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CASE NOTE

Case note on CJEU 11 June 2026, ECLI:EU:C:2026:476, C-292/25 (Shopping24)

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Abstract

In *Shopping24* (C-292/25), the Court of Justice of the European Union (CJEU) held that Article 6(1) of the European Insolvency Regulation (EIR) establishes exclusive jurisdiction. In the circumstances giving rise to *Shopping24*, a proceeding was pending in Germany regarding substantially the same claim as the one that was subsequently lodged in an Austrian insolvency proceeding. Based on national law, the German proceeding had been stayed due to the opening of insolvency proceedings against the debtor. Under both Austrian and German law, this proceeding could be continued when the claim was disputed in an insolvency proceeding. The question arose as to whether the Austrian courts have exclusive international jurisdiction to rule on the claim or whether the German proceedings could be resumed for that purpose. The judgment of the CJEU is a logical continuation of its earlier case law, although at first sight it is difficult to align with the principle of perpetuatio fori. This case note provides a reading of the judgment to render it more understandable. Moreover, the judgment may serve as a basis for further clarification of the status of choice of forum agreements in relation to Article 6(1) EIR.

Keywords: Annex actions, choice of forum agreements, pending proceedings, perpetuatio fori

1. The characterisation of insolvency-related claim validation proceedings in European private international law is a topic of particular interest. In 2019, the Court of Justice of the European Union (CJEU) held that "an action for a declaration of the existence of claims for the purposes of their registration in the context of insolvency proceedings" falls within the scope of the insolvency exception

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in Article 1(2)(b) of Regulation 1215/2012 (Brussels Ia Regulation) (Case C-47/18 *Riel* [2019] ECLI:EU:C:2019:754). This judgment has been met with criticism in the literature (e.g. PM Veder, 'Oilchart' [2025] *European Insolvency and Restructuring Journal* (note)). One particularly relevant question concerned how to align *Riel* with the principle of perpetuatio fori. This principle stipulates that the jurisdiction of a court is determined based on the facts existing when the proceeding commenced.

2. Applying the principle of perpetuatio fori to *Riel* creates difficulties. Concretely, a dispute about a claim pending prior to the opening of insolvency proceedings might be suspended due to the opening of insolvency proceedings and, later, resumed when a creditor or the insolvency practitioner disputes the claim. Only once the proceeding is resumed as a claim validation proceeding does it fall under Article 6(1) of Regulation 2015/848 (European Insolvency Regulation, EIR). However, jurisdiction of the court was established prior to the opening of insolvency proceedings and was therefore based on the Brussels Ia Regulation. The subsequent opening of an insolvency proceeding of the debtor would, normally, have no bearing on the jurisdiction of the court.
3. As this case note shows, the effect of *Shopping24* is that the foreign proceeding may not resume as a claim validation proceeding. Moreover, although the case did not concern choice of forum agreements, the judgment supports the view that such agreements, when designating jurisdiction to courts outside the Member State in which insolvency proceedings have been opened, are not enforceable in relation to claims falling under Article 6(1) EIR.

Facts of the case

4. The case emerged from the opening of insolvency proceedings against Sportgigant by the Regional Court in Linz, Austria on 17 September 2024. Prior to this, on 27 March 2024, Shopping24 initiated a proceeding against Sportgigant before the Regional Court in Hamburg, Germany, for the payment of unpaid invoices, interest, and pre-litigation costs. Because of the subsequent opening of insolvency proceedings and based on German law, the German court stayed the proceeding regarding the payment of the claim.
5. The Austrian court stated that under the national laws of both Germany and Austria, the stayed proceeding is resumed if the creditor, in this case Shopping24, lodges its claim in the insolvency proceeding and its claim is disputed.
6. Shopping24's claim was apparently disputed in the Austrian insolvency proceeding, and Shopping24 concluded that the Austrian court had jurisdiction to rule on the claim. On 19 December 2024, Shopping24 thus brought an action before the Austrian court. Its purpose was to obtain a declaratory judgment

against the insolvency practitioner and the general body of creditors concerning the existence of substantially the same claim as the one that was already pending in Germany.

