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**Proposal for a**

**COUNCIL DIRECTIVE**

**on the service in the Member States of judicial and extrajudicial documents  
in civil or commercial matters**

(presented by the Commission)

# **EXPLANATORY MEMORANDUM**

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## **1. GENERAL**

### **1.1 Context**

By Article 2 of the Treaty on European Union, the Member States set themselves the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country.

To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market. Reinforcement of judicial cooperation in civil matters, which many believe has developed too slowly, represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen<sup>1</sup>.

The sound operation of the internal market creates a need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

To this end, rapid procedures and legal certainty are of the essence at a time when the increasing number of transactions, whether in the private domain or in economic or cultural relations, is inevitably leading to a growth in litigation.

The transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States is essential for the sound operation of procedures and must be effected in the right conditions.

Before the Amsterdam Treaty entered into force, the Member States, acting on the basis of Article K.3(2) of the Union Treaty, concluded a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, drawn up by Act of the Council of the European Union on 26 May 1997<sup>2</sup>. But the Convention has not been ratified by them.

### **1.2 Negotiation of the Convention on the service of documents**

On 29 and 30 October 1993 the Council of Ministers for Justice set up a Working Party on Simplification of Document Transmission with instructions to draw up an instrument to simplify and speed up procedures for the transmission of documents between Member States. The examination of the replies to the questionnaire devised in April 1992 under the Portuguese Presidency, together with the Netherlands and the United Kingdom, had revealed a complex, variable and inefficient system.

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<sup>1</sup> Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, point 16: OJ C 19, 23.1.1999.

<sup>2</sup> OJ C 261, 27.8.1997.

Indeed, since most Member States are Parties not only to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters but also to a number of bilateral or regional instruments, confusion has gradually built up as to required and recommended procedures, leading to delays and causing mistakes and questionable choices to be made.

In 1993 the Netherlands delegation submitted a draft text amending Article IV of the Protocol annexed to the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, concerning the service of documents between the Member States of the European Union.

The Working Party began by considering that draft; this was followed by a questionnaire framed by the German Presidency on the procedures applicable in each Member State.

Then, early in 1995, the French Presidency presented a fresh draft, which involved introducing a single mandatory mechanism for all Member States.

On the basis of Member States' suggestions and results of consultations with practitioners carried out on the Commission's initiative, a solution was reached which strikes a balance between the various proposed approaches.

The Working Party having concluded its discussions, the text of the draft Convention was submitted by the Netherlands Presidency, in accordance with Article K.6 of the Treaty on European Union, for scrutiny by the European Parliament<sup>3</sup>.

On 26 May 1997, the Council adopted the Convention, which was signed on the same day by the representatives of all the Member States.

## **2. PROPOSAL FOR COUNCIL DIRECTIVE**

As the Convention of 26 May 1997 was not ratified before the Amsterdam Treaty entered into force, its provisions are not applicable. The Convention was one of only two instruments relating to judicial cooperation adopted under the Maastricht Treaty. Its purpose is to remove practical difficulties encountered by the public in their daily life. Transposing it into a Community instrument will have the effect, among others, of ensuring that it enters into operation on the same early date, well known to all.

### **2.1 Subject-matter**

This proposal for a Directive marks the first instance of exercise of the right of initiative in the area of judicial cooperation in civil matters<sup>4</sup>, now brought within the Community framework; its purpose is to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States. It is to replace the Convention on service of documents,

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<sup>3</sup> Opinion given on 11 April 1977 (OJ C 132).

<sup>4</sup> Reference to proposal for reformatting the Brussels II Convention.

broadly taking over the results of the negotiations that culminated in it. The Commission has incorporated the substance of the Convention in the proposal for a Directive.

## **2.2 Legal basis**

The subject-matter covered by the Convention is now within the ambit of Article 65 of the Treaty; the legal basis for this proposal for a Directive is Article 61(c) of that Treaty.

The form chosen for the instrument – a directive – is warranted by the obligations imposed on the Member States, the national authorities being left to determine the form and methods for achieving its objectives.

The instrument falls to be adopted by the procedure of Article 67 of the Treaty, which provides that, during a transitional period of five years, the Council is to act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

The new Title IV of the EC Treaty, which applies to the matters covered by this proposal for a Directive, is not applicable in the United Kingdom and Ireland, unless they “opt in” in the manner provided by the Protocol annexed to the Treaties. At the Council meeting (Justice and Home Affairs) on 12 March 1999, these two Member States announced their intention of being fully associated with Community activities in relation to judicial cooperation in civil matters. It will be for them to embark on the procedure of Article 3 of the Protocol in due course.

Title IV of the EC Treaty is likewise not applicable in Denmark, by virtue of the relevant Protocol. But Denmark may waive its opt-out at any time. Denmark has so far given no notice of its intention of embarking on the procedure of Article 3 of the Protocol in due course.

The proposal has been drafted on the basis of the current situation. If the Regulation were to be applicable in one or more of these Member States, the requisite adjustments will have to be made.

## **3. JUSTIFICATION FOR PROPOSAL IN TERMS OF PROPORTIONALITY AND SUBSIDIARITY PRINCIPLES**

What are the objectives of the proposed measure in relation to the obligations imposed on the Community?

The objectives of the proposal are to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States. These objectives are part of the Union’s objective of establishing an area of freedom, security and justice within which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country. To establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market.

Does the measure satisfy the criteria of subsidiarity?

Its objectives cannot be attained by the Member States acting alone and must therefore, by reason of the cross-border impact, be attained at Community level.

Are the means deployed at Community level proportional to the objectives?

The proposed instrument is confined to the minimum needed for the attainment of these objectives and does not exceed what is necessary for that purpose.

## **4. INDIVIDUAL PROVISIONS**

### **4.1 General objective**

Like the Convention it is to replace, the Directive is consistent with the 1965 Hague Convention, to which it owes a number of solutions, while introducing innovations in four main areas.

Firstly, in order to avoid delays building up between successive intermediaries downstream of a document's transmission, it makes provision for establishing more direct channels between the persons or authorities responsible for transmitting a document and those serving it or ensuring it is served.

Next, it provides for certain practical means to be used to ease the practitioners' task, including modern means of document transmission, a complete, user-friendly form and directories of Member States' designated receiving agencies.

In order to safeguard the rights of the parties, it also introduces innovative rules on the translation of documents.

And it establishes an advisory committee to assist the Commission with the implementing provisions.

The Directive replaces the system for service of documents referred to in Article IV of the Protocol to the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters<sup>5</sup> and in the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, for the purposes of relations between the Member States that are parties thereto.

### **4.2 Continuity**

The Commission has incorporated the substance of the Convention in the proposal for a Directive to ensure continuity in the results of the negotiations, but has omitted such provisions as would be incompatible with the nature of the proposed instrument and the new framework for judicial cooperation in civil matters post-Amsterdam.

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<sup>5</sup> OJ C 27, 26.1.1968.

Given the close correspondence between the provisions of the Convention and of the Directive, the survey of the provisions of the Directive is modelled on the explanatory report to the Convention, approved by the Council on 26 June 1997<sup>6</sup>.

