Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

REGULATION (EC) No 1393/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 November 2007

on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67(5), second indent, thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) 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. To establish such an area, the Community is to adopt, among others, the measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.

(2) The proper functioning 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) The Council, by an Act dated 26 May 1997[(3)], drew up 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 constitutional rules. That Convention has not entered into force. Continuity in the results of the negotiations for conclusion of the Convention should be ensured.

(4) On 29 May 2000 the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[(4)]. The main content of that Regulation is based on the Convention.

(5) On 1 October 2004 the Commission adopted a report on the application of Regulation (EC) No 1348/2000. The report concludes that the application of Regulation (EC) No 1348/2000 has generally improved and expedited the transmission and the service

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of documents between Member States since its entry into force in 2001, but that nevertheless the application of certain provisions is not fully satisfactory.

(6) Efficiency and speed in judicial procedures in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States may indicate their intention to designate only one transmitting or receiving agency or one agency to perform both functions, for a period of five years. This designation may, however, be renewed every five years.

(7) 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. Security in transmission requires that the document to be transmitted be accompanied by a standard form, to be completed in the official language or one of the official languages of the place where service is to be effected, or in another language accepted by the Member State in question.

(8) This Regulation should not apply to service of a document on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party.

(9) The service of a document should be effected as soon as possible, and in any event within one month of receipt by the receiving agency.

(10) To secure the effectiveness of this Regulation, the possibility of refusing service of documents should be confined to exceptional situations.

(11) In order to facilitate the transmission and service of documents between Member States, the standard forms set out in the Annexes to this Regulation should be used.

(12) The receiving agency should inform the addressee in writing using the standard form that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not either in a language which he understands or in the official language or one of the official languages of the place of service. This rule should also apply to the subsequent service once the addressee has exercised his right of refusal. These rules on refusal should also apply to service by diplomatic or consular agents, service by postal services and direct service. It should be established that the service of the refused document can be remedied through the service on the addressee of a translation of the document.

(13) Speed in transmission warrants documents being served within days of receipt of the document. However, if service has not been effected after one month has elapsed, the receiving agency should inform the transmitting agency. The expiry of this period should not imply that the request be returned to the transmitting agency where it is clear that service is feasible within a reasonable period.

(14) The receiving agency should continue to take all necessary steps to effect the service of the document also in cases where it has not been possible to effect service within the month, for example, because the defendant has been away from his home on holiday or away from his office on business. However, in order to avoid an open-ended obligation

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for the receiving agency to take steps to effect the service of a document, the transmitting agency should be able to specify a time limit in the standard form after which service is no longer required.

(15) 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. Having regard to such situations and the possible difficulties that may arise, this Regulation should provide for a system where it is the law of the Member State addressed which determines the date of service. However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant should be that determined by the law of that Member State. This double date system exists only in a limited number of Member States. Those Member States which apply this system should communicate this to the Commission, which should publish the information in the *Official Journal of the European Union* and make it available through the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC[(5)].

(16) In order to facilitate access to justice, costs occasioned by recourse to a judicial officer or a person competent under the law of the Member State addressed should correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of service as long as they respect these principles.

(17) Each Member State should be free to effect service of documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

(18) It should be possible for any person interested in a judicial proceeding to effect service of documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

(19) The Commission should draw up a manual containing information relevant for the proper application of this Regulation, which should be made available through the European Judicial Network in Civil and Commercial Matters. The Commission and the Member States should do their utmost to ensure that this information is up to date and complete especially as regards contact details of receiving and transmitting agencies.

(20) In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits[(6)] should apply.

(21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(7)].

(22) In particular, power should be conferred on the Commission to update or make technical amendments to the standard forms set out in the Annexes. Since those measures are of general scope and are designed to amend/delete non-essential elements of this

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Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(23) This Regulation prevails over the provisions contained in bilateral or multilateral agreements or arrangements having the same scope, concluded by the Member States, and in particular the Protocol annexed to the Brussels Convention of 27 September 1968[8] and the Hague Convention of 15 November 1965[9] in relations between the Member States party thereto. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to expedite or simplify the transmission of documents, provided that they are compatible with this Regulation.

(24) The information transmitted pursuant to this Regulation should enjoy suitable protection. This 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[10], and of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)[11].

(25) No later than 1 June 2011 and every five years thereafter, the Commission should review the application of this Regulation and propose such amendments as may appear necessary.

(26) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(27) In order to make the provisions more easily accessible and readable, Regulation (EC) No 1348/2000 should be repealed and replaced by this Regulation.

(28) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.

(29) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

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CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1 This Regulation 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. It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

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

3 In this Regulation, the term 'Member State' shall mean the Member States with the exception of Denmark.

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 set out in Annex I.

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: