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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.5.2008
COM(2008) 246 final

Proposal for a

COUNCIL REGULATION

amending Annexes A and B to Regulation (EC) No 1346/2000 on insolvency proceedings

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

There is a need for amending Annexes A and B of Council Regulation (EC) No 1346/2000 on insolvency proceedings.

- General context

Annex A to Council Regulation (EC) No 1346/2000 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).

The annexes to Council Regulation (EC) No 1346/2000 were amended lastly by Council Regulation (EC) No 681/2007 of 13 June 2007.

The Republic of Latvia notified the Commission on 13 December 2007 of further amendments to the lists set out in Annexes A and B.

- Existing provisions in the area of the proposal

Regulation (EC) No 1346/2000 should be amended accordingly by this Proposal.

- Consistency with other policies

This Regulation is consistent with other Community policies.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- Consultation of interested parties

External consultation was not relevant.

- Collection and use of expertise

There was no need for external expertise.

- Impact assessment

Amending the Regulation may have a positive effect on the re-organisation of businesses.

It is likely to have a positive or neutral impact on employment.

It is likely to have a positive or neutral impact on environment.

3. LEGAL ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

The proposal aims at amending the Annexes of Regulation (EC) No 1346/2000 in order to take account of amendments to the domestic insolvency law of Member States.

- Legal basis

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

- Subsidiarity principle

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- Proportionality principle

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

The Commission Proposal replaces the lists for the Republic of Latvia in Annexes A and B to Council Regulation (EC) No 1346/2000 with new lists taking into account the information notified by the Republic of Latvia.

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 instruments

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. This shared initiative was possible for the five-year period following the entry into force of the Amsterdam Treaty (ART. 67(1) EC), however since the entry into force of the Nice Treaty (ART. 67(2) EC), the initiative belongs to the Commission only. Therefore it is up to the Commission to propose to the Council amendments to the Annexes to the Regulation according to Article 45 of the Regulation.

4. BUDGET IMPLICATIONS

The proposal has no budgetary implications.

5. SIMPLIFICATION

The proposal provides for simplification of administrative procedures for public authorities (EU or national), simplification of administrative procedures for public private parties.

Courts of the Member States will be informed timeously about insolvency proceedings that are to be recognised.

Creditors, debtors and insolvency practitioners will be informed about insolvency proceedings under the scope of the Regulation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings⁽¹⁾, and in particular Article 45 thereof,

Having regard to the proposal from the Commission⁽²⁾,

Whereas:

- (1) Annexes A and B to Regulation (EC) No 1346/2000 list respectively the designations of the insolvency proceedings and winding-up proceedings in the national legislation of the Member States.
- (2) The Republic of Latvia notified the Commission on 13 December 2007, pursuant to Article 45 of Regulation (EC) No 1346/2000, of amendments to the lists set out in Annexes A and B to that 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) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it or subject to its application.
- (5) Regulation (EC) No 1346/2000 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1346/2000 is amended as follows:

¹ OJ L 160, 30.6.2000, p 1. Regulation as last amended by Regulation (EC) n° 681/2007 (OJ L 159, 20.6.2007, p. 1).

² OJ C , , p. .

(1) In Annex A, the insolvency proceedings relating to the Republic of Latvia are replaced by the following:

"LATVIJA

- Tiesiskās aizsardzības process
- Sanācija juridiskās personas maksātnespējas procesā
- Izlīgums juridiskās personas maksātnespējas procesā
- Izlīgums fiziskās personas maksātnespējas procesā
- Bankrota procedūra juridiskās personas maksātnespējas procesā
- Bankrota procedūra fiziskās personas maksātnespējas procesā"

(2) In Annex B, the winding-up proceedings relating to the Republic of Latvia are replaced by the following:

"LATVIJA

- Bankrota procedūra juridiskās personas maksātnespējas procesā
- Bankrota procedūra fiziskās personas maksātnespējas procesā"

Article 2

This Regulation shall enter into force on the 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 all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the Council
The President