

## EXPLANATORY REPORT

on the convention, drawn up on the basis of Article K.3 of the Treaty on European Union, on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters

*(Text approved by the Council on 26 June 1999)*

(97/C 261/03)

### INTRODUCTION

1. The purpose of European Union conventions on judicial cooperation in civil matters is to establish a common judicial area in which parties to legal proceedings pursuing their claims in another Member State are afforded the same safeguards as before their home-country courts.

To this end, rapid procedures and legal certainty are of the essence at a time when the increasing number of transactions, whether in the private domain or in economic or cultural relations, inevitably leads to a growth in litigation.

In particular, the process of transmitting judicial and extrajudicial documents in civil or commercial matters from one Member State to another for the purposes of service, a vital link in the chain of proper procedure, has to be conducted under satisfactory conditions.

2. On 29 and 30 October 1993 the Council of Ministers for Justice set up a Working Party on Simplification of Document Transmission with instructions to draw up an instrument to simplify and speed up procedures for the transmission of documents between Member States. The examination of the replies to the questionnaire devised in April 1992 under the Portuguese Presidency, together with the Netherlands and the United Kingdom, had revealed a complex, variable and inefficient system.

Indeed, since most Member States are Parties not only to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters but also to a number of bilateral or regional instruments, confusion has gradually built up as to required and recommended procedures, leading to delays and causing mistakes and questionable choices to be made.

In 1993 the Netherlands delegation submitted a draft text amending Article IV of the Protocol annexed to the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, concerning the service of documents between the Member States of the European Union.

The Working Party began by considering that draft; this was followed by a questionnaire framed by the German Presidency on the procedures applicable in each Member State.

Then, early in 1995, the French Presidency presented a fresh draft, which involved introducing a single mandatory mechanism for all Member States.

On the basis of Member States' suggestions and results of consultations with practitioners carried out on the Commission's initiative, a solution was reached which strikes a balance between the various proposed approaches.

The Working Party having concluded its discussions, the text of the draft Convention was submitted by the Netherlands Presidency, in accordance with Article K.6 of the Treaty on European Union, for scrutiny by the European Parliament <sup>(1)</sup>.

On 26 May 1997, the Council adopted the Convention <sup>(2)</sup>, which was signed on the same day by the representatives of all the Member States.

3. The new Convention applies only between the Union's Member States, subject to any existing or future agreements between two or more Member States enabling them to establish the closer cooperation referred to in Article K.7 of the Treaty on European Union.

The Convention is consistent with the 1965 Hague Convention, to which it owes a number of solutions, while introducing innovations in four main areas.

Firstly, in order to avoid delays building up between successive intermediaries downstream of a document's transmission, the Convention makes provision for establishing more direct channels between the persons or authorities responsible for transmitting a document and those serving it or ensuring it is served.

Next, the Convention provides for certain practical means to be used to ease the practitioners' task, including modern means of document transmission, a complete, user-friendly form and directories of Member States' designated receiving agencies.

In order to safeguard the rights of the parties, it also introduces innovative rules on the translation of documents.

The Convention sets up an Executive Committee charged with ensuring the proper functioning of the Convention, drawing up and updating a manual on designated agencies and a glossary of relevant legal terms and proposing improvements to the Convention's implementation or adjustments to its content.

The Convention is crowned by a Protocol on the interpretation of the Convention, by the Court of Justice of the European Communities, modelled on the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Brussels Convention of 27 September 1968.

As the matter of service of documents is referred to in Article 20 of the Brussels Convention and Article IV of the Protocol annexed thereto, those Articles will require amendment.

This Convention, the first achievement of judicial cooperation in civil matters under Title VI of the Treaty on European Union, is designed to strengthen existing ties between the Member States.

It will be for lawyers and practitioners to ensure its success.

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<sup>(1)</sup> Opinion delivered on 11 April 1997 (not yet published in the Official Journal).

<sup>(2)</sup> See p. 1 of this Official Journal.

## TITLE I

*Article 1*

## Scope

1. Article 1 (1) defines the scope of the Convention, stating that it governs relations between the Member States of the European Union with regard to the transmission of documents in civil and commercial matters.

