The Scope of Article 31(1) of Regulation 2015/848 and Acts Performed by the Debtor after the Opening of Insolvency Proceedings in Light of the *lex fori concursus* Principle

Judgment of the Court of Justice of 27 March 2025
in Case *Matthäus Metzler v Auto1 European Cars B.V.*, C-186/24[1]

The protection afforded to a third party honouring an obligation to the debtor who is subject to insolvency proceedings extends to honouring an obligation arising from a legal act performed by the debtor after the opening of such proceedings and after the transfer of the power to administer the assets to the insolvency practitioner, provided that such legal act is effective under the law of the Member State in which the proceedings were opened, pursuant to Article 31(1) of Regulation 2015/848.

Robert Obrzud
University of Gdańsk, Poland
robert.obrzud@ug.edu.pl
ORCID: 0000-0001-5999-1695

https://doi.org/10.26881/gsp.2026.2.19

Commentary

1. Introduction

The increasing number of cross-border insolvency proceedings gives rise to progressively more complex interpretative challenges stemming from the need to apply the provisions of Regulation (EU) 2015/848[2] and the relevant norms of national

---

[1] The CJEU judgement in Case C-186/24, Auto1 European Cars: Request for a preliminary ruling from by the Oberster Gerichtshof (Austria) lodged on 8 March 2024 – *Dr. Matthäus Metzler as the insolvency practitioner v Auto1 European Cars B.V.* (hereinafter: the judgement in Case C-186/24). Published at http://data.europa.eu/eli/C/2024/3060/oj [accessed: 4.05.2026].

[2] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), OJ L 141, 5.06.2015, p. 19 (hereinafter: Regulation 2015/848).

insolvency law. In practice, the most significant difficulties concern the application of the rules and mechanisms laid down in Regulation 2015/848, particularly in light of the conflict-of-law character of the provisions of the Regulation and the norms derived therefrom under the *lex fori concursus*, that is the law applicable to insolvency proceedings and their effects. The issue of insolvency, when examined in a cross-border context, engages a wide range of important questions, encompassing substantive law, procedural law, private international law, EU law, as well as instruments of international law that are applicable also beyond the borders of the European Union. It is appropriate to note that insolvency-related matters already give rise to significant legal challenges at the national level; consequently; their extension to the cross-border dimension inevitably prompts further legitimate concerns and raises a series of questions.

It is noteworthy that, in the area of insolvency law, the EU legislator has opted for a conflict-of-laws model. This approach is grounded in the well-founded understanding that the harmonisation of cross-border insolvency proceedings is most effectively and indeed, necessarily, achieved through the designation of applicable law and the determination of jurisdiction. This solution reflects the existing divergences among Member States in both substantive and procedural insolvency laws.[3] In accordance with recital 11 of Regulation 1346/2000[4] and recital 22 of Regulation 2015/848, the existence of significant differences in substantive insolvency laws precludes, for practical reasons, the establishment of a universal insolvency procedure applicable in all EU Member States.

As a result, an assessment is necessary of the nature of the legal norms of Regulation 2015/848, as the provisions of a conflict-of-laws nature necessitates the application of appropriate interpretative rules, which will also consider the general principles of interpretation of EU law,[5] aiming to ensure uniformity, effectiveness, and consistency with the binding international provisions of law applicable to the European Union.

The CJEU judgement[6] under review addresses a significant issue concerning the honouring of an obligation to the debtor in a Member State, where insolvency proceedings against the debtor have been initiated in another Member State. According to Article 31(1) of Regulation 2015/848, a third party that has honoured an obligation to the debtor in a Member State is released from the obligation to honour that obligation to the insolvency practitioner, provided that the third party was not aware of the initiation of insolvency proceedings in another Member State. In the case under review, the moment of honouring the obligation was of key importance, as the obligation was honoured after the opening of the insolvency proceedings, which gave rise to doubts of the national court. The place where the obligation was honoured

[3] A. Hrycaj, *Jurysdykcja krajowa w sprawach o ogłoszenie upadłości objętych zakresem zastosowania rozporządzenia Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego*, Warszawa 2011, pp. 29–30.

