PREFACE TO THE FOURTH EDITION


This publication, the third edition of which to my pleasure has been favourably received in 2012, has gained in strength and depth in at least three ways.

**Expert counsel European Commission.** First, since 2010 I have acted as Expert counsel to the European Commission, especially for EU legislative instruments on cross-border crisis in the banking sector, the recast of the Insolvency Regulation and the proposal for a Directive on harmonisation of certain matters of restructuring and insolvency. This type of consultancy work presents a broad range of topics, of the interests at stake and the options to regulate certain matters. It, furthermore, enables to develop a sharp focus on what is desirable and what is ‘politically’ feasible, especially regarding the goals to be reached and the (sometimes contrasting) interests to weigh. Discussions with expert-colleagues from all over the EU have been very enriching.

**Legal opinions.** Second, since the entry into force of the Insolvency Regulation in 2002, practitioners and courts have continuously sought expert knowledge. Many disputes and legal controversies from at least fifteen jurisdictions have been channelled through Dordrecht (my office), for advice and legal opinions. My views (in whatever way) have been presented to several Dutch courts as well as courts in Antwerp, Alexandria, Va., USA, Dublin, London, Los Angeles, New York, Rhodes (Greece), Stockholm, Vienna and Warsaw and Zürich. Several matters opined upon (of course on a no name basis) I have included in this publication.

**User supported.** Fifteen years after its entry into force, the Insolvency Regulation has resulted in a large body of court cases (an estimate of around 800 cases) and literature, creating a massive system of harmonised cross-border insolvency law in the EU. Today, compared to fifteen years ago, many judges, academics and practitioners are knowledgeable and experienced in this field. As I am always trying to improve the quality of my publications and the depths of the sources used, for this Volume X, Part II, I have adapted a new element in my writing process by interacting
with these persons active in the area of European restructuring and insolvency. Through my blog (www.bobwessels.nl) and via LinkedIn, I have published drafts of texts of this book with the invitation to those interested to provide me with sources of literature, precedents, court cases or additional comments to these drafts. I started this process in January 2017 and ended it the end of April 2017. Since then eight times such an invitation was expressed, with the request to send any useful information or comments on my drafts to me within two weeks. The personal return for those who responded to this invitation to contribute to the ‘live’ debate within the pages of my text are the assurance that (i) contributions will be acknowledged by listing the names of the authors concerned, and (ii) in selected cases the emailed comments may be cited in the text together with acknowledgement of the communicator. By working this way one could say that through a deliberative public participatory drafting process I was able to draw on the expertise and practical experiences of these respondents. In this way, too, a broad spectrum of jurisdictions and insights could be included. An advantage being also that the developments and views included in this Volume X, Part II, result in an illustrative and thought-provoking treatment of the Insolvency Regulation (recast) which will allow users of this book to adapt to the new rules and to adjust to its system rapidly and with confidence. In all I received ‘likes’ from around thirty persons, all over the world, including Australia, Columbia, India and Indonesia. Contributions, including references to literature, I received from Gert-Jan Boon and Olga Korneeva (Leiden Law School), Ilya Kokorin (St Petersburg; Leiden Law School), Grégory Minne (Luxembourg), Lukas Schmidt (EBS University, Wiesbaden) and prof. Horst Piekenbrock (University of Heidelberg), whilst Nicolò Nisi (Bocconi University, Milan) provided me with the draft text of his PhD on groups of companies in EU private international law. I am most grateful to all contributors for their support of my work.

As indicated, it is a great pleasure to notice that the third edition of International Insolvency Law, published early 2012, has been received so well by practitioners, judges as well as scholars. I thank the reviewers for their positive remarks and constructive criticism. It is especially rewarding that the book is used in so many countries. The reviews I have seen are from Belgium (Arie van Hoe, Tijdschrift voor Belgisch Handelsrecht 2013/8, 823), Estonia (Paul Varul and Signe Viimsalu, Juridica International XIX/2012, 187/188), France (François Mélin, Journal du droit international 2012, 1116/1117), Germany (Jessica Schmidt, in: 14 German Law Journal 2013/07, 974-976; Heinz Vallender, Zeitschrift für Wirtschaftsrecht ZIP 2/2013), Italy (Giorgio Corno, Nuovo Diritto delle Società 2013), Lithuania (Rymvidas Norkus, Justitia 2012/77, 120/121), Poland (Michał Barlowski, Kwartalnik Nauk O Przedsiębiorstwie 2013/2, 99-101), UK (Paul Omar, eurofenix Summer 2012, 13) and USA (Samuel Bufford, International Insolvency Law Review 2/2013).
Because reviewers specifically recognized as a major strength of the third edition of International Insolvency Law its bibliography (e.g. Bufford and Omar), I have chosen to maintain the bibliography (unsplit).