The relationship between this Convention and other existing or future agreements or arrangements between two or more Member States are governed by Article 20. The reader is therefore referred to the explanations provided for that Article.

The Convention applies to the transmission, for purposes of service, of judicial and extrajudicial documents. These documents are not defined.

'Judicial document' must clearly be taken to mean documents connected with judicial proceedings. The term 'extrajudicial documents', however, is not amenable to precise definition. It may be taken to cover documents drawn up by a public officer, for example a notarial deed or a writ, documents drawn up by Member States' official authorities or documents of a type or importance which require them to be transmitted and brought to the addressee's attention by official procedure.

Like many other Conventions which use the terms, this Convention does not define 'civil or commercial matters', nor does it refer to the definition in the law of the Member State of transmission or of the Member State addressed.

In the interests of consistency between the various Conventions concluded in the European Union framework, reference might usefully be made to the Court of Justice's interpretation of the concept of civil and commercial matters, which establishes the principle of a self-standing definition taking account of the objectives and structure of the Convention and the general principles emerging from all the national legal systems. This does not mean, however, that civil and commercial matters are to be narrowed down to the scope of the Brussels Convention of 1968.

Essentially, criminal and tax cases fall outside the scope of civil and commercial matters, but not civil actions heard in the context of those proceedings. However, these terms will need flexible interpretation if the rights of the parties to an action are to be protected, in particular the rights of the defence.

2. The second paragraph was added to Article 1 in order to discharge requested States of the responsibility of serving a document where the address of the person on whom it is to be served is unknown.

However, this provision does not mean that the agency of the Member State receiving an application for an act to be served on a person whose address is incomplete or incorrect need not try to complete or correct it with the means at its disposal.

If, despite such efforts, the address of the person to be served still cannot be determined, then the document ought to be returned to the transmitting agency as soon as possible.

*Article 2*

## Transmitting and receiving agencies

Article 2 establishes the principle of direct transmission of documents for service between decentralized agencies. This represents a step forward in judicial cooperation between Member States and is one of the Convention's main innovations.

As an antidote to the slow transmission of documents by diplomatic channels, the only route available to Member States not bound by relevant Conventions, a number of existing agreements have set up central authorities to convey documents to their destination, usually in stages; this Convention aims to bypass the intervening stages between a document's dispatch from the Member State of transmission and its service in the Member State addressed.

It is therefore the task of the Member States to designate public officers, judicial or administrative authorities or other persons with the jurisdiction and resources to perform the tasks entrusted to the transmitting and receiving agencies. The Convention does not, however, impose an obligation on Member States to provide the private agencies they may appoint with those resources.

A Member State may therefore designate a single agency to act as both transmitting agency and receiving agency for a given area; conversely it may designate separate agencies.

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 decentralization, 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. However, the designation of a single agency should not give rise to delays in the procedures for service of documents.

Designation of such centralized agencies will have effect for a period of five years. The Executive Committee set up under Article 18 is required to monitor the operation of decentralized agencies and to satisfy itself that they are effective. Member States which have designated a centralized agency may wish, after assessing the information collected by the Committee and taking into account the results obtained by Member States that opted for a decentralized system from the outset, to establish decentralized agencies. A Member State's declaration may, however, be renewed every five years.

Under paragraph 4, before the Convention enters into force with regard to a given Member State the latter is required to provide details of the receiving agencies which it has designated and which must be available to other Member States' transmitting agencies if they wish to transmit documents.

Member States' designated agencies will be provided with a manual containing all relevant information; it will be produced and updated annually by the Executive Committee in accordance with Article 18 of the Convention.

### Article 3

#### Central body

In order to enable transmitting and receiving agencies to resolve difficulties arising from implementation of the Convention which cannot be resolved through contacts at agency level, the Convention has provided for central bodies to be set up to solve such problems via direct contacts between the transmitting agency and the central body of the State addressed.

Under point (a) a transmitting agency may seek information from the central body of another State. A transmitting agency lacking the requisite information may need to enquire, for example, as to which receiving agency a given document has to be sent to for service.

