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REPORT

on the proposal for a Council directive on the service in the Member States of
judicial and extrajudicial documents in civil or commercial matters
(COM(1999)219 – C5-0044/1999 – 1999/0102(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Kurt Lechner

Draftsman of the opinion*:

Mrs Diana Paulette Wallis, Committee on Legal Affairs and the Internal Market

(*The Hughes procedure)

Symbols for procedures

- * : Consultation procedure
majority of the votes cast
- **I : Cooperation procedure (first reading)
majority of the votes cast
- **II : Cooperation procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- *** : Assent procedure
majority of Parliament's component Members, except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty
- ***I : Codecision procedure (first reading)
majority of the votes cast
- ***II : Codecision procedure (second reading)
majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend the common position
- ***III : Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Abbreviations for committees

- I. AFET: Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy
- II. BUDG: Committee on Budgets
- III. CONT: Committee on Budgetary Control
- IV. LIBE: Committee on Citizens' Freedoms and Rights, Justice and Home Affairs
- V. ECON: Committee on Economic and Monetary Affairs
- VI. JURI: Committee on Legal Affairs and the Internal Market
- VII. INDU: Committee on Industry, External Trade, Research and Energy
- VIII. EMPL: Committee on Employment and Social Affairs
- IX. ENVI: Committee on the Environment, Public Health and Consumer Policy
- X. AGRI: Committee on Agriculture and Rural Development
- XI. PECH: Committee on Fisheries
- XII. REGI: Committee on Regional Policy, Transport and Tourism
- XIII. CULT: Committee on Culture, Youth, Education, the Media and Sport
- XIV. DEVE: Committee on Development and Cooperation
- XV. AFCO: Committee on Constitutional Affairs
- XVI. FEMM: Committee on Women's Rights and Equal Opportunities
- XVII. PETI: Committee on Petitions

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(*The Hughes Procedure)

Procedural page

By letter of 14 July 1999, the Council consulted Parliament, pursuant to Rule 61(c) of the EC Treaty, on the proposal for a Council directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

At the sitting of 23 July 1999, the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion.

At its meeting of 29 July 1999, the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Mr Kurt Lechner rapporteur.

At the sitting of 17 September 1999, the President announced that this report would be drawn up in accordance with the Hughes procedure by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs together with the committee asked for its opinion.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs considered the Commission proposal and the draft report at its meetings of 22 September, 19 October and 9 November 1999.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Watson, chairman; Evans and Ferri, vice-chairmen; Lechner, rapporteur; Andersson, Banotti, Boumediène-Thiery, Cappato, Cashman, Ceyhun, Coelho, Cornillet, Deprez, Di Pietro, Fiori (for Buttiglione pursuant to Rule 153(2)), Frahm, Gebhardt, Jeggle (for Berlusconi pursuant to Rule 153(2)), Kessler, Kirkhope, Klamt, Krivine, Ludford, Lund, Newton-Dunn, Paciotti, Pirker, Roure, Schmid, Schultz, Sousa Pinto, Swiebel, Sylla, Turco, Van Lancker, Vattimo and Wiebenga.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 11 November 1999.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(1999) 219 – C5-0044/1999 – 1999/0102 (CNS))

The proposal is approved with the following amendments:

Text proposed by the Commission¹

Amendments by Parliament

(Amendment 1)
Title and text

Replace the word ‘directive’ by regulation throughout the text

Justification:

The advantage of regulations is that they allow the rapid, transparent and homogenous implementation of the Community text, in line with the intended objective. This type of instrument has already been chosen, moreover, for the ‘communitarisation’ of other conventions currently being considered.

(Amendment 2)
Article 1, paragraph 2

2. This Directive shall not apply where the address of the person to be served with the document is not known.

2. This Directive shall not apply where the address of the domicile or principal place of residence of the person to be served with the document is not known.

Justification:

It seems preferable to specify more clearly what is meant by the address of the addressee by referring to his domicile and/or principal place of residence.

