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The purpose of this paper is to describe the rules on jurisdiction laid down by the Insolvency Regulation (the “Regulation”) and to analyze some of problems raised by their practical application. It also includes specific references to the Commission’s Proposal amending the current text (the “Commission’s Proposal”, COM (2012) 744 final).

§ 1. Introduction

1. The Regulation is based on a model of so-called “mitigated universalism”. The starting point is a unitary insolvency proceeding for each debtor, with universal scope. The courts of the Member State within the territory of which the debtor’s center of main interest is situated shall have jurisdiction of open insolvency proceedings. These proceedings have universal scope with regard to both (i) the insolvency estate and (ii) the body of creditors. All assets of the debtor, regardless of the Member State where they are situated, are subject to these proceedings; and all creditors are entitled to (and obliged to) participate in them. The Regulation refers to them as main proceedings. However, if the debtor has an establishment in another Member State, the courts of this State will have jurisdiction to open territorial insolvency proceedings. The effects of those proceedings are restricted to the assets of the debtor situated in the territory of the latter State.

2. The Commission’s Proposal keeps that approach. The amendments introduced in the text only clarify the jurisdiction rules -mainly codifying the ECJ case law- and improve the procedural framework for determining jurisdiction.
§ 2. Main proceedings

§ 2.1. Connecting factor: the COMI

§ 2.1.1. Current text

3. The current text rests on the Centre of debtor’s Main Interests (COMI) as the relevant connecting factor. Main insolvency proceedings (=universal proceedings) may only be opened in the jurisdiction where the debtor has his COMI. The COMI represents the focal point of the economic life of the debtor and, therefore, ensures that the insolvency proceedings will be handled by a jurisdiction with which the debtor has the closes connection. Furthermore, this connecting factor has acquired a certain degree of international recognition: in particular, the UNCITRAL Model Law on Cross Border Insolvency has chosen it as a jurisdictional standard.

4. Article 3.1 of the Regulation refers to the courts of the Member State “within the territory of which the centre of a debtor’s main interest is situated”. With regard to the formulation of this provision, two preliminary comments should be made. First, the concept of court is defined in a broad sense, it includes any judicial body or other competent body empowered to open insolvency proceedings under the law of the corresponding Member State (art. 2 (d)). This concept, for example, may include authorities such as the public notaries. Second, article 3.1 is a rule on international jurisdiction (“...the courts of a Member State...”), not on territorial jurisdiction. This latter aspect is determined by the law of each State.

Example. If the debtor’s COMI is in Spain, the Regulation allocates the jurisdiction to open main insolvency proceedings to Spanish courts. The question of which territorial court in particular, i.e. Madrid, Barcelona or Sevilla, is not determined by the Regulation, but by national law. In this case, Spanish law uses to the same concept, i.e. the COMI, to determine that territorial court, but adds an alternative connecting factor: the registered office (Art. 10.1 of the Insolvency Act).

5. The COMI is an autonomous concept and must therefore be interpreted in a uniform way, independently of national legislation (ECJ, C-341/04, 2.5.2006, Eurofood, para. 31; C-396/09, 20.10.2011, Interedil, para. 44; C-191/10, 15.12.2011, Rastelli, para. 31). In order to facilitate the application of the rule, the current text contains a definition and a presumption.

6. The definition is not in the main body of the instrument but in the recitals. According to recital 13, the centre of main interests should correspond to the place where the debtor conducts the administration of his interest on a regular basis and is therefore ascertainable by third parties. This definition combines two elements: one internal and another external.

(a) The definition gives primacy to the place from which the debtor’s interests are administrated (central administration), and not where those interests are located. The idea is to look for the “brain” of the company, not for the “mussels”: the actual centre of

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1 At www.uncitral.org

2 The ECJ has underlined the recital as a relevant guidance to define the concept of COMI (Eurofood, para. 32; Interedil, para. 47 or Rastelli, para. 32).
management and supervision of the interest of the debtor (="head office functions"), which may not necessarily coincide with the location of the debtor’s principle place of business or operations (see art. 54 TFEU). The ECJ has underlined this idea. The intention of the EU legislator is to attach greater importance to the place in which the company has its central administration –the centre of management and supervision- as the criterion for jurisdiction (Interedil, para. 48: “…the European Union legislature’s intention to attach greater importance to the place in which the company has its central administration as the criterion for jurisdiction”).

