# Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC /Denmark Agreement on the service of judicial and extrajudicial documents

2009/0031(CNS) - 04/03/2009 - Legislative proposal

PURPOSE: to amend Decision 2006/326/EC to provide for a procedure for the implementation of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

PROPOSED ACT: Council Decision.

BACKGROUND: pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in Title IV of the EC Treaty, and as a consequence Community instruments adopted in the field of judicial cooperation in civil matters are not binding upon or applicable in Denmark. However, the application of certain Community instruments has been extended to Denmark by way of the international agreements between the European Community and Denmark concluded on the basis of Article 300 of the EC Treaty.

The relevant international agreements, concluded by Council Decisions 2006/325/EC and 2006/326/EC respectively, are:

- the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter;
- the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

Those parallel agreements provide for the European Community's agreement to be given in cases where Denmark intends to enter into international agreements which may affect or alter the scope of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation) or the European Parliament and Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Neither the aforementioned Council Decisions nor the parallel agreements themselves stipulate how the Community should take a decision on such agreement. The objective of the proposal(s) is to lay down the procedure for the implementation of both parallel agreements in order to ensure that decisions on the European Community's agreement can be taken swiftly.

IMPACT ASSESSMENT: the Commission evaluated different options for setting up the implementation procedure, although without carrying out a formal impact assessment. One of the options would have consisted of amending both parallel agreements in order to provide for a particular implementation procedure. This would have been a much heavier procedure and, since the issue urgently requires a solution, this option was not followed.

The option chosen by the Commission envisages a simple and relatively swift solution, i.e. amending the Council Decisions on the conclusion of the parallel agreements so as to insert the particular provisions on

the procedure to be followed by the European Community for taking decisions regarding its agreement to the conclusion by Denmark of international agreement concerned.

CONTENT: the Commission proposes amending Council Decision 2006/325/EC and Council Decision 2006/326/EC in order to insert into those decisions provisions on the implementation of Article 5(2) of the parallel agreements.

The same procedure is provided for the implementation of both parallel agreements.

However, two situations are distinguished, and a **different procedure** for the European Community to give its agreement is laid down for each of those situations. The common denominator in both situations is that the Commission is empowered by the Council to give the agreement on behalf of the European Community.

a) **the first situation** includes cases where the Member States have already been authorised to conclude the international agreement concerned. This is the case, for example, of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention), where the Community has already authorised its Member States, in the interest of the Community, to sign, ratify or accede to it. This first situation will also cover cases where the Community has itself become a party to international agreements affecting the Brussels I Regulation or the Regulation on the service of documents. In the cases described, given the fact that the Community has already reviewed the possibility of those Community instruments being affected by the international agreement concerned and has provided, where necessary, for safeguards to ensure that those Community instruments are applied in the relevant cases, a simple procedure is established. In such situations, the Commission will be empowered to give the agreement to Denmark on behalf of the European Community;

b) **the second situation** covers all cases that do not fall into the first category above. In such cases there is a need to discuss with the Member States the possibility of the Regulations concerned being affected by the international agreement which Denmark intends to conclude. The Member States will therefore be involved in the decision-making process through the comitology procedure. In such situations the Commission will be empowered to give the agreement to Denmark on behalf of the European Community through the comitology procedure.

**Legal elements**: for practical reasons the Commission is presenting at the same time two proposals for implementing both parallel agreements (see CNS/2009/0034), with relevant amending provisions for both.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Community budget.