



Brussels, 9.8.2017
COM(2017) 422 final

2017/0189 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

replacing Annex A to Regulation (EU) 2015/848 on insolvency proceedings

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)¹, hereafter "the Regulation", entered into force on 26 June 2015. The Regulation will apply from 26 June 2017, with the exception of the part relating to the system for interconnection of national insolvency registers, which will apply from 26 June 2019.

Annex A to Regulation (EU) 2015/848 lists the insolvency proceedings referred to in point (4) of Article 2 of the Regulation.

In January 2017, the Republic of Croatia notified the Commission on recent changes of its domestic insolvency law introducing new types of insolvency proceedings, such as a pre-insolvency proceeding and a consumer's insolvency proceeding. At the same time, the Republic of Croatia requested to change the list set out in Annex A of the Regulation, accordingly. Pursuant to Article 1(1), to point (4) of Article 2 and to recital (9) of the Regulation, national proceedings qualify as "insolvency proceedings" in the context of the Regulation only if they are listed in Annex A thereto. Recital (9) of the Regulation confirms this: "This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A.... National insolvency procedures not listed in Annex A should not be covered by this Regulation".

The Commission has carefully analysed the request of the Republic of Croatia in order to ensure compliance of the notification with the requirements of the Regulation.

Regulation (EU) 2015/848 should therefore be amended accordingly.

- **Consistency with existing policy provisions in the policy area**

Regulation (EU) 2015/848 is a recast version of Council Regulation (EC) No 1346/2000 on insolvency proceedings. Regulation (EU) 2015/848 repeals Council Regulation (EC) No 1346/2000 and all of its successive amendments. The latter Regulation is an important instrument of civil judicial cooperation at EU level.

The efficient treatment of cross-border insolvencies of debtors with their centre of main interests in a Member State requires that the scope of the recast Regulation, similarly to the currently applicable instrument, reflects the actual state of play of domestic insolvency laws. This proposal aims at ensuring that the scope of the recast Regulation is adjusted to the actual legal framework of the Member States on insolvency by the time of its application.

- **Consistency with other Union policies**

The Regulation has an important supportive role to the freedom of establishment and to the free movement of persons.

¹ OJ L 141, 5.6.2015, p. 19–72.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 81 (2) (a), (c) and (f) of the Treaty on the Functioning of the European Union.

• Subsidiarity (for non-exclusive competence)

The Regulation (EU) 2015/848 falls under the shared competence of the European Union. Regulation (EU) 2015/848 provides for a comprehensive set of rules directly applicable to cross-border insolvency procedures which are referred to in the Annex A.

The current proposal however merely modifies this Annex in order to accurately reflect the content of national notifications and adapt the Annex containing the lists of national procedures in this field. These changes do not affect any of the obligations and rules set out in the Regulation itself.

As a result, as long as the substantive provisions of the Regulation remain unchanged, changes to Annex A of the Regulation do not affect the substantive set of rules and may only be made by the Union legislature and not by the Member States. Consequently, the amendments to that Annex are an exclusive competence by nature, and thus is not subject to the subsidiarity test and to the ex-ante review procedure of Protocol No 2 to the Treaties, as the subsidiarity principle is not applicable in the situation at stake.

• Proportionality

The proposal complies with the proportionality principle for the following reasons:

The Commission Proposal replaces the list for the Republic of Croatia in Annex A to Regulation (EU) 2015/848 with a new list taking into account the information notified by that Member State. Since Annex A is intrinsic part of the Regulation, its modification can only be achieved via the legislative amendment of the Regulation.

The Regulation is directly applicable in the Member States. It is published in the Official Journal of the European Union, therefore its contents are accessible to all interested parties.

• Choice of the instrument

The proposed instrument is a regulation.

Other means would not be adequate for the following reasons:

Annex A to the Regulation can only be amended by a regulation to be adopted in the ordinary legislative procedure, under the legal base applied to the original Regulation. Such an amendment shall be proposed by the Commission.

The Republic of Croatia notified the Commission of amendments to the list set out in Annex A. Accordingly, the Commission does not have any other option but to propose amendments to the Annex to the Regulation, insofar as these amendments comply with the requirements set out in the Regulation.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

The envisaged amendments are of a purely technical nature. They contain no substantive change to the Regulation. For such initiatives, in line with the Better Regulation Guidelines of the European Commission, no impact assessment is required.

Furthermore, pursuant to Article 81 of the Treaty on the Functioning of the European Union, after the request of Republic of Croatia to initiate the necessary legislative procedure, no choice remained available to the Commission, but to comply with this request, insofar as it fulfils the requirements set out in the Regulation. The preparatory work for the adoption of this proposal did not require any new expertise.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implication.

Proposal for a

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure

Whereas:

- (1) Annex A to Regulation (EU) 2015/848 of the European Parliament and of the Council² lists the designations given in the national law of the Member States to the insolvency proceedings to which that Regulation applies.
- (2) On 3 January 2017, the Republic of Croatia notified the Commission recent changes in its domestic insolvency law introducing new types of insolvency proceedings. Those new insolvency proceedings are consistent with the definition of "insolvency proceedings" under Regulation (EU) 2015/848.
- (3) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].
- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to 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.
- (5) Annex A to Regulation (EU) 2015/848 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Annex A to Regulation (EU) 2015/848 is replaced by the text in the Annex to this Regulation.

² Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141 5.6.2015, p. 19).

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

COM 2017/422 Proposal for a Regulation of the European Parliament and of the Council replacing Annex A to Regulation (EU) 2015/848 on insolvency proceedings

Oireachtas Information Note

1. Proposal

The proposal is for a Regulation of the European Parliament and of the Council replacing Annex A to Regulation (EU) 2015/848 on insolvency proceedings.