(Amendment 3)
Article 2, paragraph 3

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

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

¹ OJ C 247, 31.08.1999, p. 11.

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.

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. Nevertheless, these exceptions are only possible if the system for the transmission of judicial and extrajudicial documents of the Member State concerned does not authorise direct transmission.

Justification:

In order to promote direct transmission, it seems advisable to restrict, as an exceptional measure, the option of designation by a Member State of one single transmitting agency and/or one single receiving agency or several agencies.

(Amendment 4)
Article 3, paragraph 1(b)

(b) seeking solutions to any difficulties which may arise during transmission of documents for service;

(b) seeking solutions to any difficulties which may arise during transmission of documents for service, including assistance in the case of a wrong address;

(Amendment 5)
Article 3(d) (new)

(d) providing assistance in the event of language problems, in particular information concerning the use of languages and the possibility of obtaining translations.

(Amendment 6)
Article 3(e) (new)

(e) drawing up a concise guide to the law relating to the use of languages in the Member States, together with a list of approved translators and translation agencies.

Justification:

These three amendments add to the list of the central body's tasks with a view to increasing efficiency and effectiveness.

(Amendment 7)
Article 6(2)a (new)

2a. If there are legitimate doubts as to whether or not a request for service falls within the scope of this Directive, the opinion of the applicant body shall prevail, subject to the exception provided for in the following paragraph.

Justification:

The purpose of this amendment, which is paired with Amendment 8, is to make it clear that the receiving agency is required to accept the opinion of the transmitting agency if the latter decides that a document falls within the scope of the directive. An exception would be made to this rule if an obvious mistake had occurred, in which case the receiving agency would be entitled to return the request and the documents transmitted.

(Amendment 8)
Article 6(3)

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.

3. If, as a result of an obvious mistake, the request for service does not fall within 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.

Justification:

See justification to Amendment 7.

(Amendment 9)
Article 9(3)

3. Each Member State may declare that it will not apply paragraphs 1 and 2. Delete

Justification:

This exception diminishes the force of the text.

(Amendment 10)
(Article 11, paragraph 1)

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.

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, nor any contribution to a given transmitting agency, a given receiving agency or the central agency.

Justification:

This amendment makes the text more precise in order to ensure that the service of documents is free of charge.

(Amendment 11)
Article 11(2)

2. The applicant shall pay or reimburse the costs occasioned by:

- (a) the employment of a judicial officer for of a person competent under the law of the Member State addressed;
- (b) the use of a particular method of service.

2. When required under the law of the Member State addressed, the applicant shall pay or reimburse the costs occasioned by:

- (a) the employment of a judicial officer for of a person competent under the law of the Member State addressed;
- (b) the use of a particular method of service.

Justification:

Technical stipulation.

(Amendment 12)

Article 13

1. 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.

1. Each Member State shall be free, in exceptional circumstances, 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.

Justification:

By making service by consular or diplomatic channels exceptional, this amendments seeks to promote direct transmission.

(Amendment 13)

Article 15(2)

2. Any Member State may declare that it is opposed to the service of judicial documents in its territory pursuant to paragraph 1. Delete

Justification:

This exception diminishes the force of the text.

(Amendment 14)

Article 17(c)

- (c) making amendments to the standard form shown in the Annex; (c) making amendments to the standard forms shown in the Annex ;

Justification:

There are several forms in the Annex.

(Amendment 15)

Article 21

This Directive shall not affect the application of Article 23 of the Convention on civil

This Directive shall be without prejudice to the relevant law relating to legal aid and, in

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

particular, to Article 23 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

Justification:

These amendments are justified from a technical point of view.

(Amendment 16)
Article 24

... The report shall be accompanied if need be by proposals for adaptations of this directive in line with the evolution of notification systems.

... The report shall also cover those aspects of legal transactions and the service of documents performed by electronic means for which a European regulatory framework should be devised at an early stage.

Justification:

Adaptation of the text to new technologies.