Point (b) may relate to specific cases or to more general difficulties. A transmitting agency will be able to seek the help of another Member State's central body if some time has elapsed since it sent a document to that Member State's receiving agency but a number of requests for information have been filed to establish what action was taken

after the document's transmission. It will also be able to report to a central body any recurrent difficulties in its relations with one or other receiving agencies.

Point (c), which allows applications to be made to the central body of the State addressed for documents to be forwarded for service to the competent receiving agency, may be implemented only 'in exceptional circumstances'. It is not normally within the central body's remit to process directly requests for documents to be transmitted: that is the task of the receiving agency.

The Convention contains a number of clauses enabling transmitting and receiving agencies to resolve difficulties arising from a request for service, and these should be utilized before the central body is called upon.

Thus a document ought not to be transmitted to the central body merely because it is not possible to determine the receiving agency with the relevant territorial jurisdiction; rather a request for information should be sent under Article 3 (a).

If the address of a person on whom a document is to be served cannot be established or if the address provided is wrong so that the receiving agency cannot comply with a request for service, the document must in no event be sent to the central body. The situation then falls under Article 1 (2) of the Convention, *viz.* the Convention does not apply where the address of the person to be served with the document is not known.

On the other hand, a situation which could justify a document's transmission to the central body would be one where, despite repeated requests as to the receiving agency with territorial jurisdiction to serve documents and the passage of a reasonable length of time, no response had been forthcoming.

More generally, transmission of a document to the central body of the Member State addressed could be acceptable, for example, if court buildings housing a section designated as a receiving agency or a process server's offices had been destroyed by fire, or if a general strike or a natural catastrophe had brought to a standstill the services in a region of the Member State addressed where the document was to be served.

In any event it is for the transmitting agency to decide in the light of these suggestions whether the exceptional circumstances justifying transmission of a document to

the central body of the State addressed do in fact obtain.

The Executive Committee is to monitor the application of Article 3 (c), in accordance with Article 18 (2).

Lastly, it would be advisable for Contracting States to the Hague Convention of 15 November 1965 to designate as their central bodies the central authorities designated under Article 2 of that Convention.

## TITLE II

### JUDICIAL DOCUMENTS

#### Section 1

##### *Transmission and service of judicial documents*

This section lays down the rules on the principal channel for document transmission provided for in the Convention.

#### Article 4

##### Transmission of documents

1. In order to expedite the whole process of transmission and service of the document, the transmitting agency must take the necessary steps to ensure that the document is sent directly, and as soon as possible, to the agency competent to receive it. In order to find out which receiving agency is competent to receive the document, having regard to the address of the person to be serviced with it, the transmitting agency will refer to the manual drawn up by the Executive Committee.

2. The Convention does not list the means of transmission which may be used. On the contrary, it allows any appropriate means to be employed, thus enabling a choice to be made in the light of the procedures allowed under domestic law, the circumstances of the case and the type of link-up that can be established with the competent receiving agency.

However, this flexibility to choose the means of transmission must not be allowed to prejudice the interests of the addressee. The Convention therefore provides that the document received must be faithful to that forwarded and that all the information in it must be easily legible. If this is not the case, the documents must be returned to the transmitting agency at once, together with a form with the section marked 'notice of return of request and document' filled in accordingly.

The manual will enable the transmitting agency to find out which means of transmission can be used in correspondence with the receiving agencies in that Member State. Where technical innovations take place or where receiving agencies accept new means of transmission, this can be entered in the manual when it undergoes its annual updating.

3. Documents forwarded by the transmitting agency must be accompanied by a form drawn up in accordance with the specimen request for service annexed to the Convention and available therefore in all language versions.

The Convention does not contain any rules on the language which has to be used for the pre-printed parts of the form. The transmitting agencies are therefore free to use, for example, forms in their own official language, in the official language of the receiving agency, or in the language of the European Union which the State addressed has indicated that it can accept pursuant to paragraph 3.

However, the transmitting agency must complete the form using the official language or one of the official languages of the State addressed, or a language which that State has accepted pursuant to paragraph 3. The transmitting agency will be able to find out which languages can be used by referring to the manual, which will indicate:

(a) firstly:

- either the only official language of the State addressed to be used,
- or the various official languages of the State addressed which may be used,
- or which of the official languages of the State addressed has to be used on account of the address of the person to be served;

(b) secondly:

- any other language of any of the Member States of the European Union which the State addressed has declared it can accept.

