EUROPEAN
COMMISSION

Brussels, 30.5.2016
COM(2016) 317 final

2016/0159 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

replacing the lists of insolvency proceedings and insolvency practitioners in Annexes A and B 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. Annex B lists the insolvency practitioners referred to in point (5) of Article 2.

In December 2015 Poland notified the Commission on a substantial reform of its domestic law on restructuring, taking effect as of 1 January 2016, and requested to change the lists set out in Annexes A and B to the Regulation accordingly. According 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 Poland 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.

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[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 proposal comes in the exclusive competence of the European Union. The subsidiarity principle therefore does not apply.

- **Proportionality**

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

The Commission Proposal replaces the lists for Poland in Annexes A and B to Regulation (EU) 2015/848 with new lists taking into account the information notified by that Member States. Since the Annexes are intrinsic part of the Regulation, their 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:

The Annexes 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.

Poland notified the Commission of amendments to the lists set out in the Annexes. Accordingly, the Commission does not have any other option but to propose amendments to the Annexes 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. Therefore, the proposed measure constitutes an official codification of a legislative text in the meaning of the Interinstitutional Agreement of 20 December 1994.[2] 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 Poland 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.

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[2] Official Journal C 102 , 04/04/1996 P. 0002 – 0003.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implication.

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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) Annexes A and B to Regulation (EU) 2015/848 list the designations given in the national legislation of the Member States to the proceedings and insolvency practitioners to which that Regulation applies. Annex A to Regulation (EU) 2015/848 lists the insolvency proceedings referred to in point (4) of Article 2 of the Regulation. Annex B lists the insolvency practitioners referred to in point (5) of Article 2.

(2) On 4 December 2015, Poland notified the Commission of amendments to the lists set out in Annexes A and B to that Regulation. These amendments comply with the requirements set out in the Regulation.

(3) The United Kingdom and Ireland are bound by Regulation (EU) 2015/848 and are therefore taking part in the adoption and application of this Regulation.

(4) In accordance with Articles 1 and 2 of the Protocol 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) Annexes A and B to Regulation (EU) 2015/848 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Annexes A and B to Regulation (EU) 2015/848 are replaced by the text in the Annex to this Regulation.

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

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ANNEX 1

ANNEX

to the Proposal for a

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Annexes A and B to Regulation (EU) 2015/848 are replaced by the following:

"*ANNEX A*

Insolvency proceedings referred to in point (4) of Article 2

BELGIQUE/BELGIË

— Het faillissement/La faillite,

— De gerechtelijke reorganisatie door een collectief akkoord/La réorganisation judiciaire par accord collectif,

— De gerechtelijke reorganisatie door een minnelijk akkoord/La réorganisation judiciaire par accord amiable,

— De gerechtelijke reorganisatie door overdracht onder gerechtelijk gezag/La réorganisation judiciaire par transfert sous autorité de justice,

— De collectieve schuldenregeling/Le règlement collectif de dettes,

— De vrijwillige vereffening/La liquidation volontaire,

— De gerechtelijke vereffening/La liquidation judiciaire,

— De voorlopige ontneming van beheer, bepaald in artikel 8 van de faillissementswet/Le dessaisissement provisoire, visé à l'article 8 de la loi sur les faillites,

БЪЛГАРИЯ

— Производство по несъстоятелност,

ČESKÁ REPUBLIKA

— Konkurs,

— Reorganizace,

— Oddlužení,

DEUTSCHLAND

— Das Konkursverfahren,

— Das gerichtliche Vergleichsverfahren,

— Das Gesamtvollstreckungsverfahren,

— Das Insolvenzverfahren,

EESTI

— Pankrotimenetlus,

— Võlgade ümberkujundamise menetlus,

ÉIRE/IRELAND

— Compulsory winding-up by the court,

— Bankruptcy,

— The administration in bankruptcy of the estate of persons dying insolvent,

— Winding-up in bankruptcy of partnerships,

— Creditors' voluntary winding-up (with confirmation of a court),

— Arrangements under the control of the court which involve the vesting of all or part of the property of the debtor in the Official Assignee for realisation and distribution,