(Amendment 17)
Article 17

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. 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

12.2.1.0. served by ... (capacity), address ..., telephone no ..., fax no

...

12.2.1.1. handed to

Justification:

Technical stipulations.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution of the European Parliament on the proposal for a Council directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(1999) 219 – C5-0044/1999 – 1999/0102(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(1999)219)¹,
 - having been consulted by the Council pursuant to Article 61c of the EC Treaty (C5-0044/1999),
 - having regard to Rule 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinion of its Committee on Legal Affairs and the Internal Market (A5-0060/1999),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 247, 31.08.1999, p. 11.

EXPLANATORY STATEMENT

Introduction

Strengthening judicial cooperation is an important stage in the creation of a European judicial area. At a time when the movement of persons, goods and services is gathering pace in particular in the European internal market, it is essential that cross-border procedures operate swiftly and securely. It is thus indispensable to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States. The Hague Convention of 15 November 1965 in this field and various bilateral or regional instruments have proved inadequate and a source of confusion, error and inefficiency. Work thus began, on the basis of a mandate given by the Council of Ministers of Justice on 29-30 October 1993 to an ad hoc group entitled 'the Working Party on simplification of Document transmission'. This work resulted in the conclusion of the Convention on the service in the Member State of the European Union of judicial and extrajudicial documents in civil or commercial matters of 26 May 1997 on the basis of Article K.3(2) of the Union Treaty. This Convention was not ratified by the Member States before the entry into force of the Amsterdam Treaty. The Commission thus decided, on the basis of Articles 61(c) and 65 of the EC Treaty which 'communitarise' judicial cooperation, to submit the earlier text of the 1997 Convention in the form of a proposal for a directive. The transposition of this Convention into a Community act will allow the homogenous implementation of its provisions within a short period of time. According to Article 67 of the EC Treaty, the Directive must be adopted by the Council unanimously and will not apply to the United Kingdom, Ireland and Denmark unless they waive their opt-out. However, the first two countries expressed their desire to be fully involved in the activities of the Community in judicial cooperation at a meeting of the Council of Justice Ministers in March 1999. Denmark, however, did not indicate its desire to waive its opt-out. The thrust of the proposal for a directive and the principal changes it makes to the previous Hague Convention of 1965 are summarised below.

1. Scope

The directive (Article 1) will cover only the transmission of documents in civil and commercial matters. It concerns both judicial and extra-judicial documents (notarial deeds or writs). For the definition of this type of document, reference must be made to the law of the Member State of transmission or the Member State addressed and the ECJ's interpretation.

Criminal and tax cases fall outside the scope of the Directive, but not civil actions heard in the context of those proceedings.

Article 1(2) provides that the Directive shall not apply to a requested Member State where the address of the person on whom a document is to be served is unknown. However, if the address is merely incomplete or incorrect, this provision does not mean that the Member State receiving an application need not carry out the necessary investigations.

System of serving documents

1. The agencies concerned

Article 2 establishes the general principle of the direct transmission of documents for service between decentralised agencies. This is one of the key innovations of the Directive. It thereby seeks to bypass the intervening stages which at present still complicate and slow down the dispatch of a document from a Member State of transmission and its service in the Member State addressed.

(a) Transmitting and receiving agencies

In order to facilitate the dispatch and service procedure, the Member States shall designate transmitting and receiving agencies (public officers, judicial or administrative authorities) entrusted with implementing this procedure. 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.

(b) Central bodies

Article 3 of the Directive also provides for the establishment of central bodies. The central body will not normally be responsible itself for transmitting documents, but will provide information and facilitate the task of the transmitting agencies and the receiving agencies (for example by determining which is the receiving agency in the absence of adequate information; providing information on the action taken after the document's transmission, etc.) In exceptional circumstances (Article 3(c)) for example if Court buildings have been destroyed by fire or if a general strike or a natural catastrophe has brought to a standstill the services in the region of the Member State addressed where the document was to be served, transmission of a document to the central body of the Member State addressed could be acceptable.

