

## HUNGARY 2.

### Third working session – Regulation 1364/200/EC on insolvency procedures

In our opinion „COMI” is necessary, but has to be handled with criticism. The idea itself ensures flexibility when deciding the jurisdiction and finding the court which is closest to the real interests of the debtor. It is very important to find a proper balance between the fundamental freedom of establishment and preventing „insolvency tourism”.

Some expert , e.g. Ulmer says that the principle of freedom of establishment is limited only to provisions of company law. We totally disagree this, and we are of the opinion that neither the wording of any legal instrument, nor the case law suggests that this principle would apply only to company law. However, we think that the universal applicability of the principle of freedom of establishment doesn't mean that there would be no ground for its limitation. The protection of the creditors is such an important factor of the proper functioning of the internal market, that it might be a reason to limit this freedom. The point is to find a balance between the two opposite factors, with the view to the requirement of proportionality.

A time factor should be introduced in favour of limiting pre-insolvency migration and migration during the insolvency procedure itself. However, the latter is not accepted, the ECJ's stated in *Case Susanne Staubitz-Schreiber*, that moving the COMI only because of insolvency is an abusive method.

A strict definition of COMI would be desirable, as even after *Eurofood Case*, courts across the European Union diverge concerning the interpretation of the COMI, and this is likely to create legal uncertainty both for the respective company and for third parties who are in business relations with it.

As to the definition of COMI, the Portuguese team's idea of including such factors as „friends, meat, etc.” to the definition, would not serve the aim of legal certainty, as the meaning of these words are not legally defined, so the use of these terms would trigger further need for interpretation.