Civil and commercial judicial cooperation: EC /Denmark agreement extending to Denmark the provisions on jurisdiction and the recognition and enforcement of judgments (Regulation (EC) No 44/2001)

2005/0055(CNS) - 15/04/2005 - Legislative proposal

PURPOSE: to sign and conclude the Agreement between the European Community and Denmark extending to Denmark the provisions of Council Regulation 44/2001/EC on jurisdiction and the recognitions and enforcement of judgments in civil and commercial matters.

PROPOSED ACT: Council Decision.

CONTENT: in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does

not participate in Title IV of the Treaty. As a consequence, Community instruments adopted in the field of, among others, judicial cooperation in civil matters are not binding upon or applicable in Denmark.

One of these Community instruments is Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Regulation has replaced the Brussels Convention of 1968 on the same matter, to which Denmark is a party. The Regulation contains revised and modernized rules of the Brussels Convention and applies to all Member States except Denmark; the United Kingdom and Ireland having exercised their right to opt in.

The non-application of Regulation 44/2001/EC in Denmark results in a most unsatisfactory legal situation: Not only does Denmark continue to apply the old rules of the Brussels Convention, but also all other Member States have to apply these rules, i.e. a set of rules different from the one they use in their mutual relations, when it comes to the recognition and enforcement of Danish decisions. This constitutes a step backwards given that prior to the entry into force of Regulation 44/2001 the rules of the Brussels Convention applied uniformly in all Member States. The current situation therefore jeopardizes the uniformity and legal certainty of the Community rules.

Denmark expressed at several occasions its interest to participate in the new regime. The Commission accepted to negotiate parallel agreements with Denmark, provided that the following conditions were fulfilled: such a solution would have to be of an exceptional nature and apply for a transitional period only, the participation of Denmark in the Community regime would have to be fully in the interests of the Community and its citizens and the requirements imposed on Denmark would have to be identical to those imposed on all Member States, so as to ensure that rules with the same content are applied in Denmark and in the other Member States.

In view of the situation outlined above, the Commission considered it to be in the Community interest to extend to Denmark the provisions of Regulations 44/2001/EC and 1348/2000/EC on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

The agreement extending the provisions of Regulation 1348/2000/EC to Denmark is the subject matter

of a separate Council Decision (**Please refer to CNS/2005/0056**).

The Commission presented on 28th June 2002 a recommendation for a Council Decision authorizing the Commission to open negotiations for the conclusion of the two agreements between the European Community and Denmark.

The Commission negotiated the parallel agreement extending to Denmark the provisions of Regulation 44 /2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters in accordance with the Council's negotiating directives, carefully ensuring that rights and obligations of Denmark under this agreement correspond to rights and obligations of the other Member States.

As a result, the parallel agreement contains, in particular, the following provisions:

- appropriate rules on the role of the Court of Justice to ensure the uniform interpretation of the instrument applied by the parallel agreement between Denmark and the other Member States;

- a mechanism to enable Denmark to accept future amendments by the Council to the basic instrument and the future implementing measures to be adopted under Article 202 of the EC Treaty;

- a clause providing that the agreement is considered terminated if Denmark refuses to accept such future amendments and implementing measures;

- rules specifying Denmark's obligations in negotiations with third countries for agreements concerning matters covered by the parallel agreement;

- the possibility of denouncing the parallel agreement by giving notice to the other Contracting Party.