

**AGREEMENT****between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'the Community',

of the one part, and

THE KINGDOM OF DENMARK, hereinafter referred to as 'Denmark',

of the other part,

DESIRING to improve and expedite transmission between Denmark and the other Member States of the Community of judicial and extrajudicial documents in civil or commercial matters,

CONSIDERING that transmission for this purpose is to be made directly between local bodies designated by the Contracting Parties,

CONSIDERING that speed in transmission warrants the use of all appropriate means, provided that certain conditions as to the legibility and reliability of the documents received are observed,

CONSIDERING that 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 the service is to be effected, or in another language accepted by the receiving Member State,

CONSIDERING that to secure the effectiveness of this Agreement, the possibility of refusing service of documents should be confined to exceptional situations,

WHEREAS the 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 the Council of the European Union by Act of 26 May 1997 <sup>(1)</sup> has not entered into force and that continuity in the results of the negotiations for conclusion of the Convention should be ensured,

WHEREAS the main content of that Convention has been taken over in 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 <sup>(2)</sup> (the Regulation on the service of documents),

REFERRING to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community (the Protocol on the position of Denmark) pursuant to which the Regulation on the service of documents shall not be binding upon or applicable in Denmark,

DESIRING that the provisions of the Regulation on the service of documents, future amendments hereto and the implementing measures relating to it should under international law apply to the relations between the Community and Denmark being a Member State with a special position with respect to Title IV of the Treaty establishing the European Community,

STRESSING the importance of proper coordination between the Community and Denmark with regard to the negotiation and conclusion of international agreements that may affect or alter the scope of the Regulation on the service of documents,

STRESSING that Denmark should seek to join international agreements entered into by the Community where Danish participation in such agreements is relevant for the coherent application of the Regulation on the service of documents and this Agreement,

<sup>(1)</sup> OJ C 261, 27.8.1997, p. 1. On the same day as the Convention was drawn up the Council took note of the explanatory report on the Convention which is set out on p. 26 of the aforementioned Official Journal.

<sup>(2)</sup> OJ L 160, 30.6.2000, p. 37.

STATING that the Court of Justice of the European Communities should have jurisdiction in order to secure the uniform application and interpretation of this Agreement including the provisions of the Regulation on the service of documents and any implementing Community measures forming part of this Agreement,

REFERRING to the jurisdiction conferred to the Court of Justice of the European Communities pursuant to Article 68(1) of the Treaty establishing the European Community to give rulings on preliminary questions relating to the validity and interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the validity and interpretation of this Agreement, and to the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark,

CONSIDERING that the Court of Justice of the European Communities should have jurisdiction under the same conditions to give preliminary rulings on questions concerning the validity and interpretation of this Agreement which are raised by a Danish court or tribunal, and that Danish courts and tribunals should therefore request preliminary rulings under the same conditions as courts and tribunals of other Member States in respect of the interpretation of the Regulation on the service of documents and its implementing measures,

REFERRING to the provision that, pursuant to Article 68(3) of the Treaty establishing the European Community, the Council of the European Union, the European Commission and the Member States may request the Court of Justice of the European Communities to give a ruling on the interpretation of acts of the institutions of the Community based on Title IV of the Treaty, including the interpretation of this Agreement, and the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark,

CONSIDERING that Denmark should, under the same conditions as other Member States in respect of the Regulation on the service of documents and its implementing measures, be accorded the possibility to request the Court of Justice of the European Communities to give rulings on questions relating to the interpretation of this Agreement,

STRESSING that under Danish law the courts in Denmark should — when interpreting this Agreement including the provisions of the Regulation on the service of documents and any implementing Community measures forming part of this Agreement — take due account of the rulings contained in the case law of the Court of Justice of the European Communities and of the courts of the Member States of the European Communities in respect of provisions of the Regulation on the service of documents and any implementing Community measures,

CONSIDERING that it should be possible to request the Court of Justice of the European Communities to rule on questions relating to compliance with obligations under this Agreement pursuant to the provisions of the Treaty establishing the European Community governing proceedings before the Court,

WHEREAS, by virtue of Article 300(7) of the Treaty establishing the European Community, this Agreement binds Member States; it is therefore appropriate that Denmark, in the case of non-compliance by a Member State, should be able to seize the Commission as guardian of the Treaty,

HAVE AGREED AS FOLLOWS:

#### *Article 1*

##### **Aim**

1. The aim of this Agreement is to apply the provisions of the Regulation on the service of documents and its implementing measures to the relations between the Community and Denmark, in accordance with Article 2(1) of this Agreement.