[4] Council regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings, OJ L 160, 30.06.2000, p. 1 (hereinafter: Regulation 1346/2000).

[5] A. Hrycaj, *Jurysdykcja krajowa*…, p. 77.

[6] The Court of Justice of the European Union (hereinafter: the CJEU).

was also significant, given the necessity of a foreign element in order to apply the provisions of Regulation 2015/848.

2. Factual background

The main subject matter of the case before the CJEU concerned insolvency proceedings initiated against the debtor before the Regional Court in Linz, Austria (*Landesgericht Linz*). Several days after the opening of the insolvency proceedings, the debtor concluded a contract of sale for a motor vehicle in Austria with a Dutch company having its registered office in the Netherlands, in one of the purchaser's business premises located in Austria. The company paid for the vehicle by transferring the selling price from a bank account in Germany to the debtor's bank account in Austria.

Subsequently, the insolvency practitioner brought an action seeking the restitution of the selling price for the benefit of the insolvency estate, arguing that the obligation ought to have been honoured to him, in his capacity as the vehicle seller's insolvency practitioner. The Dutch company that purchased the vehicle relied on the legal rule laid down in Article 31 of Regulation 2015/848, asserting that the company had no knowledge of the opening of the insolvency proceedings and, consequently, had acquired the vehicle in good faith and was released from any obligation to be honoured to the insolvency practitioner, having already honoured that obligation to the debtor.

The *Landesgericht Linz*, acting as the court of first instance, upheld the claim brought by the insolvency practitioner in its entirety. The judgement at first instance was overturned by the judgement of the Higher Regional Court of Linz (*Oberlandesgericht Linz*) acting as the appellate court, which held that Article 31(1) of Regulation 2015/848 was applicable in the present case. This finding was based on the circumstance that the payment had been made from a German bank account to the debtor (thus involving a cross-border element), whereas the Dutch company lacked sufficient information and knowledge concerning the opening of the insolvency proceedings before the competent court in Austria.

The insolvency practitioner brought a cassation appeal before the Austrian Supreme Court (*Oberster Gerichtshof*), claiming in essence that Article 31 of Regulation 2015/848 was not applicable to the case at hand, on the grounds that the obligation to make payment was not based on a valid legal act, as required directly under Austrian insolvency law. Indeed, pursuant to § 3(1) of the Austrian Insolvency Code, legal acts performed by a debtor, such acts concerning the insolvency estate after the opening of the insolvency proceedings, are ineffective vis-à-vis the creditors of the insolvency estate. Moreover, the appeal argued that the case did not contain any cross-border element, which constitutes a necessary condition for the application of the relevant provision of EU law stemming from Regulation 2015/848, given that the contract of sale was concluded in the territory of Austria and the insolvency proceedings are pending before an Austrian court.

The Supreme Court confirmed that Austrian law did not provide for any exemption from the general rule on the ineffectiveness of acts performed by the debtor after the opening of the insolvency proceedings. Austrian insolvency law does not provide for an exception based on the good faith of a third party that would allow such an act to remain valid and effective, which constitutes a divergence from the provisions of Regulation 2015/848. Furthermore, the referring court emphasised that Article 31 of Regulation 2015/848 applied exclusively to claims that already exist. Accordingly, that provision should not be applicable to acts performed after the opening of the insolvency proceedings which bear no connection to the insolvency estate. However, the court expressed a doubt as to the interpretation of the provision in question, indicating that it might be applicable to obligations arising from an ineffective legal act. In that context, it became essential to determine whether the case involves a cross-border element, and thus which state is to be regarded as the state in which the obligation was to be honoured in the light of the facts of the case.