(b) Furthermore, the location of the central administration must be objective and ascertainable by third parties who deal with the debtor, typically the creditors. The COMI determines both the jurisdiction (art. 3.1) and the applicable law (art. 4.1). The certainty and foreseeability of this factor is very relevant for creditors. When creditors enter into a contract with their debtor, they rely on the insolvency regime that will be applicable if the debtor becomes bankrupt. This allows them to calculate their insolvency risk. The ECJ has also stressed the importance of the certainty and predictability of the connecting factor (Eurofood, para. 33; C-1/04, 17.1.2006, Staebitz-Schreiber, para. 27; Interedil, para. 49, Rastelli, para. 33: “…that the centre of a debtor’s main interests must be identified by reference to criteria that are both objective and ascertainable by third parties, in order to ensure legal certainty and foreseeability concerning the determination of the court with jurisdiction to open the main insolvency proceedings”).

7. To simplify the application of the rule, the Regulation also lays down a presumption for companies or legal persons: the place of the registered office shall be presumed to be the COMI in the absence of proof to the contrary (art. 3.1 in fine). This functions as a iuris tantum presumption. According to the ECJ, “The presumption may be rebutted where, from the viewpoint of third parties, the place in which a company’s central administration is located is not the same as that of its registered office”; “…the simple presumption... can be rebutted if factors which are both objective and ascertainable by third parties enable it to be established that an actual situation exists which is different from that which locating it at that registered office is deemed to reflect” “…that could be so in particular in the case of a letterbox company not carrying out any business in the territory where the registered office is situated (Interedil, para 34-35; Rastelli, para. 35). In order to rebut the presumption, the factors to be taken into account include, i.a., all the places in which the debtor company pursues economic activities and all those in which it holds assets, in so far as those places are ascertainable by third parties: “those factors must be assessed in a comprehensive manner, account being taken of the individual circumstances of each particular case” (Interedil., para. 52; Rastelli, para. 36).

Example. Enron Directo S. L., was a Spanish incorporated company, with registered office in Spain, forming a part of the troubled Enron group. However, even though the presumption was in favour of the jurisdiction of the Spanish courts, the court in London accepted evidence that the head office, i.e. the COMI, was in England, as the entire principal executive, strategic and administrative decisions in relation to the financials and activities of the company were conducted in London.

8. The Regulation uses the term “debtor” in a technical sense, denoting a person, legal or natural, subject to liabilities. The principle, therefore, is that each debtor constituting a legal entity is subject to its own court jurisdiction” (Eurofood, para. 30). This principle has two important consequences in cases of groups of companies:
(a) First, the COMI must be determined separately for each legal entity, i.e. each company of the group. The COMI has to be identified subsidiary by subsidiary. As a corollary, the ECJ has affirmed that where a company carries out its business in the territory of the Member State where its registered office is situated, “the mere fact that its economic choices are or can be controlled by a parent company in another Member State is not enough to rebut the presumption” (Eurofood, para. 30 and 36).

Example. In the Eurofood case, the parent company was incorporated in Italy, and had a wholly owned subsidiary in Ireland (Eurofood IFSC Ltd), with its registered office in Dublin. The Irish courts concluded that Eurofood had its COMI in Ireland. The ECJ argued that the key element is the place from which the subsidiary regularly administers its interest. Hence, since Eurofood had the registered office in Ireland and carried out its business in the territory of this Member State, the conclusion was correct. The mere fact that the economic choices were or could be controlled by a parent company in another Member State was not enough to rebut the presumption.

(b) A cross-border accumulation or consolidation of insolvency proceedings is not possible. In a company of the group has its COMI in one Member State and another company, i.e. a different legal entity, has its COMI in a different Member State, it will not be possible to join or accumulate the proceedings. That joining would only be acceptable, under a rule of national law, if both companies have the COMI in the same Member State.

Example. In the Rastelli case (C-191/19, Rastelli, 15.12.2011), a French company, with its COMI in Marseille, was put into liquidation. The liquidator brought proceedings against an Italian company, with its COMI in Italy. It requested that the latter be joined to the insolvency proceedings that had been opened against the French company on the ground that the property of the two companies was intermixed. The ECJ affirmed that “a court of a Member State that has opened main insolvency proceedings against a company, on the view that the centre of the debtor’s main interests is situated in the territory of that Member State, can, under a rule of its national law, join to those proceedings a second company whose registered office is in another Member State only if it is established that the centre of that second company’s main interests is situated in the first Member State” (para. 29). Furthermore, the mere finding that the property of those companies has been intermixed is not sufficient to rebut the presumption in favour of the registered office (ibid., para. 39).