2. It is the objective of the Contracting Parties to arrive at a uniform application and interpretation of the provisions of the Regulation on the service of documents and its implementing measures in all Member States.

3. The provisions of Articles 3(1), 4(1) and 5(1) of this Agreement result from the Protocol on the position of Denmark.

#### *Article 2*

##### **Cooperation on the service of documents**

1. The provisions of the Regulation on the service of documents, which is annexed to this Agreement and forms part thereof, together with its implementing measures adopted pursuant to Article 17 of the Regulation and — in respect of implementing measures adopted after the entry into force of this Agreement — implemented by Denmark as referred to in Article 4 of this Agreement, and the information communicated by Member States under Article 23 of the Regulation, shall under international law apply to the relations between the Community and Denmark.

2. The date of entry into force of this Agreement shall apply instead of the date referred to in Article 25 of the Regulation.

### Article 3

#### Amendments to the Regulation on the service of documents

1. Denmark shall not take part in the adoption of amendments to the Regulation on the service of documents and no such amendments shall be binding upon or applicable in Denmark.

2. Whenever amendments to the Regulation are adopted Denmark shall notify the Commission of its decision whether or not to implement the content of such amendments. Notification shall be given at the time of the adoption of the amendments or within 30 days thereafter.

3. If Denmark decides that it will implement the content of the amendments the notification shall indicate whether implementation can take place administratively or requires parliamentary approval.

4. If the notification indicates that implementation can take place administratively the notification shall, moreover, state that all necessary administrative measures enter into force on the date of entry into force of the amendments to the Regulation or have entered into force on the date of the notification, whichever date is the latest.

5. If the notification indicates that implementation requires parliamentary approval in Denmark, the following rules shall apply:

(a) legislative measures in Denmark shall enter into force on the date of entry into force of the amendments to the Regulation or within 6 months after the notification, whichever date is the latest;

(b) Denmark shall notify the Commission of the date upon which the implementing legislative measures enter into force.

6. A Danish notification that the content of the amendments have been implemented in Denmark, in accordance with paragraph 4 and 5, creates mutual obligations under international law between Denmark and the Community. The amendments to the Regulation shall then constitute amendments to this Agreement and shall be considered annexed hereto.

7. In cases where:

(a) Denmark notifies its decision not to implement the content of the amendments; or

(b) Denmark does not make a notification within the 30-day time limit set out in paragraph 2; or

(c) legislative measures in Denmark do not enter into force within the time limits set out in paragraph 5,

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days or, in the situation referred to under (c), legislative measures in Denmark enter into force within the same period. Termination shall take effect three months after the expiry of the 90-day period.

8. Requests that have been transmitted before the date of termination of the Agreement as set out in paragraph 7 are not affected hereby.

### Article 4

#### Implementing measures

1. Denmark shall not take part in the adoption of opinions by the Committee referred to in Article 18 of the Regulation on the service of documents. Implementing measures adopted pursuant to Article 17 of that Regulation shall not be binding upon and shall not be applicable in Denmark.

2. Whenever implementing measures are adopted pursuant to Article 17 of the Regulation, the implementing measures shall be communicated to Denmark. Denmark shall notify the Commission of its decision whether or not to implement the content of the implementing measures. Notification shall be given upon receipt of the implementing measures or within 30 days thereafter.

3. The notification shall state that all necessary administrative measures in Denmark enter into force on the date of entry into force of the implementing measures or have entered into force on the date of the notification, whichever date is the latest.