The referring court therefore submitted two questions to the CJEU for a preliminary ruling. The first question concerned whether Article 31(1) of Regulation 2015/848 also covers obligations arising from a contract concluded after the opening of the insolvency proceedings and after the powers have been transferred to the insolvency practitioner.[7]

The second question concerned the interpretation of the concept of "the place in which the obligation is honoured" in the light of Regulation 2015/848 under discussion, a matter which was of significance for determining whether a cross-border element was present in the case at hand.[8]

3. Ruling of the CJEU

The CJEU held that Article 31(1) of Regulation 2015/848 also encompasses within its scope obligations arising from a legal act concluded by the debtor after the opening of the insolvency proceedings and the transfer of assets to the insolvency practitioner. This interpretation is based primarily on the literal interpretation of the provision, which contains no explicit exclusion indicating that the provision applies solely to acts performed within a specific temporal limit before the opening of the insolvency proceedings. For that reason, the Court considered that it would be inappropriate to limit the application of that provision exclusively to acts concluded prior to the commencement of the insolvency proceedings.[9]

---

7 Para. 17 of the reasoning to the judgement in Case C-186/24.

8 *Ibid*.

9 *Ibid.*, para. 18.

Nonetheless, attention was drawn to the aforementioned issue of the conflict-of-law norms in the context of cross-border insolvency proceedings. As rightly pointed out, Article 7(2)(b) and (m) of Regulation 2015/848 lays down the principle of the pre-eminence of the substantive law of the Member State in which insolvency proceedings have been opened, with respect to determining the treatment of assets acquired by the debtor or devolving on him after the opening of the proceedings, as well as with respect to the inability to invoke legal acts detrimental to creditors. Accordingly, it was held that the applicability of Article 31(1) of Regulation 2015/848, which is of substantive nature, depends on the national provisions relating to the enforceability of the legal act.[10]

Accordingly, the Court, relying on the rules of literal, contextual, and teleological interpretation, held that Article 31(1) of Regulation 2015/848 is also applicable to an obligation arising from a legal act concluded after the opening of the insolvency proceedings and the transfer of powers over the insolvency estate to the insolvency practitioner, provided that such act is effective under the national law applicable in the Member State where the proceedings were opened.[11]

The Court justified its position primarily by stating that an interpretation of the provisions contrary to the above approach could give rise to abuses by debtors who are subject to insolvency proceedings. Such debtors could, indeed, deliberately transfer assets forming part of the insolvency estate to other Member States, invoking the validity of those transactions on the grounds of the protection of the good faith of third parties, which would be contrary to the main assumptions of Regulation 2015/848.[12]

Moreover, the CJEU emphasised that allowing a third party to invoke good faith in the context of a transaction declared ineffective would constitute a far-reaching abuse of the protection of third parties' good faith as intended by the EU legislator. Such an interpretation could, indeed, imply that the third party would be protected from a claim for unjust enrichment brought against them by the insolvency practitioner.[13]

4. Assessment of the CJEU judgment

The analysis of the judgement under review must begin with the characteristics of the conflict-of-law connecting factor introduced by the EU legislator in Regulation 2015/848. The EU legislator has consistently upheld a system based on the applicability of the law of the Member State in which insolvency proceedings are opened, as the law governing cross-border insolvency proceedings (*lex fori concursus*).[14] The designation

[10] *Ibid.*, para. 23.
[11] *Ibid.*, para. 24.
[12] *Ibid.*, para. 27.
[13] *Ibid.*, para. 26.
[14] P. Kindler [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, Bd. 11: *Internationales Privatrecht II; Internationales Wirtschaftsrecht; Einführungsgesetz zum Bürgerlichen Gesetzbuche (Art. 25–248)*, ed. J. von Hein, 6. Auflage, München 2015, p. 780.

of the applicable law as that of the Member State opening the cross-border insolvency proceedings serves the objectives of speed and efficiency in the conduct of such proceedings. A positive aspect of this solution lies, *inter alia*, in the requirement to apply a single legal system, that is, that of the State of the opening of proceedings, which ensures the avoidance of allegations of infringement of the principle of equal treatment of participants in those proceedings.[15]

The solution under discussion, namely the determination of the applicable law for cross-border insolvency proceedings on the basis of the *lex fori concursus* connecting factor, serves to counteract the phenomenon known as forum shopping,[16] which refers to the practice of seeking legal advantage by transferring the debtor's assets to the territory of another state, to the detriment of the general body of creditors.

