



COMMISSION OF THE EUROPEAN COMMUNITIES

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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

**on the application of Council Regulation (EC) 1348/2000 on the service in the Member
States of Judicial and Extrajudicial documents in civil or commercial matters**

{SEC(2004)1145}

1. BACKGROUND

This Report from the Commission has been prepared in accordance with Article 24 of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters¹.

Since the entry into force of Regulation (EC) 1348/2000 on 31 May 2001, the Commission has sought to receive as much information as possible about the application of the Regulation.

The Commission has therefore gathered information and discussed the application of the Regulation on various occasions. Furthermore, the Commission has requested a Study on the application of the Regulation which has been prepared by a contractor.

This Report on the application of the Regulation is consequently based on the information provided to the Commission and on the Study, covering 14 Member States.

1.1. Meeting of the European Judicial Network in Civil Matters (December 2002)

In December 2002, one session in the context of the first meeting of the *European Judicial Network in Civil and Commercial Matters* was devoted to a discussion of the first experiences with the application of the Regulation. On that occasion, different types of problems were identified which could be summarised as follows:

- Practical problems due to the fact that the Regulation was introduced only recently (for example, standard forms were not used or the provisions concerning the use of languages were misunderstood);
- Failure of national administrations to always act within the deadlines provided for by the Regulation;
- High costs and lack of transparency concerning composition of these costs.

1.2. Public Hearing (July 2003)

In July 2003 the Commission organised a public hearing on the application of the Regulation. It was attended by about 70 participants most of whom represented Member States, acceding States and interested parties (in particular associations of professions involved in the application of the Regulation such as bailiffs and lawyers).

The public hearing provided a forum for an exchange of views for authorities and professions involved in the application of the Regulation (such as persons effecting the service of documents, administrations of Member States responsible for the application of the Regulation, associations of attorneys and judges, etc.), and provided the Commission with very valuable information concerning the application of the Regulation.

The issues which received most attention in the discussion were the amount of time required for transmission and service of documents, the effectiveness of transmitting and receiving agencies and central bodies, and the issue of costs of service. Several Member States

¹ OJ L 160, 30.6.00, p. 37.

expressed their concerns about the fact that forms were either not used correctly, or not used at all.

1.3. Study on the Application of Regulation (EC) 1348/2000

As stated above, the Commission has requested a Study on the application of the Regulation which has been prepared by a contractor in order to prepare this Report. The Study is available at the following internet address:

http://europa.eu.int/comm/justice_home/doc_centre/civil/studies/doc/study_ec1348_2000_en.pdf

The main objective of the Study was to obtain an empirical analysis of the application of the Regulation, in particular concerning the question of whether through the application of the Regulation the transmission of documents between Member States has been improved and expedited.

The Study consists of two parts, a survey and a collection of statistical data:

- The survey which was carried out by the contractor from December 2003 to February 2004 is based on 528 answers to a questionnaire concerning the application of several articles of the Regulation. The questionnaire was answered by administrations of Member States involved in the application of the Regulation, judges, attorneys and persons from professions responsible for the service of documents such as the bailiffs from all Member States in which the Regulation applies.
- The statistical data was collected by the contractor from the Central Authorities of Member States and interested bodies such as the *Union Internationale de Hussiers de Justice*. The data concerns the time required for the transmission and service of documents and the number of documents served between Member States in one year (2002).

The Study concludes that the Regulation has made the transmission and service of documents faster and, by improving judicial cooperation between Member States, has contributed significantly to establishing a European Judicial Area. However, currently professionals involved in the application of the Regulation are still in an adaptation phase and there is still a lack of knowledge about the Regulation. The Study emphasises the need for training of professionals involved in the application of the Regulation. It expresses the expectation that the *European Judicial Atlas in Civil Matters*², a user-friendly data base containing information relevant for judicial cooperation in civil matters, will facilitate the application of the Regulation. The Study covers the application of several specific articles of the Regulation.

1.4. Meeting of the Advisory Committee on the Service of Documents (April 2004)

In order to discuss the results of the Study as well as possible adaptations of the Regulation, and in order to gather further information from Member States on the functioning of the Regulation, in April 2004 the Commission convened a meeting of the Advisory committee on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters provided for by Article 18 of the Regulation.

² See http://europa.eu.int/comm/justice_home/judicialatlascivil/html/index.htm

2. APPLICATION OF SPECIFIC PROVISIONS OF THE REGULATION

This section focuses on the application of several provisions of the Regulation, and suggests possible solutions to problems that have occurred in their application.

2.1. Speed of transmission and service (Articles 2, 4 and 7)

The Study indicates that the application of the Regulation has made the transmission and the service of documents faster (see Annex I and Chapter 7.3³ of the Study). The introduction of direct contacts between local bodies, the possibility of postal service and direct service and the introduction of standard forms (which have reduced language problems) are considered as the main reasons for the speeding up of transmission and service. The amount of time required for transmission and service has generally been reduced to 1 to 3 months (in some cases, however, up to 6 months are still required).

