

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0024/2006

2.2.2006

*****|** **REPORT**

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
(COM(2005)0305 – C6-0232/2005 – 2005/0126(COD))

Committee on Legal Affairs

Rapporteur: Jean-Paul Gauzès

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.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	4
EXPLANATORY STATEMENT.....	8
PROCEDURE.....	10

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(2005)0305 – C6-0232/2005 – 2005/0126(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0305),¹
 - having regard to Article 251(2) and Articles 61(c) and 67(5) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0232/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A6-0024/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 9 A (new)

(9a) The Commission and the Member States should do their utmost to ensure that information concerning receiving and transmitting agencies displayed in the European Judicial Atlas in Civil Matters is up to date and complete, especially in terms of all relevant contact details.

¹ Not yet published in OJ.
PE 364.955v03-00

Amendment 2
ARTICLE 1, POINT 2, LETTER A
Article 8, paragraph 1 (Regulation (EC) No 1348/2000)

“1. The receiving agency shall inform the addressee, where possible, orally, and in any case in writing using the standard form in the Annex that he or she may refuse to accept the document to be served at the time of service or by returning the document within one week of that time if it is ***in a language other than either of the following languages and not accompanied by a translation into one of these 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 which the addressee understands.”

“1. The receiving agency shall inform the addressee, where possible, orally, and in any case in writing using the standard form in the Annex that he or she may refuse to accept the document to be served at the time of service or by returning the document within one week of that time if it is ***not written in, or translated into, a language understood by the addressee, except where the document is written in, or translated into, 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.”

Justification

The use of ‘or’ makes the original wording ambiguous and appears to allow two different situations in which the addressee may refuse:

- *the addressee can refuse a document written in or translated into the official language of the receiving state if s/he does not understand that language;*
- *the addressee can also refuse the document if it has not been written in or translated into an official language of the receiving Member State, even if it has been written in or translated into a language s/he understands.*

Amendment 3
ARTICLE 1, POINT 2, LETTER B
Article 8, paragraph 3 (Regulation (EC) No 1348/2000)

“3. If the addressee has refused to accept the document under the conditions of paragraph 1, the service of the document **can** be rectified through the service on the addressee in accordance with the provisions of this Regulation of a translation of the document into a language provided for in paragraph 1.

In that case, the date of service of the document shall be the date on which the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State a document shall be served within a particular period in order to preserve the rights of the applicant, the date to be taken into account with respect to the applicant shall be the date of service of the initial document.”

“3. If the addressee has refused to accept the document under the conditions of paragraph 1, **where the intention is to continue the procedure**, the service of the document **must** be rectified through the service on the addressee in accordance with the provisions of this Regulation of a translation of the document into a language provided for in paragraph 1.

In that case, the date of service of the document shall be the date on which the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State a document shall be served within a particular period in order to preserve the rights of the applicant, the date to be taken into account with respect to the applicant shall be the date of service of the initial document.

Where the addressee of a document has already exercised the option of refusal pursuant to paragraph 1, documents subsequently served in the same case must be written in or translated into a language understood by the addressee or an official language of the receiving Member State”.

Justification

The wording ‘can be rectified’ robs Article 8 of its meaning by making the sending of a translation into an option rather than an obligation.

The aim of protecting the applicant’s rights must be specifically stated. (Translator’s note: the part of the amendment to which this refers does not affect the English version.)

Where an applicant has already exercised the option of refusal when a document was served, in accordance with paragraph 1, it must be ensured that documents subsequently served in the same case are always written in or translated into a language understood by the addressee.

Amendment 4
ARTICLE 1, POINT 3
Article 9, paragraph 2 (Regulation (EC) No 1348/2000)

2. However, where according to the law of a Member State a document shall be served within a particular period in order to preserve the rights of the applicant, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.”

2. However, where according to the law of a Member State a document shall be served within a particular period in order to preserve the rights of the applicant, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.”

Justification

*The change is necessary in order to make clear the intention of protecting the applicant.
(Translator’s note: this amendment does not affect the English version.)*

Amendment 5
ARTICLE 1, POINT 5
Article 14 (Regulation (EC) No 1348/2000)

“Article 14
Service by postal services
Each Member State shall be free to effect service of judicial documents directly by postal services to persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.”

“Article 14
Service by postal services
Each Member State shall be free to effect service of judicial **and extrajudicial** documents directly by postal services to persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.”

Amendment 6
ARTICLE 1, POINT 6
Article 15 (Regulation (EC) No 1348/2000)

“Article 15
Direct service
This Regulation 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.”

“Article 15
Direct service
This Regulation shall not interfere with the freedom of any person interested in a judicial proceeding to effect service of judicial **and extrajudicial** documents directly through the judicial officers, officials or other competent persons of the Member State addressed.”