4. A Danish notification that the content of the implementing measures has been implemented in Denmark creates mutual obligations under international law between Denmark and the Community. The implementing measures will then form part of this Agreement.

5. In cases where:

(a) Denmark notifies its decision not to implement the content of the implementing measures; or

(b) Denmark does not make a notification within the 30-day time limit set out in paragraph 2,

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days. Termination shall take effect three months after the expiry of the 90-day period.

6. Requests that have been transmitted before the date of termination of the Agreement as set out in paragraph 5 are not affected hereby.

7. If in exceptional cases the implementation requires parliamentary approval in Denmark, the Danish notification under paragraph 2 shall indicate this and the provisions of Article 3(5) to (8), shall apply.

8. Denmark shall communicate to the Commission the information referred to in Articles 2, 3, 4, 9, 10, 13, 14, 15, 17(a) and 19 of the Regulation on the service of documents. The Commission shall publish this information together with the relevant information concerning the other Member States. The manual and the glossary drawn up pursuant to Article 17 of that Regulation shall include also the relevant information on Denmark.

#### Article 5

#### **International agreements which affect the Regulation on the service of documents**

1. International agreements entered into by the Community when exercising its external competence based on the rules of the Regulation on the service of documents shall not be binding upon and shall not be applicable in Denmark.

2. Denmark will abstain from entering into international agreements which may affect or alter the scope of the Regulation on the service of documents as annexed to this Agreement unless it is done in agreement with the Community and satisfactory arrangements have been made with regard to the relationship between this Agreement and the international agreement in question.

3. When negotiating international agreements that may affect or alter the scope of the Regulation on the service of documents as annexed to this Agreement, Denmark will coordinate its position with the Community and will abstain from any actions that would jeopardise the objectives of a coordinated position of the Community within its sphere of competence in such negotiations.

#### Article 6

#### **Jurisdiction of the Court of Justice of the European Communities in relation to the interpretation of the Agreement**

1. Where a question on the validity or interpretation of this Agreement is raised in a case pending before a Danish court or tribunal, that court or tribunal shall request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of the Regulation

on the service of documents and its implementing measures referred to in Article 2(1) of this Agreement.

2. Under Danish law, the courts in Denmark shall, when interpreting this Agreement, take due account of the rulings contained in the case law of the Court of Justice in respect of provisions of the Regulation on the service of documents and any implementing Community measures.

3. Denmark may, like the Council, the Commission and any Member State, request the Court of Justice to give a ruling on a question of interpretation of this Agreement. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.

4. Denmark shall be entitled to submit observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provision referred to in Article 2(1).

5. The Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

6. If the provisions of the Treaty establishing the European Community regarding rulings by the Court of Justice are amended with consequences for rulings in respect of the Regulation on the service of documents, Denmark may notify the Commission of its decision not to apply the amendments under this Agreement. Notification shall be given at the time of the entry into force of the amendments or within 60 days thereafter.

In such a case this Agreement shall be considered terminated. Termination shall take effect three months after the notification.

7. Requests that have been transmitted before the date of termination of the Agreement as set out in paragraph 6 are not affected hereby.

#### Article 7

#### **Jurisdiction of the Court of Justice of the European Communities in relation to compliance with the Agreement**

1. The Commission may bring before the Court of Justice cases against Denmark concerning non-compliance with any obligation under this Agreement.

2. Denmark may bring a complaint before the Commission as to the non-compliance by a Member State of its obligations under this Agreement.

3. The relevant provisions of the Treaty establishing the European Community governing proceedings before the Court of Justice as well as the Protocol on the Statute of the Court of Justice of the European Communities and its Rules of Procedure shall apply.

#### Article 8

##### **Territorial application**

This Agreement shall apply to the territories referred to in Article 299 of the Treaty establishing the European Community.

#### Article 9

##### **Termination of the Agreement**

1. This Agreement shall terminate if Denmark informs the other Member States that it no longer wishes to avail itself of the provisions of Part I of the Protocol on the position of Denmark, in accordance with Article 7 of that Protocol.