The transmitting agency may choose whether to use the appropriate language under point (a) or the language under point (b).

However, it should be pointed out that most of the particulars which have to be entered on the form annexed to the Convention do not require translation and that the Executive Committee will be instructed to draw up a glossary, in all the official languages of the European Union, of the main legal terms likely to be used when filling out the form.

4. Many Conventions provide for legalization to be waived. It would naturally be quite out of the question to require that documents be legalized purely for the purpose of service abroad, especially within the European Union.

Article 49 of the Brussels Convention of 27 September 1968 provides that no legalization or other similar formality can be required by a court in a Member State which receives a request for enforcement of a judgement given in another Member State.

5. This paragraph provides for the possibility of sending the document to the receiving agency in duplicate and asking for one copy to be returned; it would seem that this would be applicable only when documents are sent by conventional means, such as post. However, the practice could be adapted to other means of transmission that may be used in future, as and when they are introduced.

The transmitting agency will be able to supply the receiving agency with the requisite information via the request form sent with the document.

#### Article 5

##### Translation of documents

1. When a document has to be sent to another Member State for service, the transmitting agency must advise the applicant that the addressee may refuse to accept the document because of the language used in accordance with Article 8 of the Convention.

The Convention contains no provision regarding the possible legal consequences of refusing to accept a document on account of the language used; it will be for the competent courts to decide on this matter.

The transmitting agency must therefore draw the applicant's attention to the risks that he may be running with regard to the deadlines, effectiveness or correctness of the procedure if he does not have a translation done, as might prove necessary.

2. If the applicant chooses to have the document translated, he will have to pay the cost of translation in advance; however, this rule does not preclude any subsequent ruling on costs enabling the applicant to be reimbursed for all or part of the expenditure he has incurred, if the law of the Member State in which the proceedings take place so provides.

It should be noted that 'applicant' means in all cases the party interested in transmission of the document. It therefore cannot refer to the courts.

#### Article 6

##### Receipt of documents by the receiving agency

1. The provisions of this paragraph are intended to make sure that the transmitting agency is kept informed as to whether the documents it has dispatched have been received by the receiving agency. The emphasis is placed on the speed of the reply which has to be sent by the receiving agency, as the paragraph lays down the principle that a receipt must be sent as soon as possible, by the swiftest possible means. Receiving agencies should therefore endeavour to send the receipt to the transmitting agencies as soon as the documents are received.

It will suffice for the receiving agency to return to the transmitting agency a copy of the form requesting service forwarded with the documents, after filling in the 'acknowledgment of receipt' section (Heading 8 of the form).

When the transmitting agency receives the receipt, it can be sure that the document it has forwarded has indeed reached the competent receiving agency.

If the receipt fails to arrive within a reasonable period of time after expiry of the period of seven days, the receiving agency might presume that the documents had gone astray and should be sent again, at the risk of causing confusion between the two sets of documents.

2. This paragraph is intended to prevent the document and the request for service being returned to the transmitting agency when some additional information or documents would be all that was needed to solve the difficulties which prevent the receiving agency from serving the document or having it served as it stands.

3. This paragraph applies where the receiving agency is quite unable to respond to the request for service, even where additional information or documents have been obtained.

There are two eventualities provided for: where a request falls manifestly outside the scope of the Convention, and where service is impossible owing to failure to comply with the formalities laid down in the Convention.

The first eventuality would arise, for example, where a request for service related to proceedings in a tax matter.

The second might cover, for example, requests relating to illegible documents or, conversely, to documents not accompanied by any request, or a request relating to an addressee whose address could not be established.

This paragraph might also cover failure to reply, at least within a reasonable period of time, to a request for additional information or documents made by the receiving agency pursuant to paragraph 2.

Requests sent in error to a receiving agency in a Member State other than that within whose territory the addressee is present and those which request service in particular forms which are incompatible with local law also have to be returned to the transmitting agency.

4. This paragraph is likewise intended to prevent documents being returned to the transmitting agency simply because the receiving agency which received them did not have territorial jurisdiction, despite being in the right Member State. It therefore provides that a receiving agency which does not have competence must send the document on to the competent receiving agency in the same Member State.