2. Transmission of judicial documents

Documents must be sent directly and as soon as possible 'by any appropriate means' (Article 4) between the agencies designated. The Directive does not list the means of transmission which may be used. Each body concerned may choose one of the procedures allowed under domestic law. Documents forwarded must be accompanied by a completed form (as indicated in the manual) either in the official language/languages of the state addressed or another language of the EU which the state addressed has indicated that it can accept. The particulars entered on the form do not require translation (a glossary of the main legal terms likely to be used when filling out the form will be drawn up by the Commission in all official languages of the European Union).

No legalisation procedure is required. However, this flexibility to choose the means of transmission must not be allowed to prejudice (legibility, for instance) the interests of the

addressee (Article 4(2)). Article 12 provides, in exceptional circumstances (see the circumstances referred to above), for the possibility of transmission by consular or diplomatic channels.

3. Translation of documents

Translation of documents is not mandatory. However, the transmitting agency must advise the applicant (Article 5) that the addressee may refuse to accept a document because of the language used in accordance with Article 8 of the Directive.

If the applicant chooses to have the document translated, he will have to pay the costs of translation in advance.

4. Receipt of documents by the receiving agency

(a) Speed is mandatory:

The receiving agency must (Article 6) send its receipt as soon as possible (within seven days at the most) to the transmitting agency.

Where a request falls manifestly outside the scope of the Directive or fails to comply with the formalities, the receiving agency shall return the requests and the documents transmitted to the transmitting agency. If, on the other hand the receiving agency has no territorial jurisdiction, it shall forward the request to the competent receiving agency and notify the transmitting agency.

(b) Refusal to accept a document

The addressee may refuse a document if it is drawn up in a language other than the official language/languages of the State addressed or a language that he doesn't understand (Article 8). The receiving agency must inform the transmitting agency of this refusal immediately. Translation with the cost it entails may serve no purpose, for example, where the addressee is a national of the State of transmission, or, in any event, understands the language of that State. This is also the case where Member States have concluded agreements (the Nordic States have stated that they will use Danish, Norwegian and Swedish without distinction). The Directive does not therefore make translation of documents mandatory. However, in order to safeguard the interests of the addressee it entitles him to refuse documents.

5. Service of documents

(a) Documents must be served as rapidly as possible.

As in the case of the receipt, the service of documents must be carried out by the receiving agency with all dispatch. However, if after one month (Article 7(2)) the document has not yet been served, the receiving agency is required to notify the transmitting agency of this delay and the reasons thereof.

Documents may in principle be served by post subject to a number of conditions specified by

the Member States, such as registered post (Article 14). They may also be served by diplomatic or consular agents; this method of service traditionally permitted in international relations is maintained (Article 13). Any person interested in the transmission of a document may directly address the relevant authorities of the State addressed to have service effected.

(b) Date of service

In most cases the service of a document will have important legal effects. However, both the procedural rules and the rules of substance governing the date to be taken into account vary from one Member State to another. In drawing up the 1977 Convention the principle was adopted that the date of service was the date on which the document was served in accordance with the law of the Member State addressed. This is intended to protect the addressee's rights.

However, in order to protect the rights of the applicant, who may have an interest in acting within a given period or on a given date, the Directive (Article 9(2)) provides that the date laid down by the law of the Member State addressed applies.

(c) Costs of service

Article 11 lays down the principle that services rendered by the administrative departments of the Member State addressed are to be free of charge. On the other hand, Member States may charge costs to the applicant, where the service formalities are not carried out by their administrations.

The entire system applies also to extra-judicial documents (Article 16)

III. Final Provisions

1. Implementation of the Directive

(a) The Commission's monitoring role

The Commission is responsible for practical tasks which are indispensable if the Directive is to function properly, namely:

- drawing up and updating the manual to be used by transmitting agencies;
- making changes to the various forms used;
- updating and re-examining the lists of decentralised agencies;

The Commission is assisted by a committee.

