Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)

2005/0126(COD) - 07/07/2005 - Legislative proposal

PURPOSE: transmission and service in the Member States of judicial and extrajudicial documents.

LEGISLATIVE ACT: Regulation of the European Parliament and of the Council.

CONTENT: On 29 May 2000, the Council adopted Regulation 1348/2000/EC on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The Regulation aims at expediting the transmission of documents which is to be made directly between local bodies (transmitting and receiving agencies) designated by the Member States. Since the entry into force of Regulation 1348/2000/EC on 31 May 2001, the Commission has sought to receive as much information as possible about the application of the Regulation.

The Commission has therefore gathered information and discussed the application of the Regulation on various occasions. Furthermore, a Study on the application of the Regulation has been made by a contractor of the Commission. Lastly, the Commission adopted the Report on the Application of the Regulation foreseen in Article 24 of the Regulation.

The Report concludes that since its entry into force in 2001, the application of the Regulation has generally improved and expedited the transmission and the service of documents between Member States. Nevertheless, in the period of adaptation which is still ongoing, many persons involved in the application of the Regulation, in particular local bodies, still do not have sufficient knowledge about the Regulation. Furthermore, the application of certain provisions of the Regulation is not fully satisfactory.

The Commission Report indicates that – compared with the situation under the 1965 Hague Convention on the Service of Documents - the application of the Regulation has made the transmission and the service of documents faster. While the amount of time required for transmission and service has generally been reduced to 1 to 3 months, in some cases up to 6 months are still required. Such delays for the transmission and service of documents between Member States are unacceptable in a European area of justice in civil and commercial matters.

This proposal amends several paragraphs of Articles 7, 8, 9, 11, 14, 15, 17 and 23 of Regulation 1348/2000 /EC. The following are the main proposed amendments:

- In Art 7, it introduces an obligation to effect the service of a within one month of receipt of the document by the receiving agency. It also provides that the receiving agency shall inform the transmitting agency immediately, if it has not been possible to effect service.

- In view of divergent approaches in the Member States with respect to a time limit for the refusal to accept a document, a common time limit of one week within which the addressee can refuse to accept the document by returning it is introduced. It should also be clarified that the addressee may exercise his right also immediately at the time of service directly with the person serving the document. Furthermore, an obligation to inform the addressee in writing about his right to refuse to accept the document is introduced

since the Commission Report indicates that currently the addressee is not always informed of his right to refuse to accept the document. The receiving agency shall inform the addressee about his right using the standard form in the Annex.

- Art 8(3): In view of the fact that the Regulation does not expressly provide for a rule concerning the legal consequences of a justified refusal to accept the document in accordance with Art 8 (1), there is currently a case pending at the European Court of Justice with respect to that question. For reasons of legal certainty, the Regulation itself should provide for an explicit rule for such cases.

- Currently, several Member Stateshave invoked derogations in accordance with Article 9 (3), on the basis that the double-date system is not known in their national procedural laws. Those Member States do, however, have equivalent rules in order to protect the rights of the applicant (e.g. by providing that prescription is interrupted through the seizure of the court).

- Art 11 (4): In order to facilitate access to justice, this paragraph provides that costs occasioned by the employment of a judicial officer or of a person competent under the law of the Member State addressed shall correspond to a fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination.

- Article 14: This amendment aims at further facilitating the application of the Regulation by introducing a uniform rule for all Member States concerning postal services. Currently, the identification of the conditions applicable in a specific Member State is not user-friendly. The paragraph provides for a uniform requirement (registered letter with acknowledgement of receipt or equivalent) which is applicable already in many Member States. This requirement guarantees with sufficient certainty that the addressee has received the document, and that there is sufficient proof thereof.

- Article 15: The deletion of paragraph 2 which provides for a possibility for Member States to oppose themselves to direct service will further facilitate the application of the Regulation by introducing a uniform rule for all Member States.

- Article 15a: In order to improve legal certainty for the applicant and the addressee and for reasons of consistency, this paragraph provides – as a clarification - that the rules concerning the refusal to accept the document (Article 8), and the rules concerning the date of service (Article 9), shall apply to the means of transmission and service provided for in this section (i.e. Articles 12 to 15). This modification clarifies also that the language rules of Article 8 also apply for service by postal services.

- Articles 17 and 23: The requirement for the adoption of the manual of receiving agencies and the glossary by a Commission Decision (Article 17) should be deleted as well as the requirement of the publication of the information communicated by Member States in the Official Journal (Article 23). Instead, this paragraph provides that a rule equivalent to Articles 19 and 22 of Council Regulation 1206 /2001/EC on cooperation between the courts of the Member States in the taking of evidence in civil or commercial mattersis introduced since Articles 17 and 23 unnecessarily complicate making available the information communicated by Member States.