7. The Austrian court asked the CJEU, in essence, whether Article 6 EIR must be interpreted as meaning that in the context of insolvency proceedings pending in Austria, Austrian courts have exclusive jurisdiction over an action seeking a declaration of the existence of a claim under Austrian law even if a proceeding about the same claim is pending in Germany which had commenced prior to the opening of an insolvency proceeding and may continue under German law as a proceeding for a declaration of the existence of the claim in insolvency proceedings. Given its answer to the Austrian court's first question, the CJEU did not answer the second and third questions referred to it.

Judgment

8. The CJEU started its analysis with a summary of its case law on the two criteria found in Article 6 EIR, which determine whether an action falls within the scope of the insolvency exception and, thus, within the EIR. It restated its conclusion from *Riel* that "an action for a declaration of the existence of claims for the purposes of their being lodged in insolvency proceedings" falls within the scope of the insolvency exception (*Shopping24*, para 31). Therefore, the courts of the Member State in which the insolvency proceedings have been opened have international jurisdiction to rule on such an action.
9. Subsequently, the Court examined whether the international jurisdiction of Article 6 EIR is exclusive. First of all, the Court restated its judgment in C-296/17 *Wiemer & Trachte* [2018] ECLI:EU:C:2018:902 in which it held that the international jurisdiction in relation to Article 3(1) of Regulation 1346/2000, the predecessor of the current EIR, was exclusive in nature. Article 3(1) of Regulation 1346/2000 also served as a basis for actions which derive directly from the insolvency proceedings and are closely linked with them (Case C-339/07 *Seagon* [2009] ECLI:EU:C:2009:83). The Court further observed that the EIR contains no rule conferring jurisdiction over actions falling within its scope on courts other than those of the Member State in which the insolvency proceedings were opened. This exclusivity is only ruled out in Article 6(2) EIR which in essence stipulates that the insolvency practitioner may bring an action falling under the EIR before the courts of the Member State in which one of the defendants is domiciled when the insolvency practitioner also brings a related action based on the general provisions of civil and commercial law. Moreover, the CJEU held that the concentration of all actions directly linked with insolvency before the courts of the Member State with jurisdiction to open the insolvency proceeding is consistent

with the objective of improving the effectiveness and efficiency of insolvency proceedings. Furthermore, allowing more than one court to exercise jurisdiction for actions that fall under the EIR would undermine the objective of avoiding incentives to transfer judicial proceedings from one Member State to another.

10. Given the foregoing, the Court concluded that Article 6(1) EIR establishes exclusive international jurisdiction for actions which derive directly from insolvency proceedings and are closely linked with them. The German proceeding may therefore not continue as a proceeding for a declaration of the existence of a claim for the purposes of its registration in the Austrian insolvency proceeding.
11. It is my understanding that the judgment nevertheless leaves open the possibility that the German proceeding, as a matter of international jurisdiction, might continue as a proceeding concerning just the claim, without this proceeding having the status as a claim validation proceeding (compare: Case C-394/22 *Oilchart* [2024] ECLI:EU:C:2024:952).

Perpetuatio fori

12. *Shopping24* might sit uneasily with the principle of perpetuatio fori, according to which the jurisdiction of courts must be determined by the facts and circumstances as they were when the proceeding commenced. Accordingly, the subsequent opening of an insolvency proceeding against one of the parties has normally no bearing on the jurisdiction of the court seised of the action.
13. When the German proceeding was commenced – prior to the opening of insolvency proceedings – the insolvency exception could not have been applied. Concretely, as stated in the CERIL Report 2021-1 on identifying annex actions under Article 6(1) EIR, "a lawsuit already pending prior to the opening of insolvency proceedings against a debtor is per definitionem not an annex action". Furthermore, Article 18 EIR stipulates that the effect the opening of insolvency proceedings has on a pending lawsuit "concerning an asset or a right which forms part of the debtor's insolvency estate" is "governed solely by the law of the Member State in which that lawsuit is pending". In line with the foregoing and consistent with the principle of perpetuatio fori, Wilfinger concluded that pending proceedings outside the opening state could resume as a declaratory proceeding in relation to insolvency proceedings if the *lex fori* allows for that (A Wilfinger, 'Declaration of Claims in International Insolvency Proceedings' [2021] *European Insolvency and Restructuring Journal*). This line of reasoning also aligns with earlier judgments of the CJEU. Although no reference was made to the principle of perpetuatio fori, these judgments held that a transfer of the centre of the debtor's main interest is not taken into account if the transfer occurs after a request to open insolvency proceedings has been lodged and before the

insolvency proceedings are opened, thereby, in fact, establishing the principle of perpetuatio fori for the international jurisdictional ground regarding the opening of insolvency proceedings (Case C-1/04 *Susanne Staubitz-Schreiber* [2006] ECLI:EU:C:2006:39; Case C-723/20 *Galapagos BidCo* [2022] ECLI:EU:C:2022:209).