2. This Agreement may be terminated by either Contracting Party giving notice to the other Contracting Party. Termination shall be effective six months after the date of such notice.

3. Requests that have been transmitted before the date of termination of the Agreement as set out in paragraph 1 or 2 are not affected hereby.

#### Article 10

##### **Entry into force**

1. The Agreement shall be adopted by the Contracting Parties in accordance with their respective procedures.

2. The Agreement shall enter into force on the first day of the sixth month following the notification by the Contracting Parties of the completion of their respective procedures required for this purpose.

#### Article 11

##### **Authenticity of texts**

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovene, Slovak, Spanish and Swedish languages, each of these texts being equally authentic.

Hecho en Bruselas, el diecinueve de octubre del dos mil cinco.

V Bruselu dne devatenáctého října dva tisíce pět.

Udfærdiget i Bruxelles den nittende oktober to tusind og fem.

Geschehen zu Brüssel am neunzehnten Oktober zweitausendfünf.

Kahe tuhande viienda aasta oktoobrikuu üheksateistkümnendal päeval Brüsselis.

Έγινε στις Βρυξέλλες, στις δέκα εννέα Οκτωβρίου δύο χιλιάδες πέντε.

Done at Brussels on the nineteenth day of October in the year two thousand and five.

Fait à Bruxelles, le dix-neuf octobre deux mille cinq.

Fatto a Bruxelles, addì diciannove ottobre duemilacinque.

Briselē, divtūkstoš piektā gada deviņpadsmitajā oktobrī.

Priimta du tūkstančiai penktų metų spalio devynioliktą dieną Briuselyje.

Kelt Brüsszelben, a kettőezer ötödik év október tizenkilencedik napján.

Magħmul fi Brussel, fid-dsatax jum ta' Ottubru tas-sena elfejn u hamsa.

Gedaan te Brussel, de negentiende oktober tweeduizend vijf.

Sporządzono w Brukseli dnia dziewiętnastego października roku dwa tysiące piątego.

Feito em Bruxelas, em dezanove de Outubro de dois mil e cinco.

V Bruseli dňa devätnásteho októbra dvetisícpäť.

V Bruslju, devetnajstega oktobra leta dva tisoč pet.

Tehty Brysselissä yhdeksäntenätoista päivänä lokakuuta vuonna kaksituhattaviisi.

Som skedde i Bryssel den nittonde oktober tjugohundra fem.

Por la Comunidad Europea  
Za Evropské společenství  
For Det Europæiske Fællesskab  
Für die Europäische Gemeinschaft  
Euroopa Ühenduse nimel  
Για την Ευρωπαϊκή Κοινότητα  
For the European Community  
Pour la Communauté européenne  
Per la Comunità europea  
Eiropas Kopienas vārdā  
Europos bendrijos vardu  
Az Európai Közösség részéről  
Għall-Komunità Ewropea  
Voor de Europese Gemeenschap  
W imieniu Wspólnoty Europejskiej  
Pela Comunidade Europeia  
Za Európske spoločenstvo  
Za Evropsko skupnost  
Euroopan yhteisön puolesta  
På Europeiska gemenskapens vägnar



Por el Reino de Dinamarca  
Za Dánské království  
For Kongeriget Danmark  
Für das Königreich Dänemark  
Taani Kuningriigi nimel  
Για το Βασίλειο της Δανίας  
For the Kingdom of Denmark  
Pour le Royaume de Danemark  
Per il Regno di Danimarca  
Dānijas Karalistes vārdā  
Danijos Karalystės vardu  
A Dán Királyság részéről  
Għar-Renju tad-Danimarka  
Voor het Koninkrijk Denemarken  
W imieniu Królestwa Danii  
Pelo Reino da Dinamarca  
Za Dánske královstvo  
Za Kraljevino Dansko  
Tanskan kuningaskunnan puolesta  
På Konungariket Danmarks vägnar



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