— Examinership,

— Debt Relief Notice,

— Debt Settlement Arrangement,

— Personal Insolvency Arrangement,

ΕΛΛΑΔΑ

— Η πτώχευση,

— Η ειδική εκκαθάριση εν λειτουργία,

— Σχέδιο αναδιοργάνωσης,

— Απλοποιημένη διαδικασία επί πτωχεύσεων μικρού αντικειμένου,

— Διαδικασία Εξυγίανσης,

ESPAÑA

— Concurso,

— Procedimiento de homologación de acuerdos de refinanciación,

— Procedimiento de acuerdos extrajudiciales de pago,

— Procedimiento de negociación pública para la consecución de acuerdos de refinanciación colectivos, acuerdos de refinanciación homologados y propuestas anticipadas de convenio,

FRANCE

— Sauvegarde,

— Sauvegarde accélérée,

— Sauvegarde financière accélérée,

— Redressement judiciaire,

— Liquidation judiciaire,

HRVATSKA

— Stečajni postupak,

ITALIA

— Fallimento,

— Concordato preventivo,

— Liquidazione coatta amministrativa,

— Amministrazione straordinaria,

— Accordi di ristrutturazione,

— Procedure di composizione della crisi da sovraindebitamento del consumatore (accordo o piano),

— Liquidazione dei beni,

ΚΥΠΡΟΣ

— Υποχρεωτική εκκαθάριση από το Δικαστήριο,

— Εκούσια εκκαθάριση από μέλη,

— Εκούσια εκκαθάριση από πιστωτές

— Εκκαθάριση με την εποπτεία του Δικαστηρίου,

— Διάταγμα Παραλαβής και πτώχευσης κατόπιν Δικαστικού Διατάγματος,

— Διαχείριση της περιουσίας προσώπων που απεβίωσαν αφερέγγυα,

LATVIJA

— Tiesiskās aizsardzības process,

— Juridiskās personas maksātnespējas process,

— Fiziskās personas maksātnespējas process,

LIETUVA

— Įmonės restruktūrizavimo byla,

— Įmonės bankroto byla,

— Įmonės bankroto procesas ne teismo tvarka,

— Fizinio asmens bankroto procesas,

LUXEMBOURG

— Faillite,

— Gestion contrôlée,

— Concordat préventif de faillite (par abandon d'actif),

— Régime spécial de liquidation du notariat,

— Procédure de règlement collectif des dettes dans le cadre du surendettement,

MAGYARORSZÁG

— Csődeljárás,

— Felszámolási eljárás,

MALTA

— Xoljiment,

— Amministrazzjoni,

— Stralċ volontarju mill-membri jew mill-kredituri,

— Stralċ mill-Qorti,

— Falliment f'każ ta' kummerċjant,

— **Proċedura biex kumpanija tirkupra,**

NEDERLAND

— Het faillissement,

— De surséance van betaling,

— De schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Das Konkursverfahren (Insolvenzverfahren),

— Das Sanierungsverfahren ohne Eigenverwaltung (Insolvenzverfahren),

— Das Sanierungsverfahren mit Eigenverwaltung (Insolvenzverfahren),

— Das Schuldenregulierungsverfahren,

— Das Abschöpfungsverfahren,

— Das Ausgleichsverfahren,

POLSKA

— Upadłość

— Postępowanie o zatwierdzenie układu,

— Przyspieszone postępowanie układowe,

— Postępowanie układowe,

— Postępowanie sanacyjne,

PORTUGAL

— Processo de insolvência,

— Processo especial de revitalização,

ROMÂNIA

— Procedura insolvenței,

— Reorganizarea judiciară,

— Procedura falimentului,

— Concordatul preventiv,

SLOVENIJA

— Postopek preventivnega prestrukturiranja,

— Postopek prisilne poravnave,

— Postopek poenostavljene prisilne poravnave,

— Stečajni postopek: stečajni postopek nad pravno osebo, postopek osebnega stečaja in postopek stečaja zapuščine,

SLOVENSKO

— Konkurzné konanie,

— Reštrukturalizačné konanie,

— Oddlženie,

SUOMI/FINLAND

— Konkurssi/konkurs,

— Yrityssaneeraus/företagssanering,

— Yksityishenkilön velkajärjestely/skuldsanering för privatpersoner,

SVERIGE

— Konkurs,

— Företagsrekonstruktion,

— Skuldsanering,

UNITED KINGDOM

— Winding-up by or subject to the supervision of the court,

— Creditors' voluntary winding-up (with confirmation by the court),

— Administration, including appointments made by filing prescribed documents with the court,

— Voluntary arrangements under insolvency legislation,

— Bankruptcy or sequestration.