Since three years I left Leiden University as an emeritus, having had a chair in International insolvency law from 2007 – 2014, which followed my chair in general civil law and business law at Vrije University Amsterdam (1988 – 2008). I am pleased to express that cordial relations have been maintained with many of the Leiden lecturers and researchers, especially those within the TRI group (Turnaround, Rescue & Insolvency Law (University of Leiden, Leiden Law School)). In addition to the use of my own private library, I have been very fortunate to having been – during 2016 – an External Scientific Fellow at the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law. Its library is like a holiday’s swimming pool for little children. You want to jump in the water the whole day long. I thank Juja Chakarova, Head of Library, and her staff for the assistance received.

The law is stated on the basis of information available to me at 1 May 2017. Readers are invited to send me comments, cases or literature at the following address: info@bobwessels.nl.

Dordrecht
The Netherlands
May 2017

Bob Wessels
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I. EU INSOLVENCY REGULATION

[10425o] In this part of the book I continue my treatment of legislation, cases and doctrine related to international insolvency law, this time with much more focus on Europe. I start with an introduction on the key characteristics of the Insolvency Regulation, leaving further details to the following chapters which contain a commentary of the Insolvency Regulation’s individual provisions. Evidently these are related to the Insolvency Regulation which entered into force 26 June 2015 and applies from 26 June 2017 (with a few exceptions). After some introductory remarks (§ 1) I explain the Regulation’s genesis (§ 2) and its scheme (§ 3). My discussion continues with the Insolvency Regulation’s territorial reach (§ 4), its substantive scope (§ 5) and the fundamental elements the Regulation contains (§ 6). I finalise this Chapter with a description of its method of interpretation (§ 8) and – although the Regulation is binding in its entirety and directly applicable in EU Member States – the adoption process in several States, especially to align existing procedural law to the rules of the Insolvency Regulation (§ 9).

§ I.1 Introductory remarks


[10425q] Legislative process. The legislative process was commenced on the basis of Article 46 EIR 2000, which obliges the European Commission to present to the European Parliament, the Council and the Economic and Social Committee ‘... a report on the application of this Regulation’. This report is commonly referred to as the Heidelberg-Luxembourg-Vienna Report, a title which reflects the involved (professors of the) universities as principle drafters. See B. Hess, P. Oberhammer and T. Pfeiffer, European Insolvency
Article 46 EIR 2000 furthermore requires that the report ‘... shall be
ampanied if need be by a proposal for adaptation of this Regulation’. The
European Commission’s proposal was issued 12 December 2012, some six
months later than Article 46 EIR 2000 prescribed, see Commission Proposal
for a Regulation of the European Parliament and of the Council Amending Coun-
final. The final text of the EIR Recast was based on said Report, on discussions
and consultations with a group of experts (I have been one of them) and an
appraisal of the effects on existing EU policy. For the latter see Commission Staff
Working Document Impact Assessment Accompanying the document Revision
final.

For an overview of deliberations between EP, Council and Commission, see
Graf-Slicker (Festschrift Bruno Kübler 2105); Fletcher, in: Moss et al. (2016),
1.26ff.; Van Zwieten, in: Bork/Van Zwieten (eds.) (2016), 0.04ff. For all related
texts, see www.eur-lex.europa.eu/legal-content/ENHIS??uri=CELEX:32015RO848.

[10425r] Date of entry into force. Article 92 EIR 2015 (‘Entry into force’) pro-
vides that the EIR Recast ‘... shall enter into force on the twentieth day follow-
ing that of its publication in the Official Journal of the European Union’. The
date of publication of the EIR 2015 was 26 June 2015 (OJ L 141/19), so the EIR
2015 entered into force on 26 June 2017. Article 84(1) EIR 2015 provides that
the provisions of the Insolvency Regulation (Recast) shall apply only to insol-
vency proceedings ‘... opened after 26 June 2017’. There are three exceptions
to this date: (a) Article 86 (‘Information on national and Union insolvency
law’), which shall apply from 26 June 2016; (b) Article 24(1) (’Establishment
of insolvency registers’), which shall apply from 26 June 2018; and (c) Article
25 (’Interconnection of insolvency registers’), which shall apply from 26 June
2019. For Article 86, see http://bobwessels.nl/2015/12/2015-12-14-art-86-eir-
recast-will-apply-per-26-june-2016/.