§ 2.1.2. Commission’s Proposal

9. The Commission’s Proposal keeps the COMI as a main connecting factor. This option is reasonable. Even though its application has provoked certain difficulties in practice, there is already, as have been, an important body of national and ECJ case law clarifying the concept and providing guidance for its practical application. However, in order to provide certain guidance, the new text: (i) introduces a definition in the main body of the instrument, inspired by recital 13 of the current text; (ii) introduces a provision determining the COMI of natural persons; (iii) adds a recital clarifying the nature of the presumption of the registered office.

10. The new definition of the COMI is a mere reformulation of the one included in the recitals, but with no intention of changing the gist. The COMI shall be the place where the debtor conducts the administration of his interests on a regular basis and which is ascertainable by third parties. The case law of the ECJ remains applicable.

11. The new IR includes a provision for natural persons. In the case of an individual exercising an independent business or professional activity, the center of main
interest shall be that individual’s principal place of business; in the case of any other individual the centre of main interests shall be the place of the individual’s habitual residence. This reference is inspired by the solution adopted in other Regulations (Roma I, see art. 19, and Rome II, see art. 23) and had already been proposed by legal scholars as the pertinent interpretation under the current text and confirmed by the General Advocate in the Staubitz-Schreiber case: “...the centre of main interests of an individual who carries out a business activity is deemed to be his or her business address, for other natural persons, it is deemed to be their habitual residence.”

12. Furthermore, the new text adds a recital that clarifies the circumstances in which the presumption that the COMI of a legal persons is located at the place of its registered office can be rebutted. “... It should be possible to rebut this presumption if the company’s central administration is located in another Member State than its registered office and a comprehensive assessment of all the relevant factors establishes, in a manner that is ascertainable by third parties, that the company’s actual centre of management and supervision and of the management of its interests is located in that other Member State...”. This wording is inspired by the Interedil case (supra).

§ 2.2. Relevant time. Migration

13. The COMI is a mobile connecting factor. Companies can move their central administration from one country to another, and natural persons can change their place of habitual residence. This circumstance may raise problems in two scenarios. First, when the COMI is transferred between the date of the lodging of a request to open insolvency proceedings and the date of the judgment to open such proceedings, and second, when it is transferred before but in close proximity to the commencement of insolvency proceedings.

14. The first case has been solved by the ECJ. The relevant time to determine the situation of the COMI is the date of the filing of the application for opening insolvency proceedings (Interedil, para 55). And the same holds for the presumption: it is the location of the registered office at the moment of the lodging of a request to open insolvency proceedings (Interedil, para. 56). Accordingly, the requested court retains jurisdiction: where the centre of a debtor’s main interests is transferred after the lodging of a request to open insolvency proceedings, but before the decision is delivered, the courts of the Member State within the territory of which the centre of main interests was situated at the time when the request was lodged retain jurisdiction to rule on those proceedings.

Example. In the Staubitz-Schreiber case, the debtor, a natural person, moved her habitual residence from Germany to Spain after she had requested the opening of the proceedings in Germany, but before the resolution to open was delivered. In this case, German courts have jurisdiction to open main proceedings, since the debtor’s COMI was in Germany at the date of filing of the application for opening such proceedings.

If the company has ceased all activity, in principle, the last place in which that centre was located must be regarded as the relevant place for the purpose of determining the court having jurisdiction to open the main insolvency proceedings (Interedil, para. 54).

15. The second situation has provoked more concern. There are some national cases where insolvency proceedings have been opened in Member States in which the debtor has not been active from the start but to which it only “moves” or “migrate” at the
time it suffers financial difficulties, sometimes with the intention of invoking the jurisdiction and the insolvency regime of its new COMI. This phenomenon has been referred to as forum shopping, COMI-shift or **insolvency tourism**.