### 4.3 Adaptation

But the obvious differences between the two types of instrument warrant departures from the convention in a number of respects:

- jurisdiction of the Court of Justice: unlike Article 17 of the Convention, the Directive does not need to confer jurisdiction on the Court of Justice, given the provisions of Article 68 and other normally applicable provisions of the Treaty;
- implementing provisions: unlike Article 18 of the Convention, which provides for an Executive Committee (integrated into the Council's working structures) to oversee implementation of the Convention, the Directive confers on the Commission powers of implementation to adopt provisions to give effect to it, with the assistance of an advisory committee (Procedure I of the "comitology" decision<sup>7</sup>), in accordance with Articles 202 and 211 of the Treaty;
- relationship with other agreements and arrangements: by Article 20, the Convention does not preclude closer cooperation between Member States. The proposed Directive accordingly takes over a provision used in other Community legal instruments empowering the Member States, individually or acting in concert, to expedite the transmission of documents. The exercise of this power will be monitored by the Commission; it must be notified of draft provisions. Article 20 of the proposed Directive further provides that it prevails over other provisions governing the transmission of documents for service contained in conventions concluded by the Member States, and in particular the Protocol to the Brussels Convention of 1968 and the Hague Conventions of 1954 and 1965;
- reservations: unlike Article 23 of the Convention, the Directive makes no provision for reservations, but only for transitional or specific arrangements (Articles 2(3), 9(3), 13(2) and 15(2)) which must be notified to the Commission and published in the Official Journal;
- formal provisions: Articles 24 to 27 of the Convention would be out of place in a Community instrument. Articles 249 and 254 of the Treaty are fully applicable to the entry into force of the Directive. The Commission, acting under Article 211 of the Treaty, will fully assume the role of monitoring the application of the Directive (conferred on the Executive Committee by the Convention), proposing amendments if need be and informing the Member States and the general public of the communications and notifications required by the Directive, publishing them in the Official Journal of the European Communities (Articles 2, 3, 4, 9, 10, 13, 14, 15 and 19).

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<sup>6</sup> OJ C 261, 27.8.1997.

<sup>7</sup> Council Decision 373/87/EEC laying down the procedures for the exercise of implementing powers conferred on the Commission: (OJ L 197, 18.7.1987, p. 33).

#### 4.4 Concordance table

1997 Convention	Proposal for Directive
Preamble	Deleted
	Recital 1 (objective)
	Recital 2 (subject-matter of proposal)
	Recital 3 (scope)
	Recital 4 (subsidiarity and complementarity)
	Recital 5 (Convention/continuity)
	Recital 6 (principle of decentralised transmission)
	Recital 7 (means of transmission/form)
	Recital 8 (refusal to serve)
	Recital 9 (time-limit)
	Recital 10 (language)
	Recital 11 (date of service)
	Recital 12 (primacy/implementing provisions)
	Recital 13 (data protection)
	Recital 14 (powers of implementation/comitology)
	Recital 15 (report/amendment)
	Recital 16 (situation of UK, Ireland and Denmark)
Art. 1	Art. 1
Art. 2	Art. 2
Art. 3	Art. 3
Art. 4	Art. 4
Art. 5	Art. 5
Art. 6	Art. 6
Art. 7	Art. 7
Art. 8	Art. 8
Art. 9	Art. 9



Art. 10	Art. 10
Art. 11	Art. 11
Art. 12	Art. 12
Art. 13	Art. 13
Art. 14	Art. 14
Art. 15	Art. 15
Art. 16	Art. 16
Art. 17 (jurisdiction of Court)	Art. 17 (implementing provisions)
Art. 18 (executive committee)	Art. 18 (comitology – advisory committee)
Art. 19 (application of Arts 15-16 C. the Hague)	Art. 19 (defendant entering no appearance, taken over from Arts 15-16 C. the Hague)
Art. 20 (relationship with other agreements)	Art. 20 (primacy of Directive)
Art. 21 (judicial assistance)	Art. 21 (judicial assistance)
Art. 22	Art. 22
-	Art. 23 (publication)
Art. 23 (reservations)	Art. 24 (review)
Art. 24 (adoption and entry into force)	Art. 25 (transposal)
Art. 25 (accession)	Art. 26 (entry into force)
Art. 26 (amendments)	Art. 27 (addressees)
Art. 27 (depository and publications)	

## 4.5 Individual Articles

### Chapter I - General provisions

#### Article 1 - Scope

Article 1(1) defines the scope of the Directive, stating that it governs relations between the Member States of the European Union with regard to the transmission of documents in civil and commercial matters.

The Directive applies to the transmission, for purposes of service, of judicial and extrajudicial documents. These documents are not defined.

'Judicial document' must clearly be taken to mean documents connected with judicial proceedings. The term 'extrajudicial documents', however, is not amenable to precise definition. It may be taken to cover documents drawn up by a public officer, for example a notarial deed or a writ, documents drawn up by Member States' official authorities or documents of a type or importance which require them to be transmitted and brought to the addressee's attention by official procedure.

Like many other Conventions which use the terms, this Directive does not define 'civil or commercial matters', nor does it refer to the definition in the law of the Member State of transmission or of the Member State addressed.

In the interests of consistency between the various instruments concluded in the European Union framework, reference might usefully be made to the Court of Justice's interpretation of the concept of civil and commercial matters, which establishes the principle of a self-standing definition taking account of the objectives and structure of the Directive and the general principles emerging from all the national legal systems. This does not mean, however, that civil and commercial matters are to be narrowed down to the scope of the Brussels Convention of 1968.

Essentially, criminal and tax cases fall outside the scope of civil and commercial matters, but not civil actions heard in the context of those proceedings. However, these terms will need flexible interpretation if the rights of the parties to an action are to be protected, in particular the rights of the defence.

The second paragraph was added to Article 1 in order to discharge requested States of the responsibility of serving a document where the address of the person on whom it is to be served is unknown.

However, this provision does not mean that the agency of the Member State receiving an application for an act to be served on a person whose address is incomplete or incorrect need not try to complete or correct it with the means at its disposal.

If, despite such efforts, the address of the person to be served still cannot be determined, then the document ought to be returned to the transmitting agency as soon as possible.

## **Article 2 - Transmitting and receiving agencies**

Article 2 establishes the principle of direct transmission of documents for service between decentralised agencies. This represents a step forward in judicial cooperation between Member States and is one of the Directive's main innovations.

As an antidote to the slow transmission of documents by diplomatic channels, the only route available to Member States not bound by relevant Conventions, a number of existing agreements have set up central authorities to convey documents to their destination, usually in stages; this Directive aims to bypass the intervening stages between a document's dispatch from the Member State of transmission and its service in the Member State addressed.

It is therefore the task of the Member States to designate public officers, judicial or administrative authorities or other persons with the jurisdiction and resources to perform the tasks entrusted to the transmitting and receiving agencies. The Directive does not, however, impose an obligation on Member States to provide the private agencies they may appoint with those resources.

A Member State may therefore designate a single agency to act as both transmitting agency and receiving agency for a given area; conversely it may designate separate agencies.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units may designate more than one such agency.

As an exception to the principle of decentralisation, a Member State may also declare that it will designate one agency to act as a transmitting agency and one agency to act as a receiving agency for its entire territory, or even that it will designate a single agency to act as both transmitting and receiving agency. However, the designation of a single agency should not give rise to delays in the procedures for service of documents.

Designation of such centralised agencies will have effect for a period of five years. The Commission is required by Article 23 (Review) to monitor the operation of decentralised agencies and to satisfy itself that they are effective. Member States which have designated a centralised agency may wish, after assessing the information collected by the Committee and taking into account the results obtained by Member States that opted for a decentralised system from the outset, to establish decentralised agencies. A Member State's declaration may, however, be renewed every five years.

Under paragraph 4, the Member States are required to provide details of the receiving agencies which they have designated and which must be available to other Member States' transmitting agencies if they wish to transmit documents.

