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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL replacing Annex A to Regulation (EU) 2015/848 on insolvency proceedings

Delegations will find attached document COM(2017) 422 final.

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Brussels, 9.8.2017
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

replacing Annex A 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.

In January 2017, the Republic of Croatia notified the Commission on recent changes of its domestic insolvency law introducing new types of insolvency proceedings, such as a pre-insolvency proceeding and a consumer's insolvency proceeding. At the same time, the Republic of Croatia requested to change the list set out in Annex A of the Regulation, accordingly. 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. 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 the Republic of Croatia 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 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 procedures which are referred to in the Annex A.

The current proposal however merely modifies this Annex in order to accurately reflect the content of national notifications and adapt the Annex containing the lists of national procedures 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 Annex A 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 that Annex are an exclusive competence by nature, and thus is 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 list for the Republic of Croatia in Annex A to Regulation (EU) 2015/848 with a new list taking into account the information notified by that Member State. Since Annex A is intrinsic part of the Regulation, its 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:

Annex A 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 Republic of Croatia notified the Commission of amendments to the list set out in Annex A. Accordingly, the Commission does not have any other option but to propose amendments to the Annex 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 Republic of Croatia 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.

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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) Annex A to Regulation (EU) 2015/848 of the European Parliament and of the Council² lists the designations given in the national law of the Member States to the insolvency proceedings to which that Regulation applies.
- (2) On 3 January 2017, the Republic of Croatia notified the Commission recent changes in its domestic insolvency law introducing new types of insolvency proceedings. Those new insolvency proceedings are consistent with the definition of "insolvency proceedings" under Regulation (EU) 2015/848.
- (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, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and 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.
- (5) Annex A to Regulation (EU) 2015/848 should therefore be amended accordingly,

² 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).

HAVE ADOPTED THIS REGULATION:

Article 1

Annex A to Regulation (EU) 2015/848 is 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