The document must be sent on as stipulated in Article 4, i. e. directly and as soon as possible, by any appropriate means. Given the delay resulting from the need to send the document on, this must be done with particular dispatch.

Furthermore, in order that the transmitting agency should not remain in ignorance of what has occurred, the Convention provides that the non-competent receiving agency which sent on the document and the competent receiving agency should both notify the transmitting agency accordingly.

The territorially competent agency must notify the transmitting agency as soon as it receives the document, or within seven days at the latest, by the swiftest possible means, in the manner provided for in paragraph 1.

#### Article 7

##### Service of documents

1. The receiving agency will be informed of the form of service requested by means of the particulars which the transmitting agency enters on the request form.

If the form of service requested is incompatible with the law of the Member State addressed, the document should be served in accordance with the rules laid down by that

State's law provided that the transmitting agency has so requested. The same arrangement must be followed where no specific form of service has been requested by the transmitting agency.

This request may be made under point 5.2.1 of the form.

2. This paragraph places a duty on the receiving agency to effect service with all dispatch. It must immediately take the steps required, or have them taken. However, given the difficulties which may arise, a period of one month has been set as being sufficient to allow the service procedure to be concluded.

The second sentence should not be taken to mean that the receiving agency can neglect its duty to take, or have taken, all the steps required, and then advise the transmitting agency that the necessary action has not been taken to serve the document within the requisite time limit.

The sentence in fact refers to the duty of the receiving agency to inform the transmitting agency if the procedures undertaken to effect service have so far failed.

Indeed, it may be that in some cases it has not been possible to effect service within the month, but it may be possible within a reasonable period. In that event, the receiving agency is still required to send the certificate contained in the form to the transmitting agency when the one-month time-limit runs out.

#### Article 8

##### Refusal to accept a document

1. The rules on language use laid down in Article 8 apply solely to the documents themselves.

With the aim of safeguarding the interests of the addressee of a document, the Convention establishes the principle that the document is to be translated into the official language of the State addressed or, if that State has more than one official language, the official language or one of the official languages of the place where service is to be effected.

In certain cases, however, translation may prove to be an unnecessary expense, or even contrary to the addressee's interests. This may happen, for example, where the addressee is a national of the State of transmission or, in any event, understands the language of that State.

It should be noted that where a document has been drawn up in, or translated into, the official language of the State addressed, or the official language or one of the official languages of the place where service is to be effected, the addressee may not refuse it on grounds relating to the use of that language.

Conversely, the addressee may refuse the document if it has not been translated and he does not understand the language in which it is drawn up.

However, the Convention does not oblige the applicant to forward the document written in or translated into one of the above languages; it allows the addressee to refuse to accept the document on the grounds that the these rules have not been observed.

If a dispute arises as to whether or not the addressee of the document understands a language, it will be settled in accordance with the relevant rules, for example by raising the question of whether the document was properly served in the court seised of the procedure in connection with which it was transmitted.

The receiving agency must inform the addressee that he can refuse to accept the document if it is not in one of the languages of the place where service is effected or in an official language of the Member State of transmission that he understands.

There are various ways in which it can meet the duty to supply information imposed by this paragraph. Appropriate means will be established in each Member State according to the rules applicable to the service of documents.

Hence, where documents are served in person by a specialized agent, that agent could provide the information verbally.

If, on the other hand, documents are sent by post, the information could be given in a note attached to the documents for the addressee.

In any event, the circumstances in which the addressee was given the information must be stated in point 12 (c) of the certificate of service.

If the addressee refuses the document on account of the language used, he should let this be known within a reasonable time so as not to hold up the procedure.

It should be noted that some Member States may have concluded agreements whereby each of those States considers the others' official languages as its own. This is true, for example, of the Nordic States, which have stated that they will use Danish, Norwegian and Swedish without distinction, in accordance with the conditions laid down in the 1974 Nordic Passport Agreement.

2. In order to enable the transmitting agency and the applicant to take any measures they deem necessary, the receiving agency must inform the transmitting agency as

soon as it is aware of the refusal of an addressee to accept a document.