The Study indicates also that the introduction of direct contacts between local bodies has caused certain problems (see Annex II). In particular, in the period of adaptation which currently is still ongoing, many persons involved in the application of the Regulation, particularly local bodies, still do not have sufficient knowledge about the Regulation. The Study suggests therefore that training on the Regulation should be increased.

The effectiveness of local bodies was discussed at the meeting of the advisory committee. Some delegations stated that the choice between a centralised and a decentralised system should remain up to Member States. Some delegations stressed that problems with the application of the Regulation (such as with respect to filling in the forms or costs) as well as insufficient knowledge about the Regulation caused additional time delays, and stressed that there was a need for more training on the Regulation. In order to reduce time delays, one delegation proposed to introduce an additional form to be used in cases where the times limits provided for in the Regulation are not kept.

On the basis of the information provided by the Study and by Member States, the Commission considers that in general delays have been reduced, but that on the other hand in some cases this has not occurred yet. While there is no need to adapt the respective provisions of the Regulation, further efforts should be made – where necessary – to further reduce delays.

2.2. Application of Article 8 (Refusal to accept a document)

The Study indicates that the possibility to serve documents in a language other than the official language(s) of the Member State addressed is used in practice (see Annex III).

The Study indicates furthermore that the application of Article 8 is not entirely satisfactory, in particular since the addressee is not always informed of his right to refuse to accept the document (see Annex IV).

The Study has pointed to an issue which deserves discussion, in view of divergent approaches in the Member States⁴, and in view of the fact that there is a case pending before the European

³ Chapter 7.3 of the Study contains statistical data concerning the time required for transmission and service of documents between several Member States.

⁴ Austria and Germany have introduced time limits for the refusal to accept a document in their national legislations.

Court of Justice with respect to the legal consequences of refusal to accept a document⁵. It concerns the question of whether rules should be introduced in the Regulation with respect to a time limit for refusal to accept a document and with respect to the legal consequences of refusal to accept a document. At the committee meeting, delegations expressed different opinions, some arguing in favour of the introduction of such rules, some stating that this should be left to national law, and others stating that this question deserved some more reflection.

The Commission is interested in receiving any comments on this issue, in particular in proposals to bring more clarity to the current wording of the Regulation.

2.3. Application of Article 9 (Date of service)

An issue that has received attention in the context of the application of the Regulation is the “double-date” rule provided for in Article 9⁶.

In this respect, the Study indicates that the application of the Regulation is not entirely satisfactory because the provision is considered complicated and in certain cases it is not easy to determine the date of service (see Annex V).

At the meeting of the advisory committee, Member States expressed different opinions concerning the need for this provision. As a result of significant differences in their national legislations on the date of service⁷, some Member States consider Article 9 superfluous, whereas other stated that it is a provision of crucial importance.

Considering this and the fact that in practice problematic cases seem to be rather limited in numbers, a modification of this provision seems neither realistic nor an immediate necessity.

2.4. Application of Article 11 (Costs of service)

The issue of costs was already brought to the attention of the Commission soon after the entry into force of the Regulation, and has been the subject of extensive discussions on several occasions.

In this regard, the Study indicates that the application of this provision is not satisfactory (see Annex VI), mainly due to the fact that in certain Member States the costs charged for the service of documents are very high (above € 150) and not fully transparent (since the amounts are not known to the applicant beforehand).

The systems Member States have in place with respect to the service of documents differ significantly. In many Member States the service of documents is performed by the courts which in practice often have the documents effectively served by post. In these cases there are no or very low fees for the service of documents. On the other hand, there are some Member

⁵ Case C-443/03 (Götz Leffler v. de vennootschap naar Duitse recht Berlin Chemie AG).

⁶ Paragraph 1 provides that the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed. Paragraph 2 provides that where a document shall be served within a particular period in the context of proceedings to be brought or pending in the Member State of origin, the date to be taken into account with respect to the applicant shall be that fixed by the law of that Member State.

⁷ See the detailed overview in Chapter 4.6.3 of the Study in this respect.

States in which a liberal profession such as the *huissiers de justice* is authorized to serve documents. These professions charge fees for serving documents.⁸

In the view of the Commission, the Regulation is intended to function with different systems of serving documents, and it should neither encourage nor discourage the one or the other system.

On the other hand, on the basis of the information provided by the Study and by comments from delegations, it cannot be denied that the Regulation has caused problems with respect to some Member States because costs are not fully transparent and in some cases are deemed to be very high.

The issue was again subject of discussions at the meeting of the advisory committee where the deletion of paragraph 2 a)⁹, the introduction of a common European fee or a fixed fee or a maximum fee were suggested and discussed as possible solutions.

It was agreed that the transparency of costs was of high importance, and that information from Member States concerning the calculation of costs should be made available in the framework of the Judicial Network.¹⁰

As regards a possible modification of the Regulation, the Commission - as a possible middle-of-the-road solution - would like to invite reflections on whether the Regulation should be adapted so that Member States which charge fees would have to introduce a fixed and transparent fee.