2. Date of Commission document

09/08/2017

3. Number of Commission document

COM (2017) 422

4. Number of Council document:

2017/0189 (COD)

5. Dealt with in Brussels by

Justice and Home Affairs Council
Working Party on Civil Law Matters - Insolvency

6. Department with primary responsibility

Department of Business, Enterprise and Innovation; Department of Finance.

7. Other Departments involved

N/A

8. Background to, Short summary and aim of the proposal

The proposed Regulation would amend Annex A to Regulation (EU) 2015/848 to reflect substantial changes to the national insolvency laws of Croatia.

Regulation (EU) 2015/848 ('the 2015 Recast Regulation') was adopted by the Council and Parliament of the EU on 20 May 2015 and applies to EU Member States, including Ireland, from 26 June 2017.

The 2015 Recast Regulation is concerned only with cross-border insolvency and bankruptcy cases (i.e. where the insolvent or bankrupt individual has assets in more than one Member State). It provides an agreed legal framework between EU Member States for mutual recognition and enforcement of national insolvency procedures in insolvency cases with a cross-border dimension, such as where an insolvent company or individual has branches or assets in more than one member state. It sets out agreed common EU rules on which member states' courts will have jurisdiction to deal with the insolvency, which member states' courts will have jurisdiction to deal with the insolvency, which member states' national law will apply and ensuring court judgments made under the above rules, including appointment of a liquidator, will be recognised in all other member states.

One part of the Recast Regulation relating to the system for interconnection of national insolvency registers, will apply from 26 June 2019.

Ireland already opted in to the 2015 Recast Regulation in accordance with Article 3 of Protocol 21 of the Treaty on the Functioning of the European Union following approval by the Dáil and Seanad on 28 March 2013.

Annex A lists for each Member State the types of national insolvency/bankruptcy proceedings and insolvency practitioners that may be recognised under the Regulation. Specifically, Annex A lists the insolvency proceedings referred to in point (4) of Article 2 of the Regulation.

Annex A was already amended by Regulation 2017/353 of 15 February 2017 which updated the lists of national insolvency proceedings and insolvency practitioners to take account of significant reforms in Polish national insolvency law. Ireland opted into that amending Regulation (after its adoption) following approval by the Dáil and Seanad on 31 May 2017, with effect from 2 September 2017.

In January 2017, the Republic of Croatia notified the Commission on recent changes of its domestic insolvency law introducing new types of insolvency proceedings. The Commission in its proposal considers that the list of changes proposed by Croatia are consistent with the definition of “insolvency proceedings” under the 2015 Recast Regulation. As a result of these changes, the Republic of Croatia requested to change the list set out in Annex A of the Regulation, accordingly. Pursuant to Article 1(1), to point (4) of Article 2 and to recital (9) of the Regulation, national proceedings qualify as “insolvency proceedings” in the context of the Regulation only if they are listed in Annex A thereto. Recital (9) of the Regulation confirms this: “This Regulation should apply to insolvency proceedings which meet the conditions set out in it, irrespective of whether the debtor is a natural person or a legal person, a trader or an individual. Those insolvency proceedings are listed exhaustively in Annex A.... National insolvency procedures not listed in Annex A should not be covered by this Regulation”.

9. Legal basis of the proposal

The proposal is based on Article 81(2)(a), (c) and (f) of the Treaty on the Functioning of the European Union.

10. Voting Method

Qualified Majority

11. Role of the EP

Co-decision

12. Category of proposal

The proposed Regulation is primarily of a technical nature. It contains no substantive change to the 2015 Recast Regulation but it seeks to update the 2015 Recast Regulation to accurately reflect the changed national legislative framework on insolvency in Croatia.

13. Implications for Ireland & Ireland's Initial View'

The proposed Regulation merely modifies Annex A in order to accurately reflect the content of national notifications and adapt the Annex containing the lists of national procedures which in the case of Croatia have changed. All relevant Irish insolvency procedures and practitioners are already included in the Annex and the proposal makes no

change to this. These changes do not affect any of the obligations and rules for Ireland set out in the Regulation itself.

14. Impact on the public

The implication for Ireland as a result of this technical change is that should a case of cross-border insolvency involving an insolvent or bankrupt individual with assets in Croatia arise, the operation of the 2015 Recast Regulation will be fully legally applicable to any national insolvency proceedings occurring there.

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

Given that this is a primarily technical amendment, stakeholder consultations are not envisaged on this occasion.

16. Are there any subsidiarity issues for Ireland?

No – the proposal comes within the exclusive competence of the European Union.

17. Anticipated negotiating period

N/A

18. Proposed implementation date

Under the proposal, the proposed Regulation will enter into force on the 20th day following its publication in the EU Official Journal.

19. Consequences for national legislation

None.

20. Method of Transposition into Irish law

The proposed Regulation having the status of a Regulation does not require transposition into Irish law. However, Ireland is not bound by an EU measure in the field of civil justice co-operation unless it ‘opts in’ to the measure following approval by the Oireachtas. Therefore, Ireland is required to opt-in to the measure in accordance with Protocol 26 of the EU Treaty.

Ireland opted in to the 2015 Recast Regulation on 28 March 2013 before its adoption. That opt in also covers *Implementing* Regulations made under the 2015 Recast Regulation. However, Regulations *amending* the Annexes to the 2015 Recast Regulation each require a fresh opt in authorised by the Oireachtas.

21. Anticipated Transposition date

Not applicable. See point 20 above.

22. Consequences for the EU budget in Euros annually

No budgetary implications.

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

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