(b) Review of the Directive

Three years after the entry into force of the 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 and, if need be, proposals to increase its effectiveness.

2. Defendant not entering an appearance

In accordance with the Hague Convention, the Directive specifies (Article 19) – in order to

protect the rights of the addressees of judicial documents forwarded pursuant to this Directive – that the judge must stay judgement 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. Likewise, where a judgement has been entered against a defendant who has not appeared, this gives him the possibility, under certain circumstances, of relief from the effects of the expiry of the time for the appeal. For reasons of legal certainty, this does not apply to matters concerning the status or capacity of persons.

3. Arrangements between Member States and reservations

(a) Arrangements between Member States

The Directive will of course replace the provisions of international conventions concluded by the Member States (for example, the Brussels Convention of 1968 or The Hague Convention of 1965). However, it does not preclude Member States from maintaining or adopting provisions to expedite the transmission of documents, provided that they are compatible with the Directive.

(b) Transitional or special arrangements

Contrary to The Hague Convention, the Directive does not permit reservations, but only transitional or specific arrangements which must be communicated to the Commission. For example:

- the designation of a single agency (Article 2(3)),
- non-application of provisions regarding the date of service of a document (Article 9(3)),
- the opposition to service by the consular or diplomatic authorities (Article 13(2)),
- the opposition to direct notification (Article 15(2)).

4. Protection of information transmitted

Article 22 guarantees that personal data will be used only for the purpose for which it was transmitted and also the confidentiality of such information and the right of data subjects to be informed of the use made of such information.

5. Transposal and entry into force

The Member States shall adopt and publish by 30 June 2000 by the latest the provisions necessary to comply with this Directive. They shall implement these provisions from 1 October 2000.

Conclusions

- (a) This proposal for a directive represents a very substantial improvement compared to the 1965 Hague Convention. The system proposed for the transmission of documents between decentralised bodies in the Member State of transmission and the Member State addressed should allow the procedure to be speeded up (notably through the obligation to acknowledge receipt of a document within 7 days and to serve documents within a month).

The system also represents a considerable simplification and is less expensive as translation requirements are relaxed. This progress compared with the previous Convention protects the interests of the addressee (who is entitled to refuse receipt of a document; the obligation of the judge to stay judgement where a defendant fails to appear). Finally the system is accompanied by a number of very useful practical measures (manual of bodies; glossary of judicial terms in all languages), and the Commission monitors and updates it.

- (b) However, a number of provisions of the Directive are open to criticism, in so far as they impede the implementation of the system proposed for the transmission of documents. For instance, is it really necessary to maintain the service of documents by consular and diplomatic channels? Are there not too many transitional and specific clauses? Provisions of this kind are likely to undermine the objective of the Directive which is to speed up the procedure.

There is also the question of possible abuse as regards the option of refusing receipt of documents. The Directive fails to specify what is meant by the address of the addressee (his domicile or principal place of residence). These criticisms had already been made by the European Parliament when it considered the 1997 Convention (report by Mr Hartmut Nassauer)¹, hence the amendments tabled by the rapporteur.

¹ Report by Mr Hartmut Nassauer (A4-0101/97).

27 October 1999

OPINION

(Rule 162 of the Rules of Procedure)

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council Directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(1999)219 – C5-0044/1999 – 1999/0102(CNS)) (report by Kurt Lechner)

Committee on Legal Affairs and the Internal Market

Draftsman: Diana Wallis

PROCEDURE

At its meeting of 21, 22 and 23 September 1999 the Committee on Legal Affairs and the Internal Market appointed Diana Wallis draftsman.

It considered the draft opinion at its meetings of 11 October and 26 October 1999.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Eduard Beysen, vice-chairman; Diana Paulette Wallis, draftsman; Luis Berenguer Fuster, Maria Berger, Charlotte Cederschiöld, Brian Crowley, Enrico Ferri, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Toine Manders, Véronique Mathieu, Manuel Medina Ortega, Bill Miller, Claude Moraes, Antonio Tajani, Joachim Wuermeling, Stefano Zappalà, François Zimeray, Francesco Musotto, (for Rainer Wieland, pursuant to Rule 138(2)).