And precisely on the date of 26 June 2017? The application of the EIR 2015 is
‘after’ 26 June 2017 (Dutch: ‘na’; German: ‘ab dem’; French ‘a partir du’). What if
insolvency proceedings, to which the EIR 2015 applies, are opened exact on the
day of 26 June 2017 (which is possible, as it is a Monday)? Based on the interpre-
tation of Articles 25(2), 84(2) and 92(2) EIR 2015, the German author Freitag
(posted on: Conflict of laws.net, 14 July 2016) has argued that ‘from’ 26 June
2017 must be understood as ‘by’ or ‘on’ that date. He is right and it was formally
confirmed, late December 2016, by a Corrigendum to the EIR 2015, see [2016] OJ L 349/9. The EIR 2000, however, continues to apply to insolvency proceedings which fall within its scope and which have been opened before 26 June 2017, see Articles 84(2) jo. Article 91 EIR 2015.

Main topics. The ‘need’ for renewal was based on the European Commission’s identification of five main shortcomings in the original EIR 2000, that the proposal aims to address, and which are generally reflected in the text of the EIR 2015:

– The EIR 2000 excludes pre-insolvency proceedings, hybrid proceedings, and certain personal insolvency proceedings;
– The application of the ground rule of international jurisdiction of a court (that is, the centre of main interest (COMI) of an insolvent debtor) has led to some difficulties and to forum shopping by relocating the COMI;
– Opening of secondary proceedings has been shown to disturb the efficient administration of the debtor’s assets;
– There is no obligation to publicise the opening of insolvency proceedings. To lodge claims creditors need to be aware of these insolvency proceedings; and
– The EIR does not deal with the insolvency of groups of companies.

Generally, in literature, the revision process leading the EIR 2015 is regarded as modest, codifying certain judgements of the Court of Justice of the EU (delivered under the EIR 2000), reflecting an evolutionary development, based on the existing foundations of the EIR 2000 and leaving intact its core principles with regard to international jurisdiction, recognition and cross-border cooperation. Throughout this publication, it is explained how these shortcomings and other matters have been addressed. The underlying development the EIR 2015 reflects is the gradual shift in the concept of insolvency, a wave from ‘liquidation’ (sheer illiquidity) to ‘restructuring’ (reorganisation of businesses in financial difficulties), see Hess, in: Heidelberg-Luxembourg-Vienna Report (2013), nr. 36 et seq., noting that the main source of problems encountered by the Member States applying the EIR 2000 has been the recognition of pre-insolvency proceeding and their effects in other Member States.

Text. Compared to the original EIR 2000, the text of the EIR 2015 is over twice as long.

EIR 2000 with 3 Annexes. The EIR 2000 contains 33 Recitals, 47 Articles (in five Chapters), and three Annexes. These Annexes are an integral part of the Regulation and aim to facilitate its application. They serve to provide ‘insolvency practitioners’ (renamed, as in the EIR 2000 they were named ‘liquidiators’) and courts with a simple method of consulting the Annexes to verify whether the EIR is applicable to specific insolvency proceedings. The Annexes

EIR 2015 with 4 Annexes. The text of the EIR 2015 contains 89 Recitals, 92 Articles (in seven Chapters) and four Annexes (Annex A lists all the national terms for insolvency proceedings falling under the scope of EIR 2015; Annex B lists all the national terms for insolvency practitioners; Annex C lists all the repealed Regulations, ie the Regulations amending the Annexes and including Regulation 1346/2000, containing the EIR 2000; and Annex D is a table showing the correlation of the EIR 2000 and EIR 2015 articles). A transposition table of the recitals of the EIR 2000 and those of the EIR 2015 is available via http://bobwessels.nl/2015/08/2015-08-doc1-eu-insolvency-regulation-v-recast-recitals-compared/.

The EIR 2015 applies to 27 Member States (Denmark excluded, see recital 88 of the EIR 2015), which together count roughly 100 types of national insolvency proceedings (Annex A) and around 110 names for national insolvency office holders (Annex B).