ANNEX B

Insolvency practitioners referred to in point (5) of Article 2

BELGIQUE/BELGIË

— De curator/Le curateur,

— De gedelegeerd rechter/Le juge-délégué,

— De gerechtsmandataris/Le mandataire de justice,

— De schuldbemiddelaar/Le médiateur de dettes,

— De vereffenaar/Le liquidateur,

— De voorlopige bewindvoerder/L'administrateur provisoire,

БЪЛГАРИЯ

— Назначен предварително временен синдик,

— Временен синдик,

— (Постоянен) синдик,

— Служебен синдик,

ČESKÁ REPUBLIKA

— Insolvenční správce,

— Předběžný insolvenční správce,

— Oddělený insolvenční správce,

— Zvláštní insolvenční správce,

— Zástupce insolvenčního správce,

DEUTSCHLAND

— Konkursverwalter,

— Vergleichsverwalter,

— Sachwalter (nach der Vergleichsordnung),

— Verwalter,

— Insolvenzverwalter,

— Sachwalter (nach der Insolvenzordnung),

— Treuhänder,

— Vorläufiger Insolvenzverwalter,

— Vorläufiger Sachwalter,

EESTI

— Pankrotihaldur,

— Ajutine pankrotihaldur,

— Usaldusisik,

ÉIRE/IRELAND

— Liquidator,

— Official Assignee,

— Trustee in bankruptcy,

— Provisional Liquidator,

— Examiner,

— Personal Insolvency Practitioner,

— Insolvency Service,

ΕΛΛΑΔΑ

— Ο σύνδικος,

— Ο εισηγητής,

— Η επιτροπή των πιστωτών,

— Ο ειδικός εκκαθαριστής,

ESPAÑA

— Administrador concursal,

— Mediador concursal,

FRANCE

— Mandataire judiciaire,

— Liquidateur,

— Administrateur judiciaire,

— Commissaire à l'exécution du plan,

HRVATSKA

— Stečajni upravitelj,

— Privremeni stečajni upravitelj,

— Stečajni povjerenik,

— Povjerenik,

ITALIA

— Curatore,

— Commissario giudiziale,

— Commissario straordinario,

— Commissario liquidatore,

— Liquidatore giudiziale,

— Professionista nominato dal Tribunale,

— Organismo di composizione della crisi nella procedura di composizione della crisi da sovraindebitamento del consumatore,

— Liquidatore,

ΚΥΠΡΟΣ

— Εκκαθαριστής και Προσωρινός Εκκαθαριστής,

— Επίσημος Παραλήπτης,

— Διαχειριστής της Πτώχευσης,

LATVIJA

— Maksātnespējas procesa administrators,

LIETUVA

— Bankroto administratorius,

— Restruktūrizavimo administratorius,

LUXEMBOURG

— Le curateur,

— Le commissaire,

— Le liquidateur,

— Le conseil de gérance de la section d'assainissement du notariat,

— Le liquidateur dans le cadre du surendettement,

MAGYARORSZÁG

— Vagyonfelügyelő,

— Felszámoló,

MALTA

— Amministratur Proviżorju,

— Riċevitur Uffiċjali,

— Stralċjarju,

— Manager Speċjali,

— Kuraturi f'każ ta' proċeduri ta' falliment,

— Kontrolur Speċjali,

NEDERLAND

— De curator in het faillissement,

— De bewindvoerder in de surséance van betaling,

— De bewindvoerder in de schuldsaneringsregeling natuurlijke personen,

ÖSTERREICH

— Masseverwalter,

— Sanierungsverwalter,

— Ausgleichsverwalter,

— Besonderer Verwalter,

— Einstweiliger Verwalter,

— Sachwalter,

— Treuhänder,

— Insolvenzgericht,

— Konkursgericht,

POLSKA

— Syndyk,

— Nadzorca sądowy,

— Zarządca,

— Nadzorca układu,

— Tymczasowy nadzorca sądowy,

— Tymczasowy zarządca,

— Zarządca przymusowy,

PORTUGAL

— Administrador da insolvência,

— Administrador judicial provisório,

ROMÂNIA

— Practician în insolvenţă,

— Administrator concordatar,

— Administrator judiciar,

— Lichidator judiciar,

SLOVENIJA

— Upravitelj,

SLOVENSKO

— Predbežný správca,

— Správca,

SUOMI/FINLAND

— Pesänhoitaja/boförvaltare,

— Selvittäjä/utredare,

SVERIGE

— Förvaltare,

— Rekonstruktör,

UNITED KINGDOM

— Liquidator,

— Supervisor of a voluntary arrangement,

— Administrator,

— Official Receiver,

— Trustee,

— Provisional Liquidator,

— Interim Receiver,

— Judicial factor."