#### Article 9

##### Date of service

The provisions of this Article are intended to define the criteria relating to the date to be regarded as the date of service of a document.

In most cases the service of a document will have legal effects, and it may be important to know exactly when they arose.

Given the differences between the various Member States of the Union, both as regards procedural rules for the service of documents and as regards rules of substance, the event to be taken into account varies from one Member State to another.

When drawing up the Convention, the aim was to seek a rule that could replace the rules of domestic law in relations between Member States of the Union; this resulted in adoption of the provisions of Article 9.

The first paragraph lays down the principle that the date of service is to be the date on which the document is served in accordance with the law of the Member State addressed. It is intended to protect the addressee's rights.

Conversely, the second paragraph is intended to protect the rights of the applicant, who may have an interest in acting within a given period or on a given date. In such cases it seemed appropriate to enable him to assert his rights on a date which he can determine himself, instead of referring to an event (the service of a document in another Member State) over which he has no direct influence and which might occur after the due date.

Article 9 (1) and (2) may be applied cumulatively, so that service produces its effects at different times with regard to the addressee of the document and with regard to the applicant. Such a situation could arise for example under the law of some States if a writ containing a summons to appear were to interrupt a period of limitation.

As regards the point at which the period of limitation is interrupted with regard to the applicant, reference must be made to the law of the Member State of transmission pursuant to Article 9 (2).

However, with regard to the addressee of the document, the date to be taken into consideration for calculating the time for appearance will be the date laid down by the law of the Member State addressed.

The third paragraph provides that Member States may declare that they will not apply the provisions of this Article.

#### Article 10

##### Certificate of service and copy of the document served

When the service procedure has been concluded, the corresponding certificate on the form must be completed.

The form must be returned to the transmitting agency, together, where applicable, with a copy of the document.

The rules on the language to be used to fill in the certificate of service are similar to those for the request for service, since the receiving agency has to use either an official language or one of the official languages of the Member State to which the document has to be sent, or a language which it has indicated it can accept that purpose.

#### Article 11

##### Costs of service

1. The first paragraph lays down the principle that services rendered by the administrative departments of the Member State addressed are to be free of charge.

2. The second paragraph, on the other hand, allows Member States to charge costs to the applicant where the service formalities are not carried out by their administrations.

An advance on these costs may be demanded before the service procedure is put in hand. The manual drawn up by the Executive Committee will contain the relevant details, in particular whether a payment has to be made when the document is forwarded by the transmitting agency.

#### Section 2

##### *Other means of transmission and service of judicial documents*

This section provides for a number of subsidiary means of transmitting documents.

#### Article 12

##### Transmission by consular or diplomatic channels

This Article provides for the possibility of using diplomatic or consular channels for the transmission of documents although it specifies that such means of transmission is to be used only in exceptional cases.

As a result, it should be used only in cases of extreme difficulty, such as those instanced with respect to Article 3 (c), i. e. social or climatic circumstances which mean that the documents cannot be forwarded from one Member State to another by any other means.

#### Article 13

##### Service by diplomatic or consular agents

With this Article, the Convention incorporates a method of service traditionally permitted in international relations.

In principle it offers this possibility in respect of any person, regardless of nationality, residing in the territory of a Member State. Member States are nonetheless given the option of entering a reservation.

#### Article 14

##### Service by post

This Article establishes the principle that service may be effected by post.

However, Member States may, in order to provide guarantees for persons residing in their territory, specify the conditions under which service may be effected in their regard by post. Such conditions might for instance include the use of registered post or the application of the Convention's rules on the translation of documents.

It will be remembered that the Universal Postal Convention, to which all Member States are parties, provides in particular for the possibility of registered post.

The conditions established by Member States pursuant to paragraph 2 will if necessary be specified in the manual to be drawn up the Executive Committee.

#### Article 15

##### Direct service

This Article authorizes any person interested in the transmission of a document covered by this Convention

to contact directly the competent persons in the Member States addressed to have service effected.

This Article must not be interpreted as establishing a legal basis for accepting the direct transmission of a document by an interested party to public officers. Such direct transmission is only authorized if in accordance with the law of the Member State in which the proceedings take place.

