

Communication concerning the decision of the Curia of Hungary
in civil case n° Gfv.VII.30.044/2014

Following the institution of liquidation proceedings against the debtor, a Romanian company contacted the liquidator and reported its creditor's claim. The liquidator informed the company in a letter of how to become a creditor to the debtor. The liquidator failed to provide in the letter the information that was to be provided to all creditors under Annex no. 2 to Decree no. 38/2009 (VIII. 31.) IRM and from among the data specified in the Annex the liquidator failed to communicate to the creditor the bank account number of the court's Finance Office.

Upon the expiry of the 180-day absolute time limit the liquidator informed the creditor that its claim could not be registered because the registration fee had not been paid within the absolute time limit fixed for the payment.

The creditor filed a complaint against the liquidator's measure and requested the court to oblige the liquidator to register its creditor's claim. The creditor complained that the liquidator had failed to inform it about the conditions for becoming a creditor. The liquidator requested the court to reject the complaint.

The Curia, having proceeded upon the creditor's petition for judicial review, quashed the final order and by reversing the first instance order accepted the complaint. It obliged the liquidator to register the creditor's claim among the claims received within the time limit.

The Curia held that the creditor had had no registered office in Hungary, its main headquarters had been in another member state of the European Union, therefore the liquidator should have acted under Article 40 of Regulation (EC) no. 1346/2000 on insolvency proceedings.

Though in its petition for judicial review the creditor did not mention this violation, in case C-35/76 the European Court of Justice stated that member state courts should, *ex officio*, enforce the provisions of Community law.

Article 40 of the Regulation imposes on liquidators the duty to inform creditors having registered office in another member state. The data which must in all circumstances be communicated by liquidators to creditors of another member state are specified in Annex no. 2 to Decree no. 38/2009 (VIII. 31.) IRM.

In the instant case, once having been contacted by the creditor, the liquidator was under the duty to forward Annex no. 2 to the IRM Decree to the creditor. As the liquidator failed to do so, the creditor was not placed in a position enabling it to enforce its claim therefore the legal consequences applicable under the law to creditor's delay cannot be applied to this creditor.

Budapest, the 10th of November 2014

Civil Department of the Curia of Hungary