

European Court of Justice Rules on Centre of Main Interests: Neither Assets nor Human Resources Required

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At a Glance

The Court of Justice of the European Union (“**CJEU**”) handed down a preliminary ruling on 19 September 2024 on the interpretation of the centre of main interests (“**COMI**”) within the meaning of the EU Insolvency Regulation (“**EIR**”). The CJEU held that an individual’s COMI may be presumed to be at his or her ‘principal place of business’ (for the purposes of Article 3(1) EIR) even if the individual did not have any human means or assets there.

The decision follows the CJEU’s ruling on COMI determination for individuals on 16 July 2020 ([C-253/19 \(Novo Banco SA\)](#)) and its landmark ruling in [Galapagos \(C-723/20\)](#) on 24 March 2022 concerning determination of companies’ COMI. The case was turned by the German Federal Court to the CJEU to determine the interpretation of the EIR.

The determination of a debtor’s COMI is critically important for the jurisdiction governing the rules applicable to insolvency proceedings; within the EU, main insolvency proceedings can only be opened in the jurisdiction of a debtor’s COMI and will benefit from automatic recognition in other EU Member States. Although this latest decision is concerned with determining COMI of individuals (rather than companies), the ruling makes general remarks on determining COMI without distinguishing between individuals and companies, and therefore serves as a useful reminder of the basic tests for determining COMI.

Key Principles for the Principal Place of Business

The basic rule – whether for companies or individuals – is that the court of the member state in which the debtor has its COMI has international jurisdiction to open main proceedings. Any other proceeding can only be opened as secondary proceedings if the debtor has an ‘establishment’ in that member state or territorial proceedings if no main proceedings have yet been opened. An ‘establishment’ is defined as a place where the debtor carries out economic activity with *human means and assets*.

The CJEU dealt with the following questions.

1. *Must ‘principal place of business’ meet requirements of an ‘establishment’?*

The first question was whether the ‘principal place of business’ had to meet the (strict) requirements of an ‘establishment’, and therefore required the debtor to maintain human resources and assets.

The background is the linguistic proximity between the terms ‘establishment’ (*Niederlassung*) and ‘principal place of business’ (*Hauptniederlassung*) in the German version of the EIR, which could suggest not only a linguistic but also a substantive correlation between both terms.

The CJEU answered this question in the negative: the EIR distinguished clearly between main proceedings where the debtor has its COMI and secondary proceedings that require an ‘establishment’. Consequently, the existence of an establishment cannot be relevant in the context of determining a debtor’s COMI and therefore for determining the place of main insolvency proceedings.

It is therefore not necessary for a debtor’s ‘principal place of business’ to meet the (stricter) requirements of an ‘establishment’.

2. *Does presumption of COMI at ‘principal place of business’ apply where debtor has no human resources or assets there?*

The second question required the CJEU to consider whether the presumption that the individual’s COMI was at the ‘principal place of business’ also applied in circumstances in which the debtor did not have any human resources or assets there; in other words, whether the lack of human resources and assets was sufficient to rebut the presumption.

The CJEU held that a lack of human resources and assets on its own was insufficient to rebut the presumption. The CJEU emphasised that COMI must be determined following an overall assessment of all objective criteria ascertainable by third parties, in particular creditors, and which are capable of determining the actual place where the debtor conducts the administration of its interests on a regular basis. This applies without distinction to all debtors, whether companies, legal persons or individuals, and the term 'interests' is intended to cover all economic activities in general.

Individuals exercising an independent business or professional activity are presumed to conduct the administration of their interests on a regular basis at their 'principal place of business' since there is a strong possibility that this place corresponds to their COMI. A reversal of this presumption requires an overall assessment of all objective criteria ascertainable by third parties; mere lack of human resources or assets is insufficient for such reversal.

In addition, the presumption would be deprived of its useful effect if it required the presence of assets or human means, as, by its very nature, independent business or professional activity is capable of being exercised in the absence of the same and therefore such requirement would exclude a significant number of persons from the scope of the presumption.

3. If no 'principal place of business', can COMI be presumed at habitual residence?

The third question, which was dependent on the second question being answered negatively, asked whether, if, absent a 'principal place of business' due to lack of human means and assets, COMI of an individual could be presumed at their habitual residence. The CJEU did not have to consider this question, since it answered the second question affirmatively.

Key Takeaways for the Establishment of COMI

The decision is a useful reminder of the basic principles applicable when determining COMI, namely the importance of objective criteria ascertainable by third parties (usually creditors). Equally, where the EIR presumes, absent proof to the contrary, that COMI is located at the 'principal place of business', a rebuttal of this assumption requires a comprehensive assessment of all objective criteria.

While assets and human means are certainly such criteria, there are other criteria that need to be considered in the context of determining the COMI of individuals, namely where revenue is generated and spent, and where the bulk of the individual's assets are located.

The term 'interests' covers all economic activities in general. Social factors or family ties therefore have no significance when determining COMI.

The decision overall confirms and develops the CJEU's case-law on COMI alongside landmark cases such as [Susanne Staubitz-Schreiber](#) and [Galapagos](#).

Factual Background of the Decision

A creditor (a German local tax office) sought the opening of insolvency proceedings against an individual debtor in a Berlin insolvency court. At the time of the application, the debtor was domiciled in Berlin (Germany), Monaco, Los Angeles (United States) and on the island of Saint-Barthelemy (French Antilles). The debtor was also chairman of the supervisory board of Landbell AG, a public company incorporated under German law with its registered office in Mainz (Germany). His assets consisted of a bank account in Monaco and holdings in companies incorporated under the laws of Monaco which in turn held assets, a securities account and shareholdings in Germany.

The insolvency court initially dismissed the insolvency application on the grounds that it lacked jurisdiction. The appellate court (*Landgericht* Berlin) set aside that order following an immediate appeal (*sofortige Beschwerde*) by the creditor. Expressing doubts as to the international jurisdiction of the German courts, the debtor filed a further appeal (*Rechtsbeschwerde*) to the Federal Court of Justice (*Bundesgerichtshof*), which then turned to the CJEU for the preliminary ruling at hand.

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