**Example.** *In the Damovo restructuring, an IT company moved its COMI from Luxemburg to London prior to effecting a pre-packaged administration by (amongst other things) moving its head office functions to England, telling all suppliers, creditors and counterparties of the move, setting up bank accounts in England and holding board meetings in England. This was enough to demonstrate that its COMI had moved.*

In legal literature there have been several suggestions to prevent/discourage abusive COMI relocation, such as introducing a minimum period of the location of the COMI in the new State as a pre-condition to open insolvency proceedings (e.g. six months) and/or applying the abuse of right or fraud à la lois clauses.

16. However, these kinds of solutions are also problematic:

(a) *First,* the reference to a change of the COMI within a period of time prior to the opening of insolvency proceedings will give rise to practical problems and more litigation since it is not always easy to fix the exact day when the COMI is moved. The COMI is defined by a reference to a set of facts and activities (e.g. administration activities) and a transfer of these activities from one Member State to another does not always take place overnight.

(b) *Secondly,* any kind of veto right or preference of the previous location in favour of the former creditors may be unfair to the new creditors. Creditors under the new COMI are not normally aware of the former location of the COMI of their debtors. Neither do they usually know the exact date when the COMI was shifted. Thus, the opening of insolvency proceedings in the Member State were the COMI was formerly located may be unforeseeable to them. In general, risks of relocation of the COMI should be borne by the former creditors, not by the new ones (*i.e.* former creditors are cheaper risk avoiders).

(c) *Thirdly,* it is arguable whether any limitation on the migration of the COMI is compatibility with the freedom of establishment. The fact that, when a company moves its central administration from one Member State to another, remains for a period of time subject to the insolvency jurisdiction of the former may imply an obstacle to that freedom.

(d) And, *last but not least,* the current definition of COMI is enough (or at least the best we can imagine) to overcome forum-shopping strategies. It is true that the Regulation does not require that a specific period of time passes in order for the COMI to serve as a ground of jurisdiction. Nevertheless, this does not mean that mere nominal or artificial changes are sufficient. The definition of COMI implies a “reality test”. It requires the new location to be genuine. This new location should be based on real facts: according to the Regulation it should be the place where the debtor “conducts” a certain activity (“the administration of his main interests”) in a certain way (“on a regular basis”). This definition implies a certain degree of temporal stability. If the debtor moves from State 1 to State 2 and immediately afterwards he requests to open the proceedings, it seems clear that the conditions required by the definition are not met. “In particular, the test that the centre of main interests is readily ascertainable to third parties may be harder to meet if the move of the centre of main interests occurse in close proximity to the opening of the
proceedings” (UNCITRAÑ 123L). In general, the definition of the COMI is flexible enough to provide a right answer in different scenarios.

17. The Commission’s Proposal does not amend the current regime on this point. First, the Report on the application of the Insolvency Regulation (COM (2012) 743 final) argues that (i) the COMI moves of companies is a legitimate exercise of the freedom of establishment and (ii) the COMI relocation often benefits the debtor and his creditors rather than disadvantaging them. The Proposal does introduce an obligation to examine the jurisdiction *ex officio* and grants all foreign creditors a right to challenge the opening of the proceedings (*infra*), this “should therefore reduce the cases of forum shopping through abusive and non-genuine relocation of the COMI” (p. 7).

§ 2.3 Examination as to jurisdiction

18. The judgment opening insolvency proceedings must specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3.1 or 3.2, *i.e.* whether it is a universal or a territorial proceeding (see, art. 21.1 *in fine*). However, the Regulation does not contain rules on the examination as to jurisdiction. In principle, legal scholars have argued that such examination must be conducted by national courts *ex officio.* This is the only solution consistent with the principle that the jurisdiction of the courts of the situation of the debtor’s COMI is *exclusive.* On the other hand, the right of the interested parties, typically, foreign creditors to dispute the jurisdiction of the court of opening is governed by national law.

19. This aspect has been significantly amended in the Commission’s Proposal. This Proposal includes a provision for the examination of jurisdiction. As has been said, the fact that the jurisdiction is exclusive should entail that the appreciation is *ex officio.* However, it seems that Member States have followed different approaches. The Proposal lays down (i) an obligation to examine the jurisdiction *ex officio*, (ii) a declaration of the jurisdictional basis and (iii) recognised a right of appeal to foreign creditors (Article 3b of the Proposal).