Member States' designated agencies will be provided with a manual containing all relevant information; it will be produced and updated annually by the Commission in accordance with Article 18 of the Directive.

### **Article 3 - Central body**

In order to enable transmitting and receiving agencies to resolve difficulties arising from implementation of the Directive which cannot be resolved through contacts at agency level, the Directive has provided for central bodies to be set up to solve such problems via direct contacts between the transmitting agency and the central body of the State addressed.

Under point (a) a transmitting agency may seek information from the central body of another State. A transmitting agency lacking the requisite information may need to enquire, for example, as to which receiving agency a given document has to be sent to for service.

Point (b) may relate to specific cases or to more general difficulties. A transmitting agency will be able to seek the help of another Member State's central body if some time has elapsed since it sent a document to that Member State's receiving agency but a number of requests for information have failed to establish what action was taken after the document's transmission. It will also be able to report to a central body any recurrent difficulties in its relations with one or other receiving agencies.

Point (c), which allows applications to be made to the central body of the State addressed for documents to be forwarded for service to the competent receiving agency, may be implemented only 'in exceptional circumstances'. It is not normally within the central body's remit to process directly requests for documents to be transmitted: that is the task of the receiving agency.

The Directive contains a number of clauses enabling transmitting and receiving agencies to resolve difficulties arising from a request for service, and these should be utilised before the central body is called upon.

Thus a document ought not to be transmitted to the central body merely because it is not possible to determine the receiving agency with the relevant territorial jurisdiction; rather a request for information should be sent under Article 3(a).

If the address of a person on whom a document is to be served cannot be established or if the address provided is wrong so that the receiving agency cannot comply with a request for service, the document must in no event be sent to the central body. The situation then falls under Article 1(2) of the Directive, viz. the Directive does not apply where the address of the person to be served with the document is not known.

On the other hand, a situation which could justify a document's transmission to the central body would be one where, despite repeated requests as to the receiving agency with territorial jurisdiction to serve documents and the passage of a reasonable length of time, no response had been forthcoming.

More generally, transmission of a document to the central body of the Member State addressed could be acceptable, for example, if court buildings housing a section designated as a receiving agency or a process server's offices had been destroyed by fire, or if a general strike or a natural catastrophe had brought to a standstill the services in a region of the Member State addressed where the document was to be served.

In any event it is for the transmitting agency to decide in the light of these suggestions whether the exceptional circumstances justifying transmission of a document to the central body of the State addressed do in fact obtain.

The Commission is to monitor the application of Article 3(c), in accordance with Article 23 (Review).

Lastly, it would be advisable for Contracting States to the Hague Convention of 15 November 1965 to designate as their central bodies the central authorities designated under Article 2 of that Convention.

## **Chapter II - Judicial Documents**

### **Section 1 - Transmission and service of judicial documents**

This section lays down the rules on the principal channel for document transmission provided for in the Directive.

#### **Article 4 - Transmission of documents**

In order to expedite the whole process of transmission and service of the document, the transmitting agency must take the necessary steps to ensure that the document is sent directly, and as soon as possible, to the agency competent to receive it. In order to find out which receiving agency is competent to receive the document, having regard to the address of the person to be served with it, the transmitting agency will refer to the manual drawn up by the Commission.

The Directive does not list the means of transmission which may be used. On the contrary, it allows any appropriate means to be employed, thus enabling a choice to be made in the light of the procedures allowed under domestic law, the circumstances of the case and the type of link-up that can be established with the competent receiving agency.

However, this flexibility to choose the means of transmission must not be allowed to prejudice the interests of the addressee. The Directive therefore provides that the document received must be faithful to that forwarded and that all the information in it must be easily legible. If this is not the case, the documents must be returned to the transmitting agency at once, together with a form with the section marked 'notice of return of request and document' filled in accordingly.

The manual will enable the transmitting agency to find out which means of transmission can be used in correspondence with the receiving agencies in that Member State. Where technical innovations take place or where receiving agencies accept new means of transmission, this can be entered in the manual when it undergoes its annual updating.

Documents forwarded by the transmitting agency must be accompanied by a form drawn up in accordance with the specimen request for service annexed to the Directive and available therefore in all language versions.

The Directive does not contain any rules on the language which has to be used for the pre-printed parts of the form. The transmitting agencies are therefore free to use, for example, forms in their own official language, in the official language of the receiving agency, or in the language of the European Union which the State addressed has indicated that it can accept pursuant to paragraph 3.

However, the transmitting agency must complete the form using the official language or one of the official languages of the State addressed, or a language which that State has accepted pursuant to paragraph 3. The transmitting agency will be able to find out which languages can be used by referring to the manual, which will indicate:

(a) firstly:

- either the only official language of the State addressed to be used,
- or the various official languages of the State addressed which may be used,
- or which of the official languages of the State addressed has to be used on account of the address of the person to be served;

(b) secondly:

- any other language of any of the Member States of the European Union which the State addressed has declared it can accept.

The transmitting agency may choose whether to use the appropriate language under point (a) or the language under point (b).

However, it should be pointed out that most of the particulars which have to be entered on the form annexed to the Directive do not require translation and that the Commission will be instructed to draw up a glossary, in all the official languages of the European Union, of the main legal terms likely to be used when filling out the form.

Many Conventions provide for legalisation to be waived. It would naturally be quite out of the question to require that documents be legalised purely for the purpose of service abroad, especially within the European Union.

Article 49 of the Brussels Convention of 27 September 1968 provides that no legalisation or other similar formality can be required by a court in a Member State which receives a request for enforcement of a judgment given in another Member State.

Paragraph 5 provides for the possibility of sending the document to the receiving agency in duplicate and asking for one copy to be returned; it would seem that this would be applicable only when documents are sent by conventional means, such as post. However, the practice could be adapted to other means of transmission that may be used in future, as and when they are introduced.

The transmitting agency will be able to supply the receiving agency with the requisite information via the request form sent with the document.

#### **Article 5 - Translation of documents**

When a document has to be sent to another Member State for service, the transmitting agency must advise the applicant that the addressee may refuse to accept the document because of the language used in accordance with Article 8 of the Directive.

The Directive contains no provision regarding the possible legal consequences of refusing to accept a document on account of the language used; it will be for the competent courts to decide on this matter.

The transmitting agency must therefore draw the applicant's attention to the risks that he may be running with regard to the deadlines, effectiveness or correctness of the procedure if he does not have a translation done, as might prove necessary.

If the applicant chooses to have the document translated, he will have to pay the cost of translation in advance; however, this rule does not preclude any subsequent ruling on costs enabling the applicant to be reimbursed for all or part of the expenditure he has incurred, if the law of the Member State in which the proceedings take place so provides.

It should be noted that 'applicant' means in all cases the party interested in transmission of the document. It therefore cannot refer to the courts.

#### **Article 6 - Receipt of documents by the receiving agency**

The provisions of paragraph 1 are intended to make sure that the transmitting agency is kept informed as to whether the documents it has dispatched have been received by the receiving agency. The emphasis is placed on the speed of the reply which has to be sent by the receiving agency, as the paragraph lays down the principle that a receipt must be sent as soon as possible, by the swiftest possible means. Receiving agencies should therefore endeavour to send the receipt to the transmitting agencies as soon as the documents are received.

It will suffice for the receiving agency to return to the transmitting agency a copy of the form requesting service forwarded with the documents, after filling in the 'acknowledgement of receipt' section (Heading 8 of the form).