1. Background

The proposed Council Directive on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters is intended to take the place of the Convention of 26 May 1997 on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters (5313/1997 – C4-0062/1997 – 1997/0901 (CNS)), the draft of which Parliament approved by legislative resolution passed on 11 April 1997 subject to a number of amendments, which the Council did not take into account. That Convention was adopted pursuant to the former Article K.3 of the Treaty on European Union.

Since the Convention was not ratified before the Amsterdam Treaty entered into force, its provisions are not applicable. Accordingly, the Commission has proposed a directive to be adopted pursuant to Article 61(c) of the EC Treaty. The directive is substantively identical to the Convention except that it omits the provisions conferring jurisdiction on the Court of

Justice since they are unnecessary, provides for an advisory (comitology) committee to assist the Commission in adopting provisions to give effect to the directive and empowers Member States, acting individually or together, to maintain or adopt measures to expedite the transmission of documents provided that they are compatible with the directive. It is noted that Title IV of the EC Treaty, under which the directive is to be adopted, does not apply to the United Kingdom, Ireland and Denmark. Whereas the first two countries have notified their intention to be fully associated with Community activities in relation to judicial cooperation in civil matters under the procedure provided for in Article 3 of the relevant Protocol annexed to the EU and EC Treaties, Denmark has not, as yet, given notice of its intention to waive its opt out in this respect.

2. Reasons for the proposed amendment

Whilst the directive constitutes a highly desirable advance towards the creation of a European judicial area at a time when trade in goods and services within the internal market is becoming more intense and there are increasing movements of citizens within the Union, there is no room for complacency.

Community legislation is often rightly criticised for resembling international conventions, rather than taking a tighter form more closely resembling the statute law and regulations of the Member States, on grounds including that of legal certainty and the promotion of the very objects which the legislation seeks to attain. The case in point is an extreme one in that it is proposed to transform a convention into a directive with only minimal changes.

Although the difficulties in reaching a consensus between the Member States in this and related fields are acknowledged, it is considered that the proposed directive must be regarded as being very much in the nature of a first step towards simplifying and harmonising the system of document service across the Community in the interest, in particular, of fostering the sound operation of the internal market. It is regrettable that the Commission did not see fit to propose the adoption of a regulation in this field, as it has in the case of the convention on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for joint children (Brussels Convention II).

Consequently, the amendment moved seeks to commit the Commission to proposing a more radical reform than merely reviewing the application of the directive and proposing such amendments as may appear necessary.

3. Conclusions

The Legal Affairs Committee calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

(Amendment 1)
Recital 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;

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, in particular with a view to the eventual adoption of a regulation simplifying and harmonising the system applied by the Directive;

(Amendment 2)
Article 3

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.

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;
- (d) drawing up a concise guide to the law relating to the use of languages in its Member State together with a list of approved translators and translation agencies. The said guide, which should be updated on a regular basis, should be freely available to central authorities in other Member States, the public and practitioners and published on the Internet.

(Amendment 3)

Article 8

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.

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.

1a. Notwithstanding paragraph 1, where the document served is in a language other than an official language of the Member State in which service is to be effected or another language of the European Union which that State has indicated that it will accept, it shall be accompanied by an abstract in one such language.

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.

(Amendment 4)

Article 17

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

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.

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 forms shown in the Annex ;
- (d) giving effect to implementing measures to expedite the transmission and service of documents.

(Amendment 5)
Article 17

12. COMPLETION OF SERVICE

- (c) 12.1. Date and address of service :
- (d) 12.2. The document was

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

12.2.1.1. handed to

12. COMPLETION OF SERVICE

- (c) 12.1. Date and address of service :
- (d) 12.2. The document was

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

12.2.1.0. served by ...
(capacity), address ...,
telephone no ..., fax no
...

12.2.1.1. handed to