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COM(2016) 366 final

2016/0167 (NLE)

Proposal for a

COUNCIL IMPLEMENTING REGULATION

**replacing the lists of insolvency proceedings, winding-up proceedings and liquidators in
Annexes A, B and C to Regulation (EC) No 1346/2000 on insolvency proceedings**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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

Annex A to Council Regulation (EC) No 1346/2000 (hereafter "the Regulation") lists the insolvency proceedings referred to in Article 2(a) of the Regulation. Annex B lists the winding-up proceedings referred to in Article 2(c). Annex C lists the liquidators referred to in Article 2(b).

The annexes to Council Regulation (EC) No 1346/2000 were amended lastly by Council Implementing Regulation (EU) No 663/2014 of 5 June 2014.

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, B and C to the Regulation accordingly. According to Article 1(1) and Article 2(a) of the Regulation, as confirmed by the interpretation by the Court of Justice of the European Union, national proceedings qualify as "insolvency proceedings" in the context of the Regulation only if they are listed in Annex A thereto.¹ National proceedings, therefore, which have not been expressly included in Annex A, are not affected by the 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 (EC) No 1346/2000 should therefore be amended accordingly.

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

The 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 Regulation reflects the actual state of play of domestic insolvency laws.

The Regulation has been repealed by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). Nevertheless, this latter Regulation will apply only from 26 June 2017; in addition, the Regulation will continue to play a role even afterwards since Article 84 of the recast Regulation provides that "Regulation (EC) No 1346/2000 shall continue to apply to insolvency proceedings which fall within the scope of that Regulation and which have been opened before 26 June 2017".

- **Consistency with other Union policies**

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 45 of Regulation (EC) No 1346/2000.

¹ Judgment of the Court of Justice of the European Union of 22 November 2012 in Case C-116/11 *Bank Handlowy*, ECLI:EU:C:2012:739, paragraphs 32-36.

- **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, B and C to Council Regulation (EC) No 1346/2000 with new lists taking into account the information notified by that Member State. The lists cannot be amended in any other way.

The Regulation is directly applicable in the Member States and it does not require any implementation measures. 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:

By virtue of Article 45 of Council Regulation (EC) No 1346/2000, the Annexes to the Regulation can only be amended by the Council on the initiative of Member States or on a proposal by the Commission.

Poland notified the Commission of further amendments to the lists set out in the Annexes. Accordingly, the Commission is proposing to the Council amendments to the Annexes to 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 itself. 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 45 of the Regulation, 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.

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implication.

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

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings³, and in particular Article 45 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Annexes A, B and C to Regulation (EC) No 1346/2000 list the designations given in the national legislation of the Member States to the proceedings and liquidators to which that Regulation applies. Annex A lists the insolvency proceedings referred to in Article 2(a) of that Regulation. Annex B lists the winding-up proceedings referred to in Article 2(c) of that Regulation and Annex C lists the liquidators referred to in Article 2(b) of that Regulation.
- (2) On 4 December 2015, Poland notified the Commission, pursuant to Article 45 of Regulation (EC) No 1346/2000, of amendments to the lists set out in Annexes A, B and C to that Regulation. These amendments comply with the requirements set out in the Regulation.
- (3) The United Kingdom and Ireland are bound by Regulation (EC) No 1346/2000 and, by virtue of Article 45 of that Regulation, 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, B and C to Regulation (EC) No 1346/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes A, B and C to Regulation (EC) No 1346/2000 are replaced by the text in the Annex to this Regulation.

³ OJ L 160, 30.6.2000, p.1.

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 Council
The President