When the transmitting agency receives the receipt, it can be sure that the document it has forwarded has indeed reached the competent receiving agency.

If the receipt fails to arrive within a reasonable period of time after expiry of the period of seven days, the receiving agency might presume that the documents had gone astray and should be sent again, at the risk of causing confusion between the two sets of documents.

Paragraph 2 is intended to prevent the document and the request for service being returned to the transmitting agency when some additional information or documents would be all that was needed to solve the difficulties which prevent the receiving agency from serving the document or having it served as it stands.

Paragraph 3 applies where the receiving agency is quite unable to respond to the request for service, even where additional information or documents have been obtained.

There are two eventualities provided for: where a request falls manifestly outside the scope of the Directive, and where service is impossible owing to failure to comply with the formalities laid down in the Directive.

The first eventuality would arise, for example, where a request for service related to proceedings in a tax matter.

The second might cover, for example, requests relating to illegible documents or, conversely, to documents not accompanied by any request, or a request relating to an addressee whose address could not be established.

This paragraph might also cover failure to reply, at least within a reasonable period of time, to a request for additional information or documents made by the receiving agency pursuant to paragraph 2.

Requests sent in error to a receiving agency in a Member State other than that within whose territory the addressee is present and those which request service in particular forms which are incompatible with local law also have to be returned to the transmitting agency.

Paragraph 4 is likewise intended to prevent documents being returned to the transmitting agency simply because the receiving agency which received them did not have territorial jurisdiction, despite being in the right Member State. It therefore provides that a receiving agency which does not have competence must send the document on to the competent receiving agency in the same Member State.

The document must be sent on as stipulated in Article 4, i.e. directly and as soon as possible, by any appropriate means. Given the delay resulting from the need to send the document on, this must be done with particular dispatch.

Furthermore, in order that the transmitting agency should not remain in ignorance of what has occurred, the Convention provides that the non-competent receiving agency which sent on the document and the competent receiving agency should both notify the transmitting agency accordingly.

The territorially competent agency must notify the transmitting agency as soon as it receives the document, or within seven days at the latest, by the swiftest possible means, in the manner provided for in paragraph 1.

#### **Article 7 - Service of documents**

The receiving agency will be informed of the form of service requested by means of the particulars which the transmitting agency enters on the request form.

If the form of service requested is incompatible with the law of the Member State addressed, the document should be served in accordance with the rules laid down by that State's law provided that the transmitting agency has so requested. The same arrangement must be followed where no specific form of service has been requested by the transmitting agency.

This request may be made under point 5.2.1 of the form.

Paragraph 2 places a duty on the receiving agency to effect service with all dispatch. It must immediately take the steps required, or have them taken. However, given the difficulties which may arise, a period of one month has been set as being sufficient to allow the service procedure to be concluded.



The second sentence should not be taken to mean that the receiving agency can neglect its duty to take, or have taken, all the steps required, and then advise the transmitting agency that the necessary action has not been taken to serve the document within the requisite time limit.

The sentence in fact refers to the duty of the receiving agency to inform the transmitting agency if the procedures undertaken to effect service have so far failed.

Indeed, it may be that in some cases it has not been possible to effect service within the month, but it may be possible within a reasonable period. In that event, the receiving agency is still required to send the certificate contained in the form to the transmitting agency when the one-month time-limit runs out.

### **Article 8 - Refusal to accept a document**

The rules on language use laid down in Article 8 apply solely to the documents themselves.

With the aim of safeguarding the interests of the addressee of a document, the Directive establishes the principle that the document is to be translated into the official language of the State addressed or, if that State has more than one official language, the official language or one of the official languages of the place where service is to be effected.

In certain cases, however, translation may prove to be an unnecessary expense, or even contrary to the addressee's interests. This may happen, for example, where the addressee is a national of the State of transmission or, in any event, understands the language of that State.

It should be noted that where a document has been drawn up in, or translated into, the official language of the State addressed, or the official language or one of the official languages of the place where service is to be effected, the addressee may not refuse it on grounds relating to the use of that language.

Conversely, the addressee may refuse the document if it has not been translated and he does not understand the language in which it is drawn up.

However, the Directive does not oblige the applicant to forward the document written in or translated into one of the above languages; it allows the addressee to refuse to accept the document on the grounds that these rules have not been observed.

If a dispute arises as to whether or not the addressee of the document understands a language, it will be settled in accordance with the relevant rules, for example by raising the question of whether the document was properly served in the court seised of the procedure in connection with which it was transmitted.

The receiving agency must inform the addressee that he can refuse to accept the document if it is not in one of the languages of the place where service is effected or in an official language of the Member State of transmission that he understands.

There are various ways in which it can meet the duty to supply information imposed by this paragraph. Appropriate means will be established in each Member State according to the rules applicable to the service of documents.

Hence, where documents are served in person by a specialised agent, that agent could provide the information verbally.

If, on the other hand, documents are sent by post, the information could be given in a note attached to the documents for the addressee.

In any event, the circumstances in which the addressee was given the information must be stated in point 12 (c) of the certificate of service.

If the addressee refuses the document on account of the language used, he should let this be known within a reasonable time so as not to hold up the procedure.

It should be noted that some Member States may have concluded agreements whereby each of those States considers the others' official languages as its own. This is true, for example, of the Nordic States, which have stated that they will use Danish, Norwegian and Swedish without distinction, in accordance with the conditions laid down in the 1974 Nordic Passport Agreement.

In order to enable the transmitting agency and the applicant to take any measures they deem necessary, the receiving agency must inform the transmitting agency as soon as it is aware of the refusal of an addressee to accept a document.

#### **Article 9 - Date of service**

The provisions of this Article are intended to define the criteria relating to the date to be regarded as the date of service of a document.

In most cases the service of a document will have legal effects, and it may be important to know exactly when they arose.

Given the differences between the various Member States of the Union, both as regards procedural rules for the service of documents and as regards rules of substance, the event to be taken into account varies from one Member State to another.

When drawing up the 1997 Convention, the aim was to seek a rule that could replace the rules of domestic law in relations between Member States of the Union; this resulted in adoption of the provisions of Article 9.

The first paragraph lays down the principle that the date of service is to be the date on which the document is served in accordance with the law of the Member State addressed. It is intended to protect the addressee's rights.

Conversely, the second paragraph is intended to protect the rights of the applicant, who may have an interest in acting within a given period or on a given date. In such cases it seemed appropriate to enable him to assert his rights on a date which he can determine himself, instead of referring to an event (the service of a document in

another Member State) over which he has no direct influence and which might occur after the due date.

Article 9(1) and (2) may be applied cumulatively, so that service produces its effects at different times with regard to the addressee of the document and with regard to the applicant.

Such a situation could arise for example under the law of some States if a writ containing a summons to appear were to interrupt a period of limitation.

As regards the point at which the period of limitation is interrupted with regard to the applicant, reference must be made to the law of the Member State of transmission pursuant to Article 9(2).

However, with regard to the addressee of the document, the date to be taken into consideration for calculating the time for appearance will be the date laid down by the law of the Member State addressed.

The third paragraph provides that Member States may declare that they will not apply the provisions of this Article.

#### **Article 10 - Certificate of service and copy of the document served**

When the service procedure has been concluded, the corresponding certificate on the form must be completed.

The form must be returned to the transmitting agency, together, where applicable, with a copy of the document.

The rules on the language to be used to fill in the certificate of service are similar to those for the request for service, since the receiving agency has to use either an official language or one of the official languages of the Member State to which the document has to be sent, or a language which it has indicated it can accept that purpose.

