

CJEU on law governing time limits for lodging claims in secondary insolvency proceedings in the case ALPINE BAU, C-25/20

Under Article 32(2) of the Regulation No 1346/2000 (the “old” Insolvency Regulation, now repealed by the Regulation 2015/848), “the liquidators in the main and any secondary proceedings shall lodge in other proceedings claims which have already been lodged in the proceedings for which they were appointed, provided that the interests of creditors in the latter proceedings are served thereby, subject to the right of creditors to oppose that or to withdraw the lodgement of their claims where the law applicable so provides”.

The Regulation No 1346/2000 does not expressly stipulate the point in time when the claims already lodged in the proceedings for which a liquidator has been appointed should be brought in such other proceedings. That being said, its Article 4, for the purposes of the main proceedings, and its Article 28, for the purposes of secondary proceedings, clarify that, unless otherwise provided for in the Regulation, the law of the State in which proceedings are opened (*lex concursus*) is to apply to all proceedings.

As put by AG Campos Sánchez-Bordona in his Opinion presented back in May, that is why, in the case ALPINE BAU, C-25/20, a Slovenian court asked the Court of Justice whether the liquidator in the main insolvency proceedings conducted in Austria, who is seeking to file, in secondary proceedings conducted against the same debtor in Slovenia, claims which he already filed in the former proceedings, is subject to the time limits (and the consequences of failure to comply with those time limits) laid down in Slovenian law.

A different interpretation that the referring court also put into consideration consists on the idea that the Regulation lays down, in Article 32(2), a special right for a liquidator to lodge claims in other insolvency proceedings without being bound by any time limit (see point 13 of the request available here).

Another rival interpretation seemed to be, at least in the light of point 28 of the

Opinion, implicitly endorsed by the liquidator in the main insolvency proceeding in the written observations. According to that interpretation, the time limits for lodging claims in any other proceedings are determined in accordance with the *lex concursus* of the main proceedings.

Opinion of AG

In his Opinion, AG Campos Sánchez-Bordona pronounced himself in favor of the first interpretation and proposed to the Court to consider that where the liquidator for the main insolvency proceedings lodges claims in secondary proceedings, the time limits for the lodgement of those claims, and the consequences of lodging claims out of time, are governed by the law of the State in which the secondary proceedings were opened.

Judgment of the Court

This Thursday, the Court delivered its judgment in the case at hand. In essence, the Court agreed with the answer proposed in the Opinion. More precisely, it held that Article 32(2) of the Regulation No 1346/2000, read in conjunction with Articles 4 and 28 of the Regulation (these two provisions did not, however, appear in the preliminary question, yet the Court seemingly considered it necessary to introduce them in its reading of the question and consequently in its answer, see paragraph 26 of the judgment), is to be interpreted as meaning that the time limits for the lodgement of the claims, and the consequences of lodging claims out of time, are governed by the law of the State in which the secondary proceedings were opened (paragraph 42).

The judgment itself is all the more interesting as it also deals - and ultimately rejects - the other two interpretations mentioned above, at its paragraphs 34-40 and 41, respectively.

The judgment is available here, in French.