[10425u] Function of Annex A. The relation between the definition of ‘insolvency proceeding’ in Article 1(1) EIR 2000 and the function of Annex A has been debated throughout the EIR 2000’s life. In the recitals to the EIR 2015 the following focus has been chosen. Recital 7: ‘Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings and actions related to such proceedings are excluded from the scope of Regulation (EU) No 1215/2012 of the European Parliament and of the Council’ (known as Brussels Judgment Regulation or Brussels I, in its recast version, see OJ 2012, L 351-1-32, which entered into force 10 January 2015). There should be no gap between these proceedings and the proceeding covered by the Insolvency Regulation. Recital 7 to the EIR 2015 continues: ‘... Those proceedings should be covered by this Regulation. The interpretation of this Regulation should as much as possible avoid regulatory loopholes between the two instruments. However, the mere fact that a national procedure is not listed in Annex A to this Regulation should not imply that it is covered by Regulation (EU) No 1215/2012,’ Annex A therefore has (only) a defensive function: if a proceeding is not listed on it, this does not
automatically mean that it falls under the scope of Brussels I. The recitals to the EIR 2015 continue with recital 8: ‘In order to achieve the aim of improving the efficiency and effectiveness of insolvency proceedings having cross-border effects, it is necessary, and appropriate, that the provisions on jurisdiction, recognition and applicable law in this area should be contained in a Union measure which is binding and directly applicable in Member States. … (9) 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. In respect of the national procedures contained in Annex A, this Regulation should apply without any further examination by the courts of another Member State as to whether the conditions set out in this Regulation are met. National insolvency procedures not listed in Annex A should not be covered by this Regulation.’ There be no mistake about it, Annex A is exclusive and decisive. Expressing the importance of ‘efficiency and effectiveness’ in cross-border insolvency cases, see e.g. Case C-341/04 Eurofood IFSC [2006] ECR I-3813, paragraph 48) and the 2011 Case C-116/11 Bank Handlowy (para. 45) and more fundamental: Bork (2017), 3.4 et seq.

History. The method of operating with lists has been taken from the 1990 Istanbul Convention (mentioned in Article 85(1)(k) EIR 2015). In literature, the question had been raised as to whether using this method serves to guarantee simple applicability in practice (see, Balz (1996b) and (1996c)) or whether it arises out of a lack of confidence in the generic, abstract definition supplied in Article 1(1) EIR 2000 (see e.g. Lücke (1998)). Although under the EIR I was inclined to support the former view, it could be argued that the limited nature of the Annexes may lead to the non-applicability of the Insolvency Regulation where a specific national proceeding (a new one or a similar one with a new name) is not covered in the Annex or where a certain proceeding is considered to be of a collective nature, but due to the interpretation of Article 1(2) Brussels Judgment Regulation it would fall outside the scope of the Brussels Regulation (and is also not covered by the Insolvency Regulation). See on this principle of enumeration: Piekenbrock (2014b), 257.

Options. Hess, in: Heidelberg-Luxembourg-Vienna Report (2013), nr. 275 et seq., having found that the interface between the definition of insolvency proceeding in Article 1(1) EIR 2000 and Annex A needs to be improved, offers the following options:

a. the Annex is to be deleted, which has not been regarded as a valuable option;

b. the Annex is an informative, non-binding list visualising the Regulation’s scope of application without influencing its content;

c. the Annex is decisive, it is in nature and form an integral part of the Regulation;
**Introductory remarks**