#### **Article 11 - Costs of service**

Paragraph 1 lays down the principle that services rendered by the administrative departments of the Member State addressed are to be free of charge.

Paragraph 2, on the other hand, allows Member States to charge costs to the applicant where the service formalities are not carried out by their administrations.

An advance on these costs may be demanded before the service procedure is put in hand. The manual drawn up by the Commission will contain the relevant details, in particular whether a payment has to be made when the document is forwarded by the transmitting agency.

## **Section 2 - Other means of transmission and service of judicial documents**

This section provides for a number of subsidiary means of transmitting documents.

### **Article 12 - Transmission by consular or diplomatic channels**

This Article provides for the possibility of using diplomatic or consular channels for the transmission of documents although it specifies that such means of transmission is to be used only in exceptional cases.

As a result, it should be used only in cases of extreme difficulty, such as those instanced with respect to Article 3 (c), i.e. social or climatic circumstances which mean that the documents cannot be forwarded from one Member State to another by any other means.

### **Article 13 - Service by diplomatic or consular agents**

With this Article, the Directive incorporates a method of service traditionally permitted in international relations.

In principle it offers this possibility in respect of any person, regardless of nationality, residing in the territory of a Member State. Member States are nonetheless given the option of entering a reservation.

### **Article 14 - Service by post**

This Article establishes the principle that service may be effected by post.

However, Member States may, in order to provide guarantees for persons residing in their territory, specify the conditions under which service may be effected in their regard by post. Such conditions might for instance include the use of registered post or the application of the Convention's rules on the translation of documents.

It will be remembered that the Universal Postal Convention, to which all Member States are parties, provides in particular for the possibility of registered post.

The conditions established by Member States pursuant to paragraph 2 will if necessary be specified in the manual to be drawn up by the Commission.

### **Article 15 - Direct service**

This Article authorises any person interested in the transmission of a document covered by this Directive to contact directly the competent persons in the Member States addressed to have service effected.

This Article must not be interpreted as establishing a legal basis for accepting the direct transmission of a document by an interested party to public officers. Such direct transmission is only authorised if in accordance with the law of the Member State in which the proceedings take place.

However, since paragraph 2 allows Member States to enter a reservation in this respect, the manual drawn up by the Executive Committee should be consulted to establish whether the State in question is opposed to such procedure.

### **Chapter III - Extrajudicial Documents**

#### **Article 16**

For this concept, reference should be made to Article 1.

### **Chapter IV - Final Provisions**

#### **Article 17 - Implementing provisions**

This is a new provision, not present in the Convention. It would confer implementing powers on the Commission, in accordance with Articles 202 and 211 of the Treaty, in place of the powers conferred on the Executive Committee by Article 18 of the Convention.

The Commission is made responsible for the drawing up and updating of the manual to be used by transmitting agencies to identify receiving agencies in the other Member States to which they are to forward documents, and the preparation of a glossary of legal terms. If possible the manual will also stipulate the costs relating to service of documents pursuant to Article 11 of the Directive.

The Commission will also be responsible for making changes to the model form in the Annex and for giving effect to implementing measures for the purposes of expediting the transmission and service of documents, notably by facilitating cross-border electronic transmission in conditions of full security.

The Commission will take the requisite measures in accordance with the committee procedure prescribed by Article 18.

#### **Article 18 - Committee**

This is a new provision in relation to Article 18 of the Convention.

In giving effect to the measures implementing the Directive, the Commission will be assisted by a committee (procedure I of the "comitology" decision).

#### **Article 19 - Defendant not entering an appearance**

This Article takes over Article 19(1) and (2) of the Convention, but removes the formal reference to the 1965 Hague Convention in the heading and in paragraph 1.

It incorporates the system established in the Hague Convention of 15 November 1965 with one simple formal amendment as regards the procedures for notification by the Member States of the declaration referred to in point 1(b). It contains a number of rules designed to protect the rights of the addressees of judicial documents forwarded pursuant to this Directive.

Point 1 concerns writs of summons or equivalent documents and requires the judge to stay judgment until he is sure that the document has been served and that it was served or delivered in sufficient time to enable the defendant to prepare his defence. However, Member States which so wish are given the possibility of derogating from that rule by permitting their judges to rule after a certain period of time, provided certain conditions are fulfilled.

Point 2 concerns cases where a judgment has been entered against a defendant who has not appeared, and gives him the possibility of relief from the effects of the expiry of the time for appeal. In order to preclude legal uncertainty, which might prejudice the interests of the applicant before the original court, the Convention provides that Member States may set a limit by declaration on the time allowed for filing an application for relief.

Finally, the provisions of point 2 do not apply to matters concerning the status or capacity of persons. It seemed impossible to allow a decision in default on divorce followed by remarriage to be nullified, as the requirements of legal certainty should take precedence in this area.

#### **Article 20 - Relationship with agreements or arrangements to which Member States are parties**

This Article provides that the Directive will replace the Protocol to the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters<sup>8</sup> and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in relations between the Member States party thereto. The primacy of Community law is thereby secured.

The proposed Directive incorporates a provision taken over from other Community instruments, empowering the Member States, individually or acting in concert, to expedite the transmission of documents. It does not preclude the Member States from maintaining or adopting provisions to expedite the transmission of documents, provided they are compatible with the Directive.

The exercise of this power will be monitored by the Commission; it must be notified of draft provisions.

#### **Article 21 - Legal aid**

This Article provides that the rules on legal aid contained in any other Conventions which may apply between certain Member States are not affected.

#### **Article 22 - Protection of information transmitted**

This Article obliges receiving agencies to respect the confidentiality of information brought to their attention within the context of the exercise of their functions.

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<sup>8</sup> OJ C 27, 26.1.1968.

The receiving agencies are responsible for implementing their national law on the protection of the confidentiality of information.

The data subjects may of course avail themselves of the relevant provisions of law to obtain information on the use made of such data.

The Directive is without prejudice to the application of legislation applying to the protection of individuals in relation to the processing or personal data and the free movement of such data.

### **Article 23 - Publication**

This Article provides that the Commission is to publish in the *Official Journal of the European Communities* the information referred to in Articles 2, 3, 4, 9, 10, 13, 14, 15 and 19, which is to be supplied to it by the Member States.

### **Article 24 - Review**

This Article did not appear in the Convention.

Unlike the position in the Convention, where the monitoring function is exercised by the Executive Committee, the Commission, acting in accordance with Article 211 of the Treaty, will oversee the application of the Directive and present a report.

The Commission's responsibility will be to monitor the operation of the Directive, i.e. to collect all useful information on its implementation by the Member States. It is to examine in particular the effectiveness of the transmitting and receiving agencies, the conditions under which the central agencies receive direct requests for service of documents and the application of the provisions on the date of service.

That careful monitoring of certain provisions of the Directive should allow the Committee to establish whether rules which appeared to cause certain countries implementing difficulties are applied without difficulty by others and could have their scope extended. The information the Commission collects in this way should thus be of particular interest to Member States for their reciprocal information. It will also be the subject of regular reports to the Council, the European Parliament and the Economic and Social Committee, the first three years after adoption of the Directive and subsequently every five years.

The reports will be accompanied if need be by proposals for adaptations to the service arrangements.

### **Article 25 - Transposal**

This is a new provision in relation to the Convention.

It is the standard provision for implementation by the Member States of the provisions required for conformity with the Directive in accordance with Article 249 of the Treaty.

