrating all the actions

directly related to the insolvency of an undertaking before the courts of a Member State with jurisdiction to open the insolvency proceedings" is "consistent with the objective of improving the effectiveness and efficiency of insolvency proccedings having cross-border effects […]." (para. 22)

This result is supported by the Court with reference to Recital 4 of the Insolvency Regulation according to which forum shopping shall be avoided and further by means of a conclusion drawn from Art. 25 Insolvency Regulation: According to Art. 25 (1) Insolvency Regulation, judgments handed down by a court whose judgment concerning the opening of proceedings is recognised in accordance with Art. 16 Insolvency Regulation and which concern the course and closure of insolvency proceedings – and thus a court with jurisdiction under Art. 3 (1) Insolvency Regulation – have to be recognised with no further formalities. According to the second subparagraph of Art. 25 (1) Insolvency Regulation, the first subparagraph also applies to judgments deriving directly from the insolvency proceedings and which are closely linked to them. This means – in the Court's words – that this "provision allows the possibility for courts of a Member State within the territory of which insolvency proceedings have been opened, pursuant to Article 3 (1) of that regulation, also to hear and determine an action of the type at issue in the main proceedings." (para. 26)