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<td>6</td>
<td>Ultimately option c has been chosen: see recital 9 (cited above) and Article 1(1), last line: ‘The proceedings referred to in this paragraph are listed in Annex A’. No delegated act. In the Commission’s proposal of 12 December 2012, the Commission proposed a system of its empowerment to adopt delegated acts to amend Annexes in accordance with the procedure laid down in Articles 45 and 45a of this proposal (see option f above). Although these suggestions passed the EP, they came off worst by the Council, see Mucciarelli (2016a), 12; Schmidt, in: Mankowski/Müller/J.Schmidt (2016), Art.1, nr. 34ff. Van Zwieten, in: Bork/Van Zwieten (eds.) (2016), 1.09 et seq., provides the discussion laid down in several parliamentary documents. Amendment of the Annexes. In the former EIR 2000 an Article 45 (‘Amendment of the Annexes’) was included, providing that the Council, acting by qualified majority on the initiative of one of its members or on a proposal from the Commission, may amend the Annexes. It has done so eight times. See para. 10425t, and the 3rd edition (2012) of this book, para. 10444 and para. 10930ff. Any ‘new’ national insolvency proceeding introduced in a Member State after 26 June 2017 under the present system of the EIR 2015 formally must lead to the amendment of the regulation itself, via the formal ordinary legislative procedure as laid down in Article 294 TFEU, which is cumbersome and time consuming. See para. 10425v. Uncontrolled self-promotion: establish a Committee. Under the EIR 2000 the method of self-promotion by a Member State of a recently introduced insolvency proceedings in that Member State, without a proper verification test, has been criticised. In 2011, I proposed to establish an Expert group on matters of insolvency in the Union, called the ‘European Expert Committee on Insolvency’. That Committee could assist the Commission in scrutinising whether a national insolvency proceeding, suggested for listing in e.g. Annex A, was indeed such a proceeding. See para. 10931d in the third edition of this book (2012), from which I cite (for purposes of comparing): ‘1. An Expert group on matters of insolvency in the Union, called the ‘European Expert Committee on Insolvency’, hereinafter referred to as ‘the Committee’, should be established.</td>
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2. The Committee shall advise the Commission or the European parliament, at its own motion or at the request of the Commission of the European Parliament respectively, on technical and policy issues relating to insolvency practice and regulation, as well as Commission proposals in that field. In its work the Committee takes into account the system of the Insolvency Regulation and its coherence with other areas of law as well as its compatibility with the laws of the Member States.

3. The Committee shall be composed of nine independent persons of high quality and standard. The Commission will appoint members of the Committee having due regards to experience and knowledge in insolvency and business practice and judicial or academic expertise.

4. The Committee shall be chaired by a person to be appointed by the Commission.

5. The Commission responsible for developing the area of freedom, security and justice, shall participate at the meetings of the Committee as an observer. He may be substituted by the Director-General of [... ...]. The European Judicial Network shall be represented as an observer.

6. The Commission may invite experts and observers to attend meetings and to inform the Committee.

7. The secretariat shall be provided by the Commission.

8. The Committee shall adopt its rules of procedure, which are (near to) similar to the standard rules of procedure published by the Commission (OJ C 38, 6.2.2001, p. 3).

Article 89 (‘Committee procedure’). Under the EIR 2015, Article 89 (‘Committee procedure’) seems to have been inspired by this suggestion. Article 89(1) EIR 2015 provides that ‘... [I]n order to ensure uniform conditions for the implementation of the Regulation’ (see recital 82) the European Commission ‘... shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.’ I just note that there seems to be no limitation to this Committee’s tasks.


Uncontrolled self-promotion: national subsumption. Another solution has been presented by Bariatti et al., Implementation Report March 2017, 33. These authors rightfully acknowledge that the formal ordinary legislative procedure will be too long and cumbersome to react flexibly and promptly to the new national procedures which are envisaged to be introduced in the national legislations. These authors suggest that ‘... Member States should, where possible without it constituting a circumvention of the exhaustive nature of Annex A, qualify new proceedings that will be introduced in their national
legislations as a sub-category of proceedings that are already listed in Annex A. In such a case, it is suggested, courts should apply the EIR 2015 without any examination, whilst when it is not possible to update Annex A resorting to this solution, the formal ordinary legislative procedure to amend the Regulation should be adopted. I am not in favour of such an approach, which is hardly consonant with the principle of mutual trust between Member States and leaves ‘self-promotion’ by a Member State to the uncontrolled discretion to such a Member State. The authors suggest that Article 1 should be interpreted as a substantive provision, functioning as a blueprint to be taken into account when deciding on the proceedings to be included in Annex A. See on this role as a blueprint too Mucciarelli (2016a), 11ff. Where some of its terms will not be known in or do not reflect appropriately terms in national insolvency laws of Member States (such as ‘interim proceedings’, ‘rescue’, ‘negotiations between the debtor and its creditors’ of ‘likelihood of insolvency’) the authors’ recommendation may trigger an unaligned interpretation of terms as they appear in the laws of a Member State, with a lopsided result. Moreover, some of these terms have a specific meaning within the EIR 2015. CJEU 20 October 2011, C-396/09 (Interedil Srl v Fallimento Intredit Srl, Intesa Gestione Crediti Spa); ECLI:EU:C:2011:671, has stressed that it follows from the need for uniform application of European Union law and from the principle of equality that the terms of a provision of that law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope normally must be given an autonomous and uniform interpretation throughout the Union, having regard to the context of the provision and the objective pursued by the legislation in question. Concepts peculiar to the Regulation, such as ‘centre of main interest’ (COMI) have an autonomous meaning, and must therefore be interpreted in a uniform way, independently of national legislation. In other cases, in general, where a definition or description is not provided by the Insolvency Regulation, reference should be made to the applicable national law, see Article 7(2)(a). I would argue that a concept such as likelihood of insolvency is a concept peculiar to the EIR 2015.