The Commission proposal is that by 30 June 2000 the Member States shall adopt all the measures needed to comply with the Directive and notify to the Commission the text of the provisions they adopt in the field covered by the Directive.

The Member States are to apply the measures from 1 October 2000.

**Article 26 - Entry into force**

This is a new provision in relation to the Convention.

It states when the Directive will enter into force, in accordance with Article 254 of the Treaty.

**Article 27 - Addressees**

This is a new provision in relation to the Convention. It states that the Directive is addressed to the Member States.



Proposal for a  
**COUNCIL DIRECTIVE**

**on the service in the Member States of judicial and extrajudicial documents  
in civil or commercial matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (c) of Article 61 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the Opinion of the European Parliament<sup>2</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>3</sup>,

- (1) Whereas the Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice, in which the free movement of persons is assured; whereas to establish such an area the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the sound operation of the internal market;
- (2) Whereas the sound operation of the internal market entails the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States;
- (3) Whereas this is a subject now falling within the ambit of Article 65 of the Treaty;
- (4) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose;
- (5) Whereas the Council, by Act dated 26 May 1997<sup>4</sup>, concluded a Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters and recommended it for adoption by the Member States in accordance with their respective

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<sup>1</sup> O J C

<sup>2</sup> O J C

<sup>3</sup> O J C

<sup>4</sup> O J C 261, 27.8.1997, p. 1.

constitutional requirements; whereas that Convention has not entered into force; whereas continuity in the results of the negotiations for conclusion of the Convention should be ensured; whereas the content of this Regulation is substantially taken over from it;

- (6) Whereas efficiency and speed in judicial procedures in civil matters means that the transmission of judicial and extrajudicial documents is to be made direct and by rapid means between bodies designated by the Member States; whereas, however, the Member States may indicate their intention of preserving central bodies for a transitional period of five years; whereas this transitional arrangement is warranted by the need to adapt the Member States' existing systems for transmission;
- (7) Whereas speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the document received are observed; whereas security in transmission requires that the document to be transmitted be accompanied by a pre-printed form, to be completed in the language of the place where service is to be effected, or in another language accepted by the Member State in question;
- (8) Whereas, to secure the effectiveness of the Directive, the possibility of refusing service of documents is confined to exceptional situations;
- (9) Whereas speed of transmission warrants documents being served within days of reception of the document; whereas, however, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency; whereas the expiry of this period should not imply that the request be returned to the transmitting body where it is clear that service is feasible within a reasonable period;
- (10) Whereas, for the protection of the addressee's interests, service should be effected in the language of the place where it is to be effected or in one of the languages of the originating Member State which the addressee understands;
- (11) Whereas, given the differences between the Member States as regards their rules of procedure, the material date for the purposes of service varies from one Member State to another; whereas in such situations this Directive should provide for a double-date system, where it is the law of the receiving Member State which determines it, unless the relevant documents are to be served within a specified period; whereas the purpose of this is to protect both the addressee and the requesting party;
- (12) Whereas this Directive prevails over the provisions applying to these matters, contained in international conventions concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters<sup>5</sup> and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial

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<sup>5</sup> OJ C 27, 26.1.1998, p. 24.

Documents in Civil or Commercial Matters, in relations between the Member States party thereto; whereas the Directive does not preclude Member States from maintaining or adopting measures to expedite the transmission of documents, provided that they are compatible with the Directive;

- (13) Whereas the information transmitted pursuant to this Directive should enjoy suitable protection; whereas the matter falls within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>6</sup>, and of Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>7</sup>;
- (14) Whereas the Commission should be empowered to give effect to measures implementing this Directive; whereas to that end it should be assisted by an advisory committee;
- (15) Whereas, no later than three years after the date of entry into force of this Directive, the Commission should review its application and propose such amendments as may appear necessary;
- (16) Whereas, in accordance with Articles 1 and 2 of the Protocols on the position of the United Kingdom and Ireland and on the position of Denmark, those Member States are not participating in the adoption of this Directive; whereas this Directive is accordingly not binding on the United Kingdom, Ireland or Denmark, nor is it applicable in their regard,

HAS ADOPTED THIS DIRECTIVE:

## **Chapter I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### *Scope*

1. This Directive shall apply in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.
2. This Directive shall not apply where the address of the person to be served with the document is not known.

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<sup>6</sup> OJ L 281, 23.11.1995, p. 31.

<sup>7</sup> OJ L 24, 30.1.1998, p. 1.

## *Article 2*

### *Transmitting and receiving agencies*

1. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another Member State.
2. Each Member State shall designate the public officers, authorities or other persons, hereinafter referred to as 'receiving agencies', competent for the receipt of judicial or extrajudicial documents from another Member State.
3. A Member State may designate one transmitting agency and one receiving agency or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.
4. Each Member State shall provide the Commission with the following information:
  - (a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;
  - (b) the geographical areas in which they have jurisdiction;
  - (c) the means of receipt of documents available to them; and
  - (d) the languages that may be used for the completion of the standard form in the Annex.

The Member States shall notify the Commission of any subsequent modification of such information.

## *Article 3*

### *Central body*

Each Member State shall designate a central body responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
- (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

## **Chapter II**

### **JUDICIAL DOCUMENTS**

#### **SECTION 1**

#### **TRANSMISSION AND SERVICE OF JUDICIAL DOCUMENTS**

##### *Article 4*

##### *Transmission of documents*

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated on the basis of Article 2.
2. The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.
3. The document to be transmitted shall be accompanied by a request drawn up using the standard form in the Annex. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.
4. The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.
5. When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.

##### *Article 5*

##### *Translation of documents*

1. The applicant shall be advised by the transmitting agency to which he or she forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

#### *Article 6*

##### *Receipt of documents by receiving agency*

1. A receiving agency, on receipt of a document, shall, as soon as possible and in any event within seven days of receipt thereof, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form in the Annex.
2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.
3. If the request for service is manifestly outside the scope of this Directive or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return in the standard form in the Annex.
4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly, using the standard form in the Annex. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

#### *Article 7*

##### *Service of documents*

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency, unless such a method is incompatible with the law of that Member State.
2. All steps required for service of the document shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency by means of the certificate in the standard form in the Annex, which shall be drawn up under the conditions referred to in Article 10(2). The period shall be calculated in accordance with the law of the Member State addressed.

## Article 8

### *Refusal to accept a document*

1. The receiving agency shall inform the addressee that he or she may refuse to accept the document to be served if it is in a language other than either of the following languages:
  - (a) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected; or
  - (b) a language of the Member State of transmission which the addressee understands.
2. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

## Article 9

### *Date of service*

1. The date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed, without prejudice to Article 8.
2. Where a document must be served within a particular period in the context of proceedings to be brought or pending in the Member State of origin, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.
3. Each Member State may declare that it will not apply paragraphs 1 and 2.

## Article 10

### *Certificate of service and copy of the document served*

1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form in the Annex and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.
2. The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the European Union other than its own which is or are acceptable to it for completion of the form.

*Article 11*

*Costs of service*

1. The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.
2. The applicant shall pay or reimburse the costs occasioned by:
  - (a) the employment of a judicial officer or of a person competent under the law of the Member State addressed;
  - (b) the use of a particular method of service.

**SECTION 2**

**OTHER MEANS OF TRANSMISSION AND SERVICE  
OF JUDICIAL DOCUMENTS**

*Article 12*

*Transmission by consular or diplomatic channels*

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Article 2 or 3.

