

## COUNCIL DECISION

of 30 November 2009

**amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters**

(2009/943/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) The application of the provisions of 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) <sup>(2)</sup> was extended to Denmark under Article 3(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters <sup>(3)</sup> (hereinafter the Agreement), concluded by Council Decision 2006/326/EC <sup>(4)</sup>.

(2) Article 5(2) of the Agreement provides that Denmark will abstain from entering into international agreements which may affect or alter the scope of Regulation (EC) No 1393/2007, unless it is done in agreement with the Community and satisfactory arrangements have been made with regard to the relationship between that Agreement and the international agreement in question.

(3) Neither the Agreement nor Decision 2006/326/EC stipulates how the Community is to express its agreement to the conclusion by Denmark of the international agreement in question.

(4) It is therefore necessary to establish a procedure for the implementation of Article 5(2) of the Agreement. Such a procedure should ensure that decisions expressing the Community's agreement can be taken swiftly.

(5) When informed by Denmark of its intention to enter into an international agreement, the Commission should assess the coherence of that agreement with Regulation (EC) No 1393/2007, including Community legislation affecting that Regulation, and set out any arrangements which may be necessary. As the objective is to arrive at a uniform application of the provisions of Regulation (EC) No 1393/2007 in all Member States and in Denmark, the Commission should ensure that Denmark does not enter into a specific international agreement if this could affect the conditions on which the Community would itself accede to the agreement in question, or, as the case may be, would authorise the Member States to accede to it in the interest of the Community. If the Community is already party to the agreement in question or if the Community has authorised the Member States to become party thereto in the interest of the Community, the Commission should make an assessment of a more limited nature with the aim of verifying that Denmark proposes to accede to the international agreement on the same conditions as the Community or, as the case may be, the Member States as authorised by the Community.

(6) Decision 2006/326/EC should be amended accordingly in order to provide for such a procedure.

(7) 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 Decision.

(8) 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 is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

<sup>(1)</sup> Opinion of 24 November 2009 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 324, 10.12.2007, p. 79.

<sup>(3)</sup> OJ L 300, 17.11.2005, p. 55.

<sup>(4)</sup> OJ L 120, 5.5.2006, p. 23.

HAS DECIDED AS FOLLOWS:

*Sole Article*

The following Articles shall be inserted in Decision 2006/326/EC:

*Article 1a*

1. For the purpose of applying Article 5(2) of the Agreement, the Commission shall assess, before taking a decision expressing the Community's agreement, whether the international agreement envisaged by Denmark would not render the Agreement ineffective and would not undermine the proper functioning of the system established by its rules.

2. The Commission shall take a reasoned decision within 90 days of being informed by Denmark of Denmark's intention to enter into the international agreement in question.

If the international agreement in question meets the conditions referred to in paragraph 1, the decision by the Commission shall express the Community's agreement within the meaning of Article 5(2) of the Agreement.

*Article 1b*

The Commission shall inform the Member States of the international agreements which Denmark has been authorised to conclude in accordance with Article 1a.'

Done at Brussels, 30 November 2009.

*For the Council*

*The President*

B. ASK

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