Opinion of Advocate General Szpunar, Case C-253/19 – Novo Banco, on the COMI under the European Insolvency Regulation

Today, Advocate General Szpunar delivered his Opinion in Case C-253/19 – MH, NI v. OJ, Novo Banco SA. As is generally known, Article 3 of Regulation 2015/848, entitled 'International jurisdiction', provides in paragraph 1:

> *'The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main insolvency proceedings"). The centre of main interests shall be the place where the debtor conducts the administration of its interests on a regular basis and which is ascertainable by third parties.*
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> *In the case of a company or legal person, the place of the registered office shall be presumed to be the centre of its main interests in the absence of proof to the contrary. That presumption shall only apply if the registered office has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.*
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> *In the case of an individual exercising an independent business or professional activity, the centre of main interests shall be presumed to be that individual's principal place of business in the absence of proof to the contrary. That presumption shall only apply if the individual's principal place of business has not been moved to another Member State within the 3-month period prior to the request for the opening of insolvency proceedings.*
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> *In the case of any other individual, the centre of main interests shall be presumed to be the place of the individual's habitual residence in the absence of proof to the contrary. This presumption shall only apply if the habitual residence has not been moved to another Member State within the 6-month period prior to the request for the opening of insolvency proceedings.'*

As the Opinion explains (paras. 4 et seq.):

> *4. The applicants are married to each other and, since 2016, have been resident in Norfolk (United Kingdom), where they are engaged in paid employment. The couple made a request to the Portuguese courts to declare them insolvent. The court of first instance declared that it did not have international jurisdiction to rule on their request, holding that, under the fourth subparagraph of Article 3(1) of Regulation 2015/848, the centre of their main interests was their place of habitual residence, namely the United Kingdom.*
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> *5. The applicants brought an appeal against that judgment before the referring court, claiming that it was based on a misinterpretation of the rules laid down by Regulation 2015/848. In that regard, they submitted that, in so far as the sole immovable asset that they owned was located in Portugal, where all the transactions which gave rise to their insolvency had occurred, the centre of their main interests was not their place of habitual residence (United Kingdom), but was located in Portugal. Moreover, they claimed that there is no connection between their current place of residence and the events that led to their insolvency, which occurred entirely in Portugal.*
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> *6. The referring court has doubts as to the correct interpretation of Article 3(1) of Regulation 2015/848 and is uncertain, in particular, of the criteria to be used for the purpose of rebutting the simple presumption laid down in that provision for natural persons not exercising an independent business or professional activity, according to which, for such persons, the habitual residence of the concerned party is presumed to be the centre of that party's main interests in the absence of proof to the contrary.*
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> *7. In that regard, the referring court points out that recital 30 of that regulation states that, in the case of natural persons not exercising an independent business or professional activity, it should be possible to rebut that presumption, for example where the major part of the debtor's assets is located outside the Member State of the debtor's habitual residence.*

AG Szpunar proposed (paras. 65 et seq.) that the Court should answer the question referred for a preliminary ruling by the Tribunal da Relação de Guimarães (Court of Appeal, Guimarães, Portugal) as follows:

Article 3(1), first and fourth subparagraphs, of Regulation (EC) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings must be interpreted as meaning that the presumption that the habitual residence of a debtor who is a natural person not engaged in a self-employed activity is the centre of his main interests may be rebutted if the place of habitual residence does not fulfil its role as the place where a debtor's economic decisions are taken, as the place where the majority of his revenue is earned and spent, or as the place where the major part of his assets is located.

However, that presumption cannot be rebutted in favour of the Member State within the territory of which a debtor's sole immovable asset is located in the absence of any other indication that the centre of that debtor's main interests is located in that Member State. That fact may be determined on the basis of objective factors which are ascertainable by third parties (current and potential creditors) and relate to the financial interests of that debtor.