

OBSERVATION FILE TEAM NETHERLANDS 1

Debate I

Portugal	France
State	
The team made clear proposals for the adaption of the Regulation, to prevent insolvency tourism	The French team convincingly argued that the current criteria are sufficiently adaptable to counter tourism.
Explain	
Interesting comparative research was conducted by the team to support their argument, which enabled them to point at diverging years of bankruptcy in different jurisdictions.	They listed many arguments and examples to sustain their position, and indicated clearly the needs to be met by the Regulation: foreseeability and adaptability.
Illustrate	
German and UK case law were cited, as well as their national provisions on the duration of bankruptcy (7 years vs. 1 year, e.g.). The relevance of the issues was shown by pointing at Denmark and Switzerland.	They indicated for instance that a new criterion instead of the COMI-principle will also lead to avoidance and forum shopping, and a clear lack of foreseeability.
Presentation	
Very complete overview of all the relevant (national) case law.	Lively presentation, supported by very concise sheets, on which all the arguments were put together.

What we've learned:

That the concept of COMI is not as undisputed as we thought on beforehand. Now that the different jurisdictions have collected experiences, and forum shopping appears to be possible and happening – the need for a good (informed) European debate is apparent.