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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

replacing 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

Annexes A and B are decisive in defining the scope of application of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings[1]. They list exhaustively those insolvency proceedings or insolvency practitioners, respectively, of the Member States' laws, to which the Regulation applies. It is, therefore, of utmost importance that these Annexes are regularly updated in order to reflect the actual legal situation in the Member States.

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. Similarly, pursuant to point (5) of Article 2 and to recital (21) of the Regulation the persons and bodies that comply with the definition of 'insolvency practitioner' of the Regulation are listed in Annex B.

In October 2020, the Netherlands notified the Commission on recent changes of its domestic insolvency law introducing a new preventive insolvency scheme, as well as new types of insolvency practitioners. This was followed in December 2020 by notifications from Italy, Lithuania, Cyprus and Poland.

The Commission has carefully analysed the notifications of the said Member States in order to ensure compliance of the notifications 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 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 Regulation reflects the actual state of play of domestic insolvency laws. This proposal aims at ensuring that the scope of the Regulation is adjusted to the actual legal framework of the Member States on insolvency by the time of its application.

Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)[2] establishes minimum standards both for preventive restructuring procedures available for debtors in financial difficulty, when there is a likelihood of insolvency, and for procedures leading to a discharge of debts incurred by over-indebted entrepreneurs and allowing them to take up a new activity. National insolvency proceedings transposing this Directive may be covered by the scope of Regulation (EU) 2015/848, if they comply with the requirements of the Regulation vis-à-vis national insolvency proceedings and are included in Annex A of the Regulation.

[1] OJ L 141, 5.6.2015, p. 19–72.
[2] OJ L 172, 26.6.2019, p. 18–55.

- **Consistency with other Union policies**

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

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)**

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 proceedings which are referred to in the Annex A and to types of insolvency practitioners referred to in Annex B.

The current proposal however merely modifies these Annexes in order to accurately reflect the content of national notifications and adapt the Annexes containing the lists of national procedures, or types of insolvency practitioners, respectively, 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 Annexes A and B 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 these Annexes are an exclusive competence by nature, and thus are 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 lists in Annexes A and B to Regulation (EU) 2015/848 with new lists taking into account the information notified by the said Member States. Since Annexes A and B 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:

Under the current legislation, Annexes A and B 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 Netherlands, Italy, Lithuania, Cyprus and Poland notified the Commission of amendments to the lists set out in Annexes A and B. Accordingly, the Commission does not

have any other option but to propose amendments to these 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. 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 the Netherlands to initiate the necessary legislative procedure, followed by similar requests of Italy, Lithuania, Cyprus and Poland, no choice remained available to the Commission, but to comply with these requests, insofar as they fulfil 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 of the European Parliament and of the Council[3] list the designations given in national law of the Member States to the insolvency proceedings and to the insolvency practitioners to which that Regulation applies. Annex A lists the insolvency proceedings referred to in point (4) of Article 2 of Regulation (EU) 2015/848 and Annex B lists the insolvency practitioners referred to in point (5) of that Article.

(2) In October 2020, the Netherlands notified the Commission on recent changes of its domestic insolvency law introducing a new preventive insolvency scheme, as well as on new types of insolvency practitioners. This was followed in December 2020 by notifications from Italy, Lithuania, Cyprus and Poland relating to recent changes to their domestic law that introduce new types of insolvency proceedings or insolvency practitioners. In Italy, the new provisions on insolvency and restructuring will enter into force on 1 September 2021. Those new types of insolvency proceedings and insolvency practitioners comply with the requirements set out in Regulation (EU) 2015/848 and make it necessary to amend Annexes A and B to that Regulation.

(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, [Ireland has given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, 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.

[3] 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).

(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 set out 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	*For the Council*
The President	*The President*