Pursuant to Article 7(1) of Regulation 2015/848, the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. The scope of the designated applicable law expressly includes the conditions for the opening of those proceedings, their conduct and their closure. Additional areas governed by the law designated under the *lex fori concursus* are set out by way of example in Article 7(2) of Regulation 2015/848. From the perspective of the judgement under discussion, particularly relevant examples of the scope of regulation by the law applicable to cross-border insolvency proceedings include points (b) and (m) of Article 7(2) of Regulation 2015/848, namely: relating to the assets which form part of the insolvency estate and the treatment of assets acquired by or devolving on the debtor after the opening of the insolvency proceedings, as well as the rules relating to the voidness, voidability, or unenforceability of legal acts detrimental to the general body of creditors.

As correctly observed by the CJEU, the mechanism laid down in Article 31(1) of Regulation 2015/848 is characterised by its substantive nature.[17] However, that does not in any way limit the scope of the national law applicable pursuant to the *lex fori concursus* conflict-of-law connecting factor provided for in Article 7(1)–(2) of Regulation 2015/848.

In the case under analysis, the act performed by the debtor after the opening of the insolvency proceedings is ineffective under the provisions of the Austrian insolvency code (*Insolvenzordnung*).[18] In particular, the payment of a debt made to the debtor after

[15] Ch.G. Paulus, *Europäische Insolvenzordnung. Kommentar*, 5. Auflage, Frankfurt am Main 2017, p. 232.

[16] Recital 5 of Regulation 2015/848 states that, in order to ensure the proper functioning of the internal market, it is essential to avoid incentives for the parties to transfer assets or judicial proceedings from one Member State to another seeking to obtain a more favourable legal position to the detriment of the general body of creditors (so-called forum shopping).

[17] Such an interpretation was also adopted under Regulation 1346/2000 by K. Piasecki, "Rozporządzenie Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego" [in:] *idem*, *Kodeks postępowania cywilnego*, t. 6*: Przepisy z zakresu międzynarodowego postępowania cywilnego. Sąd polubowny (arbitrażowy). Regulacje prawne Unii Europejskiej w sprawach transgranicznych. Komentarz*, wyd. 5, Warszawa 2013, p. 963.

[18] Para. 3(1) of *Insolvenzordnung* (the Austrian insolvency code) of 11 December 1914 , RGBl. 337/1914 (hereinafter: the *Insolvenzordnung*).

the opening of the insolvency proceedings does not discharge the obligor, unless the obligation was honoured to the insolvency estate or the obligor was unaware of the opening of the insolvency proceedings at the time when the obligation was honoured, and such lack of knowledge was not due to a failure to exercise reasonable diligence (that is, it was not the case that the obligor ought to have known of the opening of the insolvency proceedings).[19] Under Polish insolvency law (*Prawo upadłościowe*), a legal act performed by an insolvent debtor and concerning assets forming part of the insolvency estate is void, regardless of the debtor's knowledge at the time of the act. The knowledge of the counterparty is relevant only with regard to the option to seek the restitution of the obligation to the estate.[20] Furthermore, pursuant to Article 78 of Polish insolvency law, honouring an obligation to the insolvent debtor after the publication of the declaration of insolvency in the Register does not release the obligor from honouring his obligation to the insolvency estate, unless the equivalent value of the obligation has been transferred by the insolvent debtor to that estate.