COM (2016) 317: Proposal for a Regulation of the European Parliament and of the Council replacing the lists of insolvency proceedings and insolvency practitioners in Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings

Information Note submitted under section 2(1) of the European Union (Scrutiny) Act 2002

1. Proposal

Proposal for a Regulation of the European Parliament and of the Council replacing the lists of insolvency proceedings and insolvency practitioners in Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings

2. Date of Commission document

30/5/2016

3. Number of Commission document:

COM (2016) 317

4. Number of Council document:

9710/16

5. Dealt with in Brussels by

Justice & Home Affairs Council and Working Party on Civil Law Matters (Insolvency)

6. Department with primary responsibility

Department of Justice and Equality

7. Other Departments involved

Department of Jobs, Enterprise & Innovation

8. Background, short summary and aim of the proposal

This proposal is essentially a technical update, relating to the recent EU 'Recast' Insolvency Regulation.

8.1 The parent Regulation

(Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast), "the recast Regulation", entered into force on 26 June 2015.

The recast Regulation will apply in Ireland from 26 June 2017, (with the exception of one part relating to the system for interconnection of national insolvency registers, which will apply from 26 June 2019).

The recast Regulation does not seek to harmonise insolvency law across EU Member States. Rather, it consolidates EU law setting out a legal framework for *mutual recognition and enforcement of national insolvency procedures*, in the context of *cross-border* insolvencies (i.e. where an insolvency company or individual has assets in more than one Member State). It sets out agreed common EU rules on:

- which Member State's courts will have jurisdiction to deal with the insolvency,
- which Member State's national law will apply, and
- ensuring that Court judgements made under the above rules (including appointment of a liquidator) will be recognised in all other Member States.

The recast Regulation also updates EU law in this area to strengthen recognition of pre-insolvency procedures and debt restructuring (to support rescuing viable businesses at an early stage, and giving a 'second chance' to honest entrepreneurs who have run into financial difficulties). It sets out new strengthened rules on insolvency proceedings involving groups of companies based in different Member States. And it clarifies an extends the rules on 'secondary proceedings', where the main insolvency proceedings are before a court in one Member State but the company or individual also has a base, with assets or obligations, in a different Member State.

8.2 The current proposal

The current proposal is a technical update to the recast Regulation outlined above.

Since the Regulation provides for mutual recognition and enforcement of national insolvency procedures between EU Member States, its Annexes A and B provide a definitive list respectively of the national insolvency proceedings and of the national insolvency practitioners (e.g. liquidators) in each Member State that are to be recognised under the Regulation (see Article 1 and Article 2, points (4) and (5), of the Regulation). .

This proposal updates those lists to take account of recent reforms in some Member States' insolvency laws and, in particular, of recent legal changes in Polish insolvency law.

In December 2015, Poland notified the Commission on a substantial reform of its domestic law on restructuring, taking effect 1 January 2016, and requested that the lists in Annexes A and B to the Regulation be changed accordingly. The Commission has scrutinised the Polish request and agreed to amend the Annexes as proposed.

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 voting.

11. Role of the EP

Ordinary legislative procedure.

12. Category of proposal

Purely technical.

13. Implications for Ireland

No implications for Ireland. All relevant Irish insolvency procedures (corporate or personal) are already listed in the Annexes A and B and the proposal makes no change to this.

Ireland supports the measure.

14. Impact on the public

Proposal ensures that the Regulation reflects the state of play of insolvency legislation in Member States and facilitates effective recognition and enforcement of Irish and other Member State insolvency procedures in the case of cross-border insolvency.

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

No, this is a purely technical update.

16. Are there any subsidiarity issues for Ireland?

As the proposal comes within the exclusive competence of the EU, the subsidiarity principle does not apply.

17. Anticipated negotiating period

Unknown but not expected to be lengthy.

18. Proposed implementation date

The Regulation will enter into force on the 20th day following its publication in the Official Journal of the European Union.

19. Consequences for national legislation

None

20. Oireachtas approval required?

No

Opt-in under Protocol 21 to the Lisbon Treaty (the 'JHA Protocol') not required.

21. Method of transposition into Irish law

If adopted, the Regulation will be directly applicable.

22. Anticipated transposition date

N/A

23. Consequences for the EU budget in euros annually

None

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

Madeleine Reid, Civil Law Reform Division, Dept Justice & Equality

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28 June 2016