20. The judge has the obligation to examine his jurisdiction *ex officio* prior to opening insolvency proceedings and to specify in the decision on which grounds the jurisdiction is based. The court seized of a request to open insolvency proceedings shall *ex officio* examine whether it has jurisdiction pursuant to Article 3. The judgment opening insolvency proceedings shall specify the grounds on which the jurisdiction of the court is based, and, in particular, whether jurisdiction is based on Article 3(1) or (2). This latter obligation was already imposed by the current text (art. 21.1), but now it is more visible.

21. The Proposal also recognizes a right to challenge the decision opening main proceedings. Any creditor or interested party who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings, shall have the right to challenge the decision opening main proceedings. The court opening main proceedings or the liquidator shall inform such creditors *insofar* as they are known of the decision in due time in order to enable them to challenge it. The right of appeal may be exercised prior or once the decision has been taken (this is left to national law).
§ 2.4 Conflict of jurisdiction

22. The Regulation is based upon the principle that only a single main insolvency proceeding may be opened with regard to the same debtor. International jurisdiction corresponds, exclusively, to the Member State where the debtor’s COMI is located. And each debtor, legal person, can have only one COMI. Nevertheless, even though the COMI is a uniform concept, there may be cases where judges faced with the same facts apply the concept in a disparate way or draw different conclusions from those facts. Both, for example, may understand that the COMI of the debtor is situated in their own territory.

23. Those positive conflicts must be solved according to the temporal priority principle. Once the court of a Member State have adopted a decision regarding their jurisdiction, this decision must be recognized by all other Member States, without the latter being able to review the jurisdiction of the court of the opening State (see recital 22 and Eurofood, para. 44). According to the ECJ, “By requiring that any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction pursuant to Article 3 be recognized in all the other Member States from the time that it becomes effective in the State of the opening of proceedings, the first subparagraph of Article 16(1) of the Regulation lays down a rule of priority, based on a chronological criterion, in favour of the opening decision which was handed down first. As the 22nd recital of the Regulation explains, '[t]he decision of the first court to open proceedings should be recognized in the other Member States without those Member States having the power to scrutinise the court's decision' (Ibid, para. 49).

Example. In the Eurofood case, according to Irish insolvency law, the main insolvency proceedings were opened in Ireland the 27 January 2004 (the date on which the application was submitted). A month latter, an Italian judge opened insolvency proceedings against the same company, arguing that the debtor’s COMI was situated in Parma. In these circumstances, the Irish proceedings prevail.

§ 2.5. Material Scope

24. Article 3.1 of the Regulation only refers to the jurisdiction to open insolvency proceedings. Naturally, the jurisdiction of the insolvency court encompasses all other decision envisaged in article 16 and 25, including provisional measures, i.e. all decisions concerning the course and closure of insolvency proceedings and composition approved in the context of such proceedings.

25. As regards, in particular, to the question of what actions or disputes fall within the jurisdiction of the court opening insolvency proceedings, Article 3 does not define it. However, the gap is only apparent. The scope of the jurisdiction of the insolvency court is implicitly defined by recital 6, article 25 of the Regulation and has been clarified by the ECJ (C-133/79, 22.2.1979, Gourdain; C-339/07, 12.2.2009, Seagon; C-213/10, 19.4.2012, F-Tex). According to the case law of the ECJ: the court opening insolvency proceedings have jurisdiction for any action which derives directly from the insolvency proceedings and are close linked with them. The characterization implies a double test. (i) From a substantive perspective, the legal cause of action must be insolvency law, i.e. the action must respond to an insolvency policy (e.g. if the application succeeds it is the general
body of creditors which benefit); and (ii), from a procedural point of view, the action must be closely connected with the insolvency proceedings (e.g. only the liquidator can make the application).

**Examples.** According to the ECJ, the following actions fall under the jurisdiction of the courts where insolvency proceedings are opened: (i) An action to set aside a transaction (a payment) by virtue of insolvency (Seagon, para. 28); (ii) An action invalidating a transfer granted by the liquidator appointed in insolvency proceedings on the grounds that the liquidator had no power to dispose of the assets transferred (C-111/08, 2.7.2009, SCT Industri). Conversely, an action brought against a third party by an applicant on the basis of an assignment of claims which has been granted by a liquidator the subject matter of which is to set aside a transaction does not fall under the category of insolvency matters (F-Tex, para. 49). An action brought by a seller based on a reservation of title against a purchaser who is insolvent is also excluded from the scope of the Insolvency Regulation (C-292/08, 10.9.2009, German Graphics). Actions excluded from the Insolvency Regulation are subject to the Brussels I Regulation.