Consequently, it should be accepted that the admissibility of affording protection to a third party who has honoured an obligation directly to the debtor, within the meaning of Article 31(1) of Regulation 2015/848, in relation to the debtor's act performed after the opening of the insolvency proceedings concerning that debtor, is to be determined by the substantive law of the Member State in which the proceedings were opened (*lex fori concursus*). Only a positive assessment of the legal effectiveness of such an act under that law will permit the application of third-party protection pursuant to Article 31(1) of Regulation 2015/848, which, in turn, requires the absence of the third party's knowledge of the insolvency proceedings. In this regard, the third party may rely on the presumption of the lack of knowledge introduced in Article 31(2) of Regulation 2015/848, provided that the obligation was honoured before the publication under Article 28 of the Regulation.[21] As noted previously, it is the national law that will determine whether a third party may seek the restitution of the obligation from the insolvency estate, as well as the extent of the duty to return any obligation received by that party to the estate. Furthermore, it is the national norms which will determine whether the third party may be released from the duty to honour the obligation towards the estate in cases where the obligation was previously honoured directly to the insolvent debtor.

19 Para. 3(2) of the *Insolvenzordnung*.

20 Article 77(1) of the Insolvency Law Act of 28 February 2003, consolidated text: *Journal of Laws* of 2022, item 1520, as amended (hereinafter: Insolvency Law).

21 J. Lachner, "Commentary to Art. 24" [in:] K. Kohutek, J. Lachner, *Komentarz do rozporządzenia nr 1346/2000 w sprawie postępowania upadłościowego*, LEX/el. 2007.

5. Conclusions

The judgment of the Court of Justice of the European Union in Case C-186/24 constitutes a significant contribution to the development of European insolvency law, as it clarifies the scope of application of Article 31(1) of Regulation No 2015/848 and the relationship between substantive rules and conflict-of-law provisions in cross-border insolvency proceedings. The Court convincingly demonstrates that the protection of third parties acting in good faith cannot be interpreted in isolation from the national insolvency law provisions designated by the *lex fori concursus* connecting factor.

A key achievement of the judgment under review is the confirmation that Article 31(1) of Regulation No 2015/848 also applies to acts performed after the opening of insolvency proceedings; however, the effectiveness of such acts must be assessed in accordance with the law of the Member State in which the proceedings were opened. This approach ensures the coherence of the legal system and prevents situations in which debtors could deliberately circumvent insolvency law by engaging in cross-border transactions while invoking the protection of their counterparties' good faith.

The interpretation adopted by the CJEU is fully reflected in Polish insolvency law, which, in Articles 77 and 78 of the Insolvency Law, consistently embraces the principle of the invalidity of acts performed by the insolvent debtor concerning the insolvency estate and limits the possibility of discharge from the obligation to perform to the insolvency estate where performance has been rendered to the debtor after the publication of the opening of insolvency proceedings.

The judgment analysed also confirms the soundness of the conflict-of-law model adopted by the EU legislature for the regulation of cross-border insolvency proceedings. This model, based on the *lex fori concursus* principle, ensures predictability of outcomes, equal treatment of creditors, and effectively counteracts forum shopping. At the same time, it leaves Member States the freedom to shape their substantive insolvency law, thereby allowing the specific characteristics of national legal systems to be taken into account.

From the perspective of legal practice, the judgment under review provides valuable guidance for insolvency practitioners, who may more effectively pursue claims for the restitution of performances rendered to the debtor after the opening of proceedings. At the same time, it serves as a warning to third parties that good faith alone will not always be sufficient to release them from the obligation to perform to the insolvency estate if the legal act forming the basis of the performance is ineffective under the applicable law.

It should be emphasised that the interpretation of Article 31 of Regulation No 2015/848 adopted by the CJEU in Case C-186/24 fits within the broader context of the Court's case law on cross-border insolvency proceedings and confirms its consistent efforts to ensure the uniform application of the Regulation while respecting the autonomy of national insolvency law systems.