EXPLANATORY STATEMENT

1. Background

On 29 May 2000 the Council, having consulted the European Parliament, adopted Regulation (EC) No 1348/2000 in order to expedite and improve the transmission of judicial and extrajudicial documents between Member States of the European Union.

This regulation on the service of judicial and extrajudicial documents in civil and commercial matters is based on the *Convention on the service abroad of judicial and extrajudicial documents in civil and commercial matters*, signed at The Hague on 15 November 1965. It improves a number of provisions of this Convention. A regulation in this area is essential if the single market is to function properly and for the legal security of transactions.

Measures to reduce the transmission times of judicial and extrajudicial documents in civil and commercial matters form part of a more general effort to develop the mutual legal aid necessary for achieving a European area of freedom, security and justice.

2. Application of the regulation

The studies and consultations¹ organised by the Commission underscore the fact that Regulation (EC) No 1348/2000 has significantly expedited and improved the transmission of judicial and extra-judicial documents between participant Member States. However, they also point to a number of problems, in particular:

- the failure to meet deadlines, even if the situation has improved compared to the past (the average duration is between one to three months, but it is as much as 6 months in some cases);
- the failure to use forms established by the regulation;
- the lack of information for the addressee about the right to refuse a document;
- the high cost and lack of transparency of the processing costs (which should not exceed €150) in some states;
- the poor training of the personnel responsible for applying the Regulation.

The proposal for amendment put forward by the Commission is intended to address the problems identified in implementing Regulation (EC) No 1348/2000. It is intended to:

- further reduce transmission times by introducing an obligation to effect the service within one month of receipt of the document by the receiving agency;
- draw up a new multilingual form informing the addressee of his right to refuse a document;
- establish a common period of one week during which the addressee may refuse to

¹ December 2002: debate in the *European judicial network in civil and commercial matters*.

July 2003: public hearing on the application of the Regulation.

April 2004: convocation of a meeting of the *Advisory committee on the service of judicial and extrajudicial documents in civil and commercial matters* (as provided for in Article 18 of the Regulation)

May 2004: study commissioned from the *MainStrat* consultancy on implementation of the Regulation.

February 2005: second hearing.

- receive the document by returning it;
- ensure that the addressee understands the document.

3. The rapporteur's position

Your rapporteur welcomes the Commission's proposal for a regulation which marks an important stage in the creation of the European judicial area. He supports the proposed amendments, since they will create greater legal security for the applicant and the addressee. They will ensure greater transparency and speed in the service of judicial and extra-judicial documents. Your rapporteur is in favour of the following amendments:

- Article 11: introduction of a fixed fee to remove the lack of transparency in this area;
- Article 14: uniform provision on postal services;
- Article 15: direct service;
- Articles 17 and 23: elimination of the obligation to adopt, by Commission decision, a manual of receiving agencies and a glossary as well as the obligation to publish the information communicated by the Member States in the Official Journal.

Your rapporteur believes that one point has not been completely resolved in amending the Regulation, namely the right to refuse a document (Article 8). He supports the introduction of a multilingual form notifying the addressee of his right to refuse a document. However, the practical arrangements provided for the return of documents should be made clearer in the form. Furthermore, he would like to see the possibility of refusing the service of documents provided for in Article 8 restricted to specified or exceptional situations.

PROCEDURE

Title	Proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
References	COM(2005)0305 – C6-0232/2005 – 2005/0126(COD)
Date submitted to Parliament	
Committee responsible Date announced in plenary	JURI 6.9.2005
Committee(s) asked for opinion(s) Date announced in plenary	LIBE [] 6.9.2005
Not delivering opinion(s) Date of decision	LIBE 13.10.2005
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Jean-Paul Guazès 15.9.2005
Previous rapporteur(s)	
Simplified procedure – date of decision	
Legal basis disputed Date of JURI opinion	/
Financial endowment amended Date of BUDG opinion	/
European Economic and Social Committee consulted – date of decision in plenary	
Committee of the Regions consulted – date of decision in plenary	
Discussed in committee	29.11.2005 31.1.2006
Date adopted	31.1.2006
Result of final vote	+: 20 –: 0 0: 0
Members present for the final vote	Maria Berger, Bert Doorn, Giuseppe Gargani, Kurt Lechner, Klaus-Heiner Lehne, Katalin Lévai, Marcin Libicki, Hans-Peter Mayer, Aloyzas Sakalas, Francesco Enrico Speroni, Rainer Wieland, Nicola Zingaretti, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Alexander Nuno Alvaro, Nicole Fontaine, Jean-Paul Gauzès, Roland Gewalt, Eva Lichtenberger, Manuel Medina Ortega, Marie Panayotopoulos-Cassiotou, Michel Rocard
Substitute(s) under Rule 178(2) present for the final vote	
Date tabled	2.2.2006
Comments (available in one language only)	...