14. At first sight, *Shopping24* is thus difficult to align with the principle of perpetuatio fori. However, another interpretation might shed a different light on this. Concretely, the ruling might be interpreted as implying that claim validation proceedings are distinct from an action pending prior to the opening of insolvency proceedings about the same claim. In other words, it is a different action and thus jurisdiction must be established again. This line of reasoning also makes the diverging judgments in *Oilchart* and *Riel* more understandable. The Court held in the former that the insolvency exception in the Brussels Ia Regulation was not applicable while it held in the latter that the insolvency exception was applicable. While the material legal basis of the claims in these judgments was essentially the same, the distinction in outcome could lie in the fact that the latter concerned a claim validation proceeding which the Court apparently qualifies as distinct from a proceeding about materially the same claim which commenced independent of insolvency proceedings. In that reading, *Shopping24* is the logical continuation of its earlier *Riel* judgment. That is underlined by the fact *Shopping24* was decided by a three-judge chamber and without an Opinion of an Advocate General. Moreover, this line of reasoning renders it logical that jurisdiction must be established again and arguably the principle of perpetuatio fori is not infringed.

Choice of forum agreements

15. It is still unclear whether choice of forum agreements for claims that fall under the scope of Article 6 EIR are enforceable if they designate a court outside the Member State in which the insolvency proceedings have been opened. Some contend that these agreements are unenforceable (e.g. Wilfinger 2021) whereas others argue that this is solved by the *lex concursus* (e.g. A Leandro, *Jurisdiction in EU Cross-Border Insolvency Law* (Edward Elgar, 1st edn, 2025) para 3.123).
16. Although *Shopping24* did not concern the enforceability of choice of forum agreements, this judgment supports the view that choice of forum agreements are unenforceable if they designate a court outside the opening state. Specifically, the CJEU stated in *Shopping24* that the EIR, besides Article 6(2) EIR, does not lay down any rule regarding the allocation of international jurisdiction other than that the courts in the Member State of the opening of insolvency proceedings have international jurisdiction (*Shopping24* paras 38-39). This stands in contrast to the Brussels Ia Regulation, which expressly provides for the enforceability of

choice of forum agreements (Article 25 Brussels Ia Regulation). The CJEU has so far not applied the rules contained in the Brussels Ia Regulation by analogy to claims falling under the EIR (e.g. *Riel* para 43; *Oilchart* para 59). Moreover, allowing choice of forum agreements designating jurisdiction in a court other than in the opening state to be enforceable would be difficult to reconcile with "the objective of improving the effectiveness and efficiency of insolvency proceedings having cross-border effects" while, as the CJEU in *Shopping24* stated, concentrating actions that fall within the scope of Article 6(1) EIR before the courts of the Member State in which the insolvency proceedings were opened is consistent with this objective (*Shopping24* para 40). Additionally, in *Shopping24*, the CJEU did not examine Article 18 EIR, about the law applicable to pending proceedings, when assessing whether the Austrian courts have exclusive international jurisdiction. It solely examined Article 6 EIR about international jurisdiction. Thus, the CJEU treated international jurisdiction as governed by Article 6 EIR without any reference to Article 18 EIR concerning the applicable provisions in national law about the resumption of the proceedings. Conversely, it would be consistent if the Court likewise does not look to Article 7(2)(f), which concerns the law applicable to proceedings brought after the opening of insolvency proceedings, when assessing the international jurisdiction of a court in the case of a choice of forum clause concerning a claim that falls within the scope of Article 6 EIR when the proceeding commenced after the opening of insolvency proceedings.

17. Given the foregoing, *Shopping24* clears the way for a ruling about the unenforceability of foreign choice of forum agreements for claims that fall within the scope of Article 6 EIR.