

Judgment no 1453/2019 of 19 March 2019

According to the case files, the appellant/the opposing party's company was declared bankrupt by the bankruptcy court in Denmark on 9 May 2018.

[...]

As for whether the claims in this case may be heard or not, the underwriter's bankruptcy estate has the following comments.

It is noted that this matter is not subject to Regulation (EU) 2015/848 on insolvency proceedings as whereas-clause 88 explicitly stipulates that "In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application" nor is Denmark bound by Regulation 2000/1346 that was replaced by the above Regulation. The Brussels Convention of 27 September 1968 is not relevant either as it does not cover bankruptcy matters.

As the effects of a bankruptcy order in the Danish legal system correspond to the effects in the Italian system, both as regards the commencement of the proceedings taken by the creditors collectively and the necessity of filing proofs of their claims against the estate (see sections 97 and 128 of the Danish Bankruptcy Act), it must be assumed that the request to calculate the claim that is subject to the demand for payment to which an objection has been made and which is already part of the dismissal of the objection from the defendant administration should be sent to the Danish bankruptcy court according to Denmark's legal system.

The consequence is that the case should be dismissed as regards the calculation of the administration's claim (see the civil appeal court 24156/18). The dismissal of the main claim also includes dismissal of the claim for contribution made by Alpha Insurance against the defendant third party as this claim has been made in the alternative in respect of the dismissal of the objection against the so-called "fiscal" order, also considering the necessity of the preceding payment for exercising the contribution under Article 1950(1)(c.c.) of the civil statute book.

As for the special nature of the issues, it is found reasonable that the costs of the proceedings are cancelled.

It is held that

The final judgment of the Court is:

- judgment was given against [XX] in default
- the case is dismissed
- the costs of the proceedings are cancelled

Thus decided in Palermo at the court hearing on 19 March 2019

Judge

[XX]