Amendment 9 to the Annexes. End September 2016, a Council Implementation Regulation (EU) 2016/1792 of 29 September 2016 was published, replacing Annexes A, B and C to the EIR 2000. Referring to Article 45 EIR 2000 and having regard to the proposal from the European Commission, it mentions that Slovakia and Poland, on 28 October 2014 and 4 December 2015 respectively, notified the Commission, for the purposes of Article 45 EIR 2000 of amendments to the lists set out in Annexes A, B and C to that Regulation: ‘Those amendments comply with the requirements set out in that Regulation. Since those amendments are already in force, this Regulation should therefore enter into force as soon as possible.’ Annexes A, B and C to EIR 2000 have been replaced by the text of the Annexes contained this Council Implementation Regulation, OJ of 11 October 2016, L 274/35.
This amendment confirms experience of some 12 years that it generally takes 12 to 18 months to have an amendment entered into force. In the meantime, however, in September 2016 the Annexes A and B already had legal effect for over 12 months. They should be revised too. And so it happened.

Revising the Annexes A and B to the EIR 2015. On 30 May 2016 a proposal for a Regulation of the European Parliament and of the Council was published for ‘... replacing the lists of insolvency proceedings and insolvency practitioners in Annexes A and B to Regulation (EU) 2015/848 on insolvency proceedings’ (see COM(2016) 317 final; 2016/0159 (COD)). The President of the EP and the President of the Council first explain the reasons for and the objectives of this proposal. After describing that the EIR 2015 entered into force on 26 June 2015 and that it 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’, which by the way is only partly true as the establishment of these registers itself applies from 26 June 2018, see Article 92 EIR 2015) it is explained:


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.’

Explanatory Memorandum to the proposal. In close to two pages the proposals’ consistency with existing policy provisions and its legal basis is explained:

‘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.
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.

The envisaged amendments are of a purely technical nature. They contain no substantive change to the Regulation ...

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 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.


[10425w] Review of the EIR 2015. Article 90(1) EIR 2015 (‘Review clause’) provides that no later than 27 June 2027, and every 5 years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. The report shall be accompanied where necessary by a proposal for adaptation of this Regulation. This is a rather similar review process as the one laid down in Article 46 EIR 200. One topic is already certain (!), see recital 22: ‘… At the next review of this Regulation, it will be necessary to identify further measures in order to improve the preferential rights of employees at European level …’; which may have been a scribble in the marge, and by mistake taken into a recital, or should be taken serious (e.g. by Josko de Marx, in: Braun (2017), Art. 13, nr. 22), however in that case is odd as this intention rather belongs to the area of harmonisation.
This fourth edition of A Practical Guide to the Wiring Regulations takes account of the requirements of BS 7671:2008 Requirements for Electrical Installations (IEE Wiring Regulations Seventeenth Edition). BS 7671:2008 was issued on 1 January 2008 and came into effect on 1 July 2008. Indeed, of the 28 HDs listed in the preface of BS 7671:2008, 17 are revised compared with the versions used in BS 7671:2001, as finally amended, and seven are newly introduced to BS 7671. The revised HDs have led to changes in, amongst other things, the various protective measures specified in Part 4 of BS 7671 and the requirements for special installations or locations. NASA Images Solar System Collection Ames Research Center. Brooklyn Museum. Preface to the Fourth Edition. This fourth edition updates the third edition to reflect the changes in Stata 12, released in July 2011, and Stata 13, released in June 2013. Since the first edition of the book, many nice things have happened with Stata, and these changes are also reflected in the book. One of the nice developments is the PDF manuals, which give you immediate access to “everything about Stata.” Instead, you are guided to use the help command, which efficiently leads you to the information you need. This also means that the text reads much more fluently. In several other ways, Stata has become more user friendly, which means that we could drop quite a bit of tedious stuff from the book. We need no longer explain the set memory command or the importance of the update swap command.