However, since paragraph 2 allows Member States to enter a reservation in this respect, the manual drawn up by the Executive Committee should be consulted to establish whether the State in question is opposed to such procedure.

### TITLE III

#### EXTRAJUDICIAL DOCUMENTS

##### *Article 16*

For this concept, reference should be made to Article 1.

### TITLE IV

#### INTERPRETATION BY THE COURT OF JUSTICE

##### *Article 17*

This Article establishes the principle of the jurisdiction of the Court of the European Communities to interpret the Convention. However, since unanimity on this principle proved impossible, the detailed rules governing, in particular, referral to the Court of Justice are contained in the Protocol on the interpretation of the Convention by the Court of Justice.

Only the courts and competent authorities of Member States which have ratified both the Protocol and the Convention are entitled to request the Court to give a ruling.

### TITLE V

#### FINAL PROVISIONS

##### *Article 18*

#### Executive Committee

Since in essence the Convention lays down rules for judicial cooperation, an Executive Committee has been established with a view to monitoring its operation and examining all general questions relating to its application.

The Committee is to operate within the structural framework of Title VI of the Treaty on European Union as is stipulated in the declaration for the minutes of the meeting at which the Convention was drawn up.

As a result, it consists of representatives of all the Member States, including those which are not yet parties to the Convention, and the Commission is fully involved in its work. Any rules governing its operation which are not laid down in the Convention are those which apply to the other Council Working Parties.

The Committee is to meet for the first time as soon as three Member States have declared that they will apply the Convention in their relations with the other Member States which have made the same declaration. In accordance with the rules laid down in Articles 18 (2), 24 (4) and 27 (2) (c), that first meeting should be held 90 days after the date of deposit of the third declaration, which date will be published in the *Official Journal of the European Communities*.

The Committee's functions fall into three main categories.

The Committee's first responsibility is to monitor the operation of the Convention, i. e. to collect all useful information on its implementation by the Member States. It is to examine in particular the effectiveness of the transmitting and receiving agencies, the conditions under which the central agencies receive direct requests for service of documents and the application of the provisions on the date of service.

That careful monitoring of certain provisions of the Convention should allow the Committee to establish whether rules which appeared to cause certain countries implementing difficulties are applied without difficulty by others and could have their scope extended. The information the Executive Committee collects in this way should thus be of particular interest to Member States for their reciprocal information. It will also be the subject of regular reports to the Council, the first three years after the Committee's first meeting and subsequently every five years.

The Council will decide on a case-by-case basis whether each report should be forwarded to the European Parliament.

The Executive Committee's second area of responsibility is the completion of the practical tasks needed for the Convention to operate, such as the drawing up and updating of the manual to be used by transmitting agencies to identify receiving agencies in the other Member States to which they are to forward documents, and the preparation of a glossary of legal terms. If

possible the manual will also stipulate the costs relating to service of documents pursuant to Article 11 of the Convention.

Finally, the Committee will be able to make use of the information it collects to suggest improvements to the Convention or simply to the form.

#### *Article 19*

#### **Application of Articles 15 and 16 of the Hague Convention of 1965**

This Article incorporates the system established in the Hague Convention of 15 November 1965 with one simple formal amendment as regards the procedures for notification by the Member States of the declaration referred to in point 1 (b). It contains a number of rules designed to protect the rights of the addressees of judicial documents forwarded pursuant to this Convention.

Point 1 concerns writs of summons or equivalent documents and requires the judge to 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. However, Member States which so wish are given the possibility of derogating from that rule by permitting their judges to rule after a certain period of time, provided certain conditions are fulfilled.

Point 2 concerns cases where a judgement has been entered against a defendant who has not appeared, and gives him the possibility of relief from the effects of the expiry of the time for appeal. In order to preclude legal uncertainty, which might prejudice the interests of the applicant before the original court, the Convention provides that Member States may set a limit by declaration on the time allowed for filing an application for relief.

Finally, the provisions of point 2 do not apply to matters concerning the status or capacity of persons. It seemed impossible to allow a decision in default on divorce followed by remarriage to be nullified, as the requirements of legal certainty should take precedence in this area.