*Article 13*

*Service by diplomatic or consular agents*

Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

Any Member State may declare that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

*Article 14*

*Service by post*

1. Each Member State shall be free to effect service of judicial documents directly by post to persons residing in another Member State.
2. Any Member State may specify the conditions under which it will accept service of judicial documents by post.



## *Article 15*

### *Direct service*

1. This Directive shall not interfere with the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed.
2. Any Member State may declare that it is opposed to the service of judicial documents in its territory pursuant to paragraph 1.

## **Chapter III**

### **EXTRAJUDICIAL DOCUMENTS**

## *Article 16*

### *Transmission*

Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Directive.

## **Chapter IV**

### **FINAL PROVISIONS**

## *Article 17*

### *Implementing rules*

The Commission shall adopt, in accordance with the procedure prescribed by Article 18, rules for the purposes of:

- (a) drawing up and annually updating a manual containing the information provided by Member States in accordance with Article 2(4);
- (b) drawing up a glossary in the official languages of the European Union of documents which can be served under this Directive;
- (c) making amendments to the standard form shown in the Annex;
- (d) giving effect to implementing measures to expedite the transmission and service of documents.

## Article 18

### Committee

The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

## Article 19

### *Defendant not entering an appearance*

1. Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Directive, and the defendant has not appeared, judgment shall not be given until it is established that:

- (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Directive;

and that in either of these cases the service or the delivery was affected in sufficient time to enable the defendant to defend.

2. Each Member State shall be free to declare that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- (a) the document was transmitted by one of the methods provided for in this Directive;
- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;

- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.
3. Notwithstanding the provisions of paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.
  4. When a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service, under the provisions of this Directive, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled:
    - (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
    - (b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may declare that such application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

5. Paragraph 4 shall not apply to judgments concerning status or capacity of persons.

#### *Article 20*

##### *Relationship with agreements or arrangements to which Member States are parties*

1. This Directive shall, in relation to matters to which it applies, prevail over other provisions contained in conventions concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
2. This Directive shall not preclude the maintenance or adoption of provisions to expedite the transmission of documents provided that they are compatible with the Directive. Member States shall notify the Commission of drafts of the measures which they propose to adopt.

## Article 21

### *Legal aid*

This Directive shall not affect the application of Article 23 of the Convention on civil procedure of 17 July 1905, Article 24 of the Convention on civil procedure of 1 March 1954 or Article 13 of the Convention on international access to justice of 25 October 1980 between the Member States parties to these Conventions.

## Article 22

### *Protection of information transmitted*

1. Information, including in particular personal data, transmitted under this Directive shall be used by the receiving agency only for the purpose for which it was transmitted.
2. Receiving agencies shall ensure the confidentiality of such information, in accordance with their national law.
3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Directive.
4. This Directive shall be without prejudice to Directives 95/46/EC and 97/66/EC.

## Article 23

### *Publication*

The Commission shall publish in the *Official Journal of the European Communities* the information referred to in Articles 2, 3, 4, 9, 10, 13, 14, 15 and 19 and furnished by the Member States.

## Article 24

### *Review*

No later than three years after the date of entry into force of this Directive, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, paying special attention to the effectiveness of the bodies designated pursuant to Article 2 and to the practical application of point (c) of Article 3 and Article 9. The report shall be accompanied if need be by proposals for adaptations of this Directive in line with the evolution of notification systems.

*Article 25*

*Transposal*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 2000. They shall forthwith inform the Commission thereof. They shall apply these provisions with effect from 1 October 2000.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall immediately notify to the Commission all provisions of domestic law which they adopt in the field governed by this Directive.

*Article 26*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

*Article 27*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*

## ANNEX

<b>REQUEST FOR SERVICE OF DOCUMENTS</b> <b>(Article 4(3) of the Directive)</b>
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Reference No. . (\*) This item is optional

### 1. TRANSMITTING AGENCY

- 1.1. Identity: .
- 1.2. Address:
  - 1.2.1. Street and Number/PO Box: .
  - 1.2.2. Place and Code: .
  - 1.2.3. Country: .
- 1.3. Tel. No.: .
- 1.4. Fax No.: (\*) .
- 1.5. E-mail (\*): .

### 2. RECEIVING AGENCY

- 2.1. Identity: .
- 2.2. Address:
  - 2.2.1. Street and Number/PO Box: .
  - 2.2.2. Place and Code: .
  - 2.2.3. Country: .
- 2.3. Tel. No.: .
- 2.4. Fax No.: (\*) .
- 2.5. E-mail (\*): .

### 3. APPLICANT

- 3.1. Identity: .
- 3.2. Address:
  - 3.2.1. Street and Number/PO Box: .
  - 3.2.2. Place and Code: .
  - 3.2.3. Country: .
- 3.3. Tel. No.: (\*) .
- 3.4. Fax No.: (\*) .
- 3.5. E-mail (\*): .

### 4. ADDRESSEE

- 4.1. Identity: .
- 4.2. Address:
  - 4.2.1. Street and Number/PO Box: .
  - 4.2.2. Place and Code: .
  - 4.2.3. Country: .
- 4.3. Tel. No.: (\*) .
- 4.4. Fax No.: (\*) .
- 4.5. E-mail (\*): .
- 4.6. Identification number/social security number/organisation number/or equivalent (\*): .

### 5. METHOD OF SERVICE

- 5.1. In accordance with the law of the Member State addressed
- 5.2. By the following particular method: .
  - 5.2.1. If this method is incompatible with the law of the Member State addressed, the document(s) should be served in accordance with the law:
    - 5.2.1.1. yes
    - 5.2.1.2. no

6. DOCUMENT TO BE SERVED

(a) 6.1. Nature of the document

6.1.1. Judicial

6.1.1.1. writ of summons

6.1.1.2. judgment

6.1.1.3. appeal

6.1.1.4. other: .

6.1.2 Extrajudicial

(b) 6.2. Date or time-limit stated in the document (\*):

(c) 6.3. Language of document:

6.3.1. original D EN DK ES FIN FR GR IT NL P S others: .

6.3.2. translation (\*) D EN DK ES FIN FR GR IT NL P S others: .

(d) 6.4. Number of enclosures: .

7. A COPY OF DOCUMENT TO BE RETURNED WITH THE CERTIFICATE OF SERVICE

(Article 4 (5) of the Directive)

7.1. Yes (in this case send two copies of the document to be served)

7.2 No

- |  |
|--|
| <p><b>1. You are required by Article 7(2) of the Directive to effect all steps required for service of the document as soon as possible. In any event, if it is not possible for you to effect service within one month of receipt, you must inform this Agency by means of the certificate provided for in point 13.</b></p> <p><b>2. If you cannot fulfil this request for service on the basis of the information or documents transmitted, you are required by Article 6(2) of the Directive to contact this Agency by the swiftest possible means in order to secure the missing information or document.</b></p> |
|--|

Done at: .,

Date: .

Signature and/or stamp: .

Reference No. of the receiving agency: .

**ACKNOWLEDGEMENT OF RECEIPT**  
**(Article 6 (1) of the Directive)**

**This acknowledgement must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.**

8. DATE OF RECEIPT: .

Done at: .,

Date: .

Signature and/or stamp: .