In conclusion, the judgment under review fully deserves approval. It represents an important step towards the harmonisation of the practice of applying Regulation No 2015/848 and contributes to greater legal certainty in cross-border commercial transactions. At the same time, it confirms that the effective protection of the insolvency estate and of the interests of creditors requires maintaining a balance between the principle of protecting the good faith of third parties and the need to prevent abuse and circumvention of insolvency law provisions.

Literature

Hrycaj A., *Jurysdykcja krajowa w sprawach o ogłoszenie upadłości objętych zakresem zastosowania rozporządzenia Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego*, Warszawa 2011.

Kindler P. [in:] *Münchener Kommentar zum Bürgerlichen Gesetzbuch*, Bd. 11: *Internationales Privatrecht II; Internationales Wirtschaftsrecht; Einführungsgesetz zum Bürgerlichen Gesetzbuche (Art. 25–248)*, ed. J. von Hein, 6. Auflage, München 2015, p. 780.

Lachner J., "Commentary to Art. 24" [in:] K. Kohutek, J. Lachner, *Komentarz do rozporządzenia nr 1346/2000 w sprawie postępowania upadłościowego*, LEX/el. 2007.

Paulus Ch.G., *Europäische Insolvenzordnung. Kommentar*, 5. Auflage, Frankfurt am Main 2017.

Piasecki K., „Rozporządzenie Rady (WE) Nr 1346/2000 w sprawie postępowania upadłościowego" [in:] K. Piasecki, *Kodeks postępowania cywilnego*, t. 6*: Przepisy z zakresu międzynarodowego postępowania cywilnego. Sąd polubowny (arbitrażowy). Regulacje prawne Unii Europejskiej w sprawach transgranicznych. Komentarz*, wyd. 5, Warszawa 2013, p. 963.

Summary

Robert Obrzud

The Scope of Article 31(1) of Regulation 2015/848 and Acts Performed by the Debtor after the Opening of Insolvency Proceedings in Light of the *lex fori concursus* Principle

The commentary concerns the judgment of the Court of Justice of 27 March 2025 in Case C-186/24, *Matthäus Metzler v Auto1 European Cars B.V.* The CJEU held that Article 31(1) of Regulation 2015/848 also covers obligations arising from legal acts performed by the debtor after the opening of insolvency proceedings and the transfer of powers to the insolvency practitioner. However, third-party protection is conditional upon the effectiveness of such an act under the law of the Member State in which the proceedings were opened (*lex fori concursus*). The judgment reinforces the conflict-of-laws model underpinning EU cross-border insolvency law.

Keywords: cross-border insolvency proceedings, honouring an obligation to the debtor, honouring an obligation to the insolvency practitioner, knowledge of the insolvency proceedings.

Streszczenie

Robert Obrzud

Zakres zastosowania art. 31 ust. 1 rozporządzenia 2015/848 a czynności dłużnika dokonane po ogłoszeniu upadłości w świetle zasady *lex fori concursus*

Glosa dotyczy wyroku Trybunału Sprawiedliwości z dnia 27 marca 2025 r. w sprawie C-186/24, *Matthäus Metzler przeciwko Auto1 European Cars B.V.* TSUE rozstrzygnął, że art. 31 ust. 1 rozporządzenia 2015/848 obejmuje swoim zakresem również zobowiązania wynikające z czynności prawnych dokonanych przez dłużnika po ogłoszeniu upadłości i po przejęciu zarządu masą upadłości przez syndyka. Ochrona dobrej wiary osoby trzeciej, która spełniła świadczenie do rąk dłużnika, jest jednak uzależniona od skuteczności danej czynności na gruncie prawa państwa otwarcia postępowania (*lex fori concursus*). Wyrok potwierdza spójność modelu kolizyjnoprawnego przyjętego przez unijnego ustawodawcę.

Słowa kluczowe: transgraniczne postępowania upadłościowe, spełnienie zobowiązania wobec dłużnika, spełnienie zobowiązania wobec syndyka, wiedza o toczącym się postępowaniu upadłościowym.