26. The Commission’s Proposal includes a provision that tries to codify the case law of the ECJ but also incorporates a new rule on related actions. According to Article 3a of the Proposal, “The courts of the Member State within the territory of which insolvency proceedings have been opened in accordance with Article 3 shall have jurisdiction for an action which derives directly from the insolvency proceedings and is closely linked with them”. The purpose of this provision is to clarify the delimitation between the Brussels I Regulation and the Insolvency Regulation, but it does not change the current regime, only makes it clearer.

27. There is, however, a new rule on related actions, giving the liquidator a option of accumulation on an insolvency-related action with an action covered by the Brussels I Regulation: “Where an action referred to in paragraph 1 is related to an action in civil and commercial matters against the same defendant, the liquidator may bring both actions in the courts of the Member State within the territory of which the defendant is domiciled, or, where the action is brought against several defendants, in the courts of the Member State within the territory of which any of them is domiciled, provided that that court has jurisdiction pursuant to the rules of Regulation (EC) No 44/2001”. For the purpose of this Article, “actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.” This rule is envisaged for cases, for example, where the liquidator wishes to combine an action for director’s liability on the bases of insolvency law with an action based on company law or general tort law (see recital 13b of the Proposal).

§ 3. Territorial proceedings

28. The Regulation permits the opening of territorial proceedings, *i.e.* insolvency proceedings restricted to the assets of the debtor in the corresponding Member State. The territorial proceedings may be independent (art. 3.2), if no main proceedings have been opened, or secondary (art. 3.3), where main proceedings have already been opened. The Regulation places a series of restrictions in order not to undermine the main criteria, in particular: (i) territorial proceedings can only be opened where the debtor has an establishment; (ii) the body of creditors is not limited territorially; and (iii), when both main and secondary proceedings are opened, the Regulations lays down a regime on cooperation and coordination of proceedings.
29. The connecting factor is the situation of an **establishment** of the debtor. When the debtor has its COMI in one Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings only if he possesses an establishment within the territory of that other Member State. The concept of establishment is defined in the Regulation: *any place of operations where the debtor carries out a non-transitory economic activity with human means and goods* (art. 2 (h)). The fact that the definition refers to the presence of human resources shows that a minimum level of organization and a degree of stability is required. The mere presence of goods or banks accounts is not enough (*Interedil*, para. 62).

30. The effects of these territorial proceedings are limited to the assets of the debtor situated in the territory of the corresponding Member State, irrespective of whether or not the assets are linked to the activities of the establishment. The Regulation contains a rule on **location of assets** (art. 2 (g): (i) tangible property, in the Member State where it is physically situated; (ii) registered property, in the Member State under the authority of which the registered is kept; (iii) claims, in the Member State where the debtor’s COMI (debitoris debitoris) is located. The relevant point in time for determining the location of assets is the time the proceedings are opened.

31. The Commission’s Proposal introduces more precise rules on location of assets. According to these new provisions, "the Member State in which assets are situated" means, in the case of:

(a) **Tangible property**, the Member State within the territory of which the property is situated.

(b) **Property and rights ownership** or entitlement to which must be entered in public register, the Member State under the authority of which the register is kept.

(c) **Registered shares in companies**, the Member State within the territory of which the company having issued the shares has its registered office.

(d) **Financial instruments**, title to which is evidenced by entries in a register or account maintained by or on behalf of an intermediary ("book entry securities"), the Member State in which the register or account in which the entries are made is maintained. This definition is taken from the collateral Directive.

(e) **Cash held in accounts with a credit institution**, the Member State indicated in the account's IBAN.

(f) **Claims against third parties** other than those relating to assets referred to in subparagraph (v), the Member State within the territory of which the third party required to meet them has the centre of his main interests, as determined in Article 3(1).

The new provision on the location of bank account is very relevant. According to the current text, bank accounts follow the criteria set forth to any other claim, i.e. the location of the COMI of the debtor of such claim. Hence, even though a bank account is opened with a branch of a credit institution in Member State A, it would be considered to be located where that credit institution has its central administration, which may be in
State B. The Commission’s Proposal locates bank accounts in the corresponding branch (which is identified by the International Bank Account Number).