**NOTICE OF RETURN OF REQUEST AND DOCUMENT**  
**(Article 6(3) of the Directive)**

**The request and document must be returned on receipt.**

**9. REASON FOR RETURN: .**

- 9.1. The request is manifestly outside the scope of the Directive:
  - 9.1.1. the document is not civil or commercial.
  - 9.1.2. the service is not from one Member State to another Member State
- 9.2. Non-compliance with formal conditions required makes service impossible:
  - 9.2.1. the document is not easily legible
  - 9.2.2. the language used to complete the form is incorrect
  - 9.2.3. the document received is not a true and faithful copy
  - 9.2.4. other (please give details): .
- 9.3. The method of service is incompatible with the law of that Member State (Article 7 (1) of the Directive)

Done at: .,

Date: .

Signature and/or stamp: .

**NOTICE OF RETRANSMISSION OF REQUEST AND DOCUMENT  
TO THE APPROPRIATE RECEIVING AGENCY  
(Article 6(4) of the Directive)**

**The request and document were forwarded on to the following receiving agency, which has territorial jurisdiction to serve it:**

10.1. IDENTITY: .

10.2. Address:

10.2.1. Street and Number/PO Box: .

10.2.2. Place and Code: .

10.2.3. Country: .

10.3. Tel. No.: .

10.4. Fax No. (\*): .

10.5. E-mail (\*): .

Done at: .,

Date: .

Signature and/or stamp: .

Reference No of the appropriate receiving agency: .

**NOTICE OF RECEIPT BY THE APPROPRIATE RECEIVING AGENCY TO THE  
TRANSMITTING AGENCY**

**(Article 6(4) of the Directive)**

**This notice must be sent by the swiftest possible means of transmission as soon as possible after receipt of the document and in any event within seven days of receipt.**

11. DATE OF RECEIPT: .

Done at: .,

Date: .

Signature and/or stamp: .

**CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS**  
**(Article 10 of the Directive)**

**The service shall be effected as soon as possible. In any event, if it has not been possible to effect service within one month of receipt, the receiving agency shall inform the transmitting agency (according to Article 7(2) of the Directive).**

**12. COMPLETION OF SERVICE**

(a) 12.1. Date and address of service: .

(b) 12.2. The document was

(A) 12.2.1. served in accordance with the law of the Member State addressed, namely

12.2.1.1. handed to

12.2.1.1.1. the addressee in person

12.2.1.1.2. another person

12.2.1.1.2.1. Name: .

12.2.1.1.2.2. Address: .

12.2.1.1.2.2.1. Street and Number/PO Box: .

12.2.1.1.2.2.2. Place and Code: .

12.2.1.1.2.2.3. Country: .

12.2.1.1.2.3. Relation to the addressee:

Family

Employee

Others

12.2.1.1.3. the addressee's address

12.2.1.2. served by post

12.2.1.2.1. without acknowledgement of receipt

12.2.1.2.2. with the enclosed acknowledgement of receipt

12.2.1.2.2.1. from the addressee

12.2.1.2.2.2. another person

12.2.1.2.2.2.1. Name: .

12.2.1.2.2.2.2. Address: .

12.2.1.2.2.2.2.1. Street and Number/PO Box: .

12.2.1.2.2.2.2.2. Place and Code: .

12.2.1.2.2.2.2.3. Country: .

12.2.1.2.2.2.3. Relation to the addressee:

Family

Employee

Others

12.2.1.3. other method (please say how) .

(B) 12.2.2. served by the following particular method (please say how): .

(c) 12.3. The addressee of the document was informed (orally) (in writing) that he or she may refuse to accept it if it was not in an official language of the place of service or in an official language of the state of transmission which he or she understands.

**13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2)**

It was not possible to effect service within one month of receipt.

**14. REFUSAL OF DOCUMENT**

The addressee refused to accept the document on account of the language used. The documents are annexed to this certificate.

**15. REASON FOR NON-SERVICE OF DOCUMENT**

15.1. Address unknown

15.2. Addressee cannot be located

15.3. Document could not be served before the date or time-limit stated in point 6.2.

15.4 Others (please specify): .

The documents are annexed to this certificate.

Done at: .,

Date: .

Signature and/or stamp: .

## **FINANCIAL STATEMENT**

### **1. TITLE OF OPERATION**

Proposal for a Council Directive on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters

### **2. BUDGET HEADING INVOLVED**

B5-800

### **3. LEGAL BASIS**

Article 61(c)

### **4. DESCRIPTION OF OPERATION**

#### **4.1 General objective**

The objectives of the proposal are to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters in the internal market. These objectives are part of the Union's objective of establishing an area of freedom, security and justice.

#### **4.2 Period covered and arrangements for renewal**

Indefinite

### **5. CLASSIFICATION OF EXPENDITURE OR REVENUE**

5.1 NCE (non-compulsory expenditure)

5.2 DA (dissociated appropriations)

### **6. TYPE OF EXPENDITURE**

Public contract

## 7. FINANCIAL IMPACT (PART B)

€ thousand

Budget item (No and title)	2000	2001	2002	2003	2004	Calculation method
B5-800 Publications	37.5  112.5					Manual and glossary to be designed (tendering procedure): €25 000 + €12 500  Manual and glossary to be printed and distributed: €75 000 + €37 500  Manual to be updated: €50 000
Total	150	50	50	50	50	

## 8. FRAUD PREVENTION MEASURES

The provisions governing the award, control and audit of public contracts will apply.

## 9. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

### 9.1 Specific and quantified objectives; target population

All operators and individuals will enjoy the benefit of the Directive as the purpose is to establish an area of freedom, security and justice in which the free movement of persons is assured and litigants can assert their rights, enjoying facilities equivalent to those they enjoy in the courts of their own country.

### 9.2 Grounds for the operation

The transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States is essential for the sound operation of procedures and must be effected in the right conditions.

To ensure that in practice the bodies empowered to transmit and receive judicial documents to and from other Member States are in a position to perform their function easily and without delays, the Directive provides for the preparation of a manual of information supplied by the Member States and a glossary of documents that may require to be served in all the official languages.

The Directive provides for an advisory committee to assist the Commission in preparing implementing measures.

### 9.3 Monitoring and evaluation of the operation

Article 23 of the proposed Directive requires the Commission to report to the European Parliament and the Council on its operation, no later than three years after the date of its adoption.

## 10. ADMINISTRATIVE EXPENDITURE (SECTION III, PART A OF THE BUDGET)

Actual mobilisation of the necessary administrative resources will depend on the Commission's annual decision on the allocation of resources, taking into account the number of staff and additional amounts authorised by the budgetary authority.

### 10.1 Effect on the number of posts

Type of post		Staff to be assigned to managing the operation		Source		Duration
		Permanent posts	Temporary posts	Existing resources in the DG or department concerned	Additional resources	
Officials or temporary staff	A					2000-2003
	B	0.5		0.5		
	C	0.5		0.5		
Other resources						
Total		1.0		1.0		

### 10.2 Overall financial impact of additional human resources

€

Type of post		Staff to be assigned to managing the operation		Annual Cost
		Permanent posts	Temporary posts	
Officials or temporary staff	A			
	B	€54 000		
	C	€54 000		
Other resources				
Total		€108 000		

### 10.3 Increase in other administrative expenditure as a result of the operation

€ thousand

Budget item (No and title)	2000	2001	2002	2003	2004	Calculation method
A-7031 Committee (compulsory)	19.5					1 <sup>st</sup> year: 15 experts representing Member States meeting twice: 2 x €9 750 = €19 500
		9.75	9.75	9.75	9.75	2 <sup>nd</sup> and subsequent years: one meeting @ €9 750
A-7050 Studies and publications				30		Study for preparation of report on application of Directive
Total	19.5	9.75	9.75	39.75	9.75	

This expenditure will be covered from the resources of the relevant Directorate-General.



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