



Council of the
European Union

Brussels, 1 June 2016
(OR. en)

9710/16

**Interinstitutional File:
2016/0159 (COD)**

**JUSTCIV 158
CODEC 796**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	30 May 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 317 final
Subject:	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

Delegations will find attached document COM(2016) 317 final.

Encl.: COM(2016) 317 final



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.

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

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

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.

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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