#### *Article 20*

#### **Relationship with other agreements or arrangements**

This Article provides that only this Convention and agreements or arrangements fulfilling the conditions laid

down in Article K.7 of the Treaty on European Union, i. e. which contain provisions on the transmission of documents for service which allow for closer cooperation on the matter and do not impede the cooperation established by this Convention, will continue to apply between the Member States party thereto.

It follows, moreover, from this Article in conjunction with Article 1 that no other agreement, convention or arrangement may be applied between the European Union Member States that have ratified this Convention.

In particular, as far as the service of documents is concerned, this Convention will replace the Hague Conventions of 1954 and 1965 in relations between the Member States party thereto.

Thus, where in the course of the same proceedings documents have to be transmitted both to Member States and to non-member States, the rules under the European Convention or the agreements or arrangements referred to in Article 20 are the only rules applicable to documents being transmitted to Member States.

Documents connected with the same proceedings for service in a country which is not a member of the European Union will of course be transmitted in accordance with existing agreements with that country.

The existence of particular agreements or arrangements between Member States will be indicated in the manual drawn up by the Executive Committee.

#### *Article 21*

#### **Legal aid**

This Article provides that the rules on legal aid contained in any other Conventions which may apply between certain Member States are not affected.

#### *Article 22*

#### **Protection of information transmitted**

This Article obliges receiving agencies to respect the confidentiality of information brought to their attention within the context of the exercise of their functions.

The receiving agencies are responsible for implementing their national law on the protection of the confidentiality of information.

The data subjects may of course avail themselves of the relevant provisions of law to obtain information on the use made of such data.

#### Article 23

##### Reservations

This Article gives an exhaustive list of the reservations permitted under the Convention. These reservations must be entered at the time of the notification referred to in Article 24 (2) but may be withdrawn at any time.

It should be pointed out that the declaration provided for in Article 14 (2) does not qualify as a reservation.

#### Article 24

##### Adoption and entry into force

This Article concerns the entry into force of the Convention under the rules established in this respect by the Council of the European Union.

The Convention enters into force 90 days after the deposit of its instrument of adoption by the last of the 15 States which are members of the European Union as at 26 May 1997, the date of adoption by the Council of the Act drawing up the Convention, to complete that formality.

Nevertheless, as with the judicial cooperation agreements previously concluded between Member States, paragraph 4 allows each Member State to declare, on adopting the Convention or at a later date, that the Convention will apply in advance to its relations with other Member States that have made the same declaration. Such declarations take effect 90 days after the date of deposit.

However, Member States cannot declare that the Court of Justice is competent to interpret the Convention during the period of advance application, as the corresponding provisions of the Convention in this respect would have to be adopted by the 15 Member States.

#### Article 25

##### Accession

This Article provides that the Convention is open to accession by any State which becomes a member of the European Union. It sets out the procedures for such accession. No State which is not a member of the European Union may accede to the Convention.

If the Convention has already entered into force when a new Member State accedes to it, it enters into force with respect to that State 90 days after the deposit of its instrument of accession. On the other hand, if the Convention has not entered into force by the end of that 90-day period, the same conditions will obtain for that State as for the others, namely those provided for in Article 24 (4). In that case, the State acceding to the Convention may make a declaration of advance application.

The accession of a new Member State is not, however, a condition of the entry into force of the Convention *vis-à-vis* the States which were members of the European Union on the date when the Council adopted it.

#### Article 26

##### Amendments

This Article covers the procedure for amending the Convention.

Amendments may be proposed not only by Member States which are parties to the Convention or by the Commission in accordance with the rules laid down in Title VI of the Treaty on European Union, but also, pursuant to the rule laid down in Article 18 (4) (c), by the Executive Committee.

Depending on the nature of the amendments proposed, two separate procedures are laid down.

Under the first, as outlined in the first three paragraphs, amendments are adopted by the Council, which recommends that they be adopted by the Member States in accordance with their respective constitutional requirements.

The second, which is described in paragraph 4, involves a simplified procedure, which allows the Council itself to amend the forms annexed to the Convention.

#### Article 27

##### Depositary and publications

This Article gives the Secretary-General of the Council the role of depositary of the Convention.

The Secretary-General is to inform the Member States of all notifications concerning the Convention and to order their publication in the 'C' series of the *Official Journal of the European Communities*.