The Commission will give further consideration to all arguments expressed on this issue.

2.5. Application of Article 14 (Service by post)

The Study confirms that documents are frequently served directly by post (see Annex VII).

The Study indicates furthermore that the application of Article 14 is not entirely satisfactory (see Annex VIII). Problems are mainly related to the acknowledgment of receipt. An important problem in this context is that the information on acknowledgment of receipt (which is determined by the Universal Postal Union) concerning the service of the document and the addressee is less detailed than in the standard form provided for in Article 10 of the Regulation.

With respect to Article 14, the Commission considers that in a possible future revision of the Regulation it should be clarified that the language rules of Article 8 also apply for service by post (which is not clear from the current wording of the Regulation).

Furthermore, the introduction of uniform rules concerning the conditions (e.g. registered letter with acknowledgement of receipt, accompanied by a uniform form informing the addressee about his right to refuse to accept the document) should be considered in order to facilitate the

⁸ An overview is given in Chapters 4.1.3 and 4.1.4 of the Study.

⁹ This would mean that the applicant would not have to pay for the costs of the employment of a judicial officer or of a person competent under the law of the Member State addressed.

¹⁰ The Commission has meanwhile asked Member States to provide that information in the framework of the network.

application of the Regulation. Currently, the identification of the conditions applicable in a specific Member State¹¹ is not user-friendly.

2.6. Application of Article 15 (Direct service)

The Study does not give a clear answer to the question whether persons interested in a judicial proceeding frequently provide service of documents directly through the judicial officers, officials or other competent persons of the Member State addressed (see Annex IX).

The advisory committee discussed the question whether the deletion of paragraph 2¹² (possibly under additional conditions in the current paragraph 1) could be considered in order to facilitate the application of the Regulation by introducing a uniform rule. Delegations expressed different views in this respect. Whereas some delegations argued in favour of deleting paragraph 2, others stated that this was not acceptable to them.

The Commission considers that it should be explored further whether paragraph 2 could be deleted, possibly by introducing new conditions in (the current) paragraph 1.

2.7. Application of Article 19 (Defendant not entering an appearance)

One Member State has proposed deleting paragraph 2¹³ since – also taking into account the facts that under the Regulation there is the principle of direct contacts between the authorities and the possibility of using modern communication technology - the conditions provided for in that paragraph with respect to the service of documents do not correspond with those contained in Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.¹⁴

The Commission is particularly interested in any comments on this issue.

2.8. Application of Articles 17 (Implementing rules) and 23 (Communication and Publication)

The Commission considers that the requirement for the adoption of the manual of receiving agencies and the glossary by a Commission Decision (Article 17) should be deleted as well as the requirement of the publication of the information communicated by Member States in the Official Journal (Article 23). Instead, a rule equivalent to Article 19 (1) of Council Regulation (EC) 1206/2001 on the taking of evidence should be introduced since Articles 17 and 23 unnecessarily complicate making available the information communicated by Member States. The information communicated by Member States is now available in the *European Judicial Atlas in Civil Matters* where it is updated continuously¹⁵. The Commission also considers that it is important that in the Atlas a record of changes and of time periods during which different declarations have been successively in force is kept.

¹¹ An overview is given in Chapter 4.8.2 of the Study.

¹² This would mean that Member States could not oppose any more the direct service of documents.

¹³ This would mean that judges could not give a judgment any more if no certificate of service or delivery has been received.

¹⁴ OJ L 143, 30.4.2004, p. 15.

¹⁵ See http://europa.eu.int/comm/justice_home/judicialatlascivil/html/docservinformation_en.htm

2.9. Application of Annexes (Forms)

The Study indicates that the application of the forms is not entirely satisfactory, in particular because forms are either not used at all or not always filled in correctly or completely or are filled in by hand and cannot be read (see Annex X). The Study also expresses the expectation that the introduction of the *European Judicial Atlas in Civil Matters* should contribute to improving this aspect of the application of the Regulation.

At the meeting of the advisory committee, one delegation stated that there are already too many forms and that certain forms are superfluous, whereas another delegation considered that an additional form should be introduced which could be used in cases where the deadlines provided for in the Regulation are not kept.

3. CONCLUSIONS

Based on the information provided by Member States and other interested parties on various occasions and by the Study, the Commission draws the following conclusions concerning the application of Regulation 1348/2000 since its entry into force in 2001:

- The application of the Regulation has generally improved and expedited the transmission and the service of documents between Member States. The main reasons for the speeding up of transmission and service are the introduction of direct contacts between local bodies, the possibility of postal service and direct service and the introduction of standard forms.
- Nevertheless, the application of the Regulation is not entirely satisfactory:
 - In the period of adaptation which is still ongoing, many persons involved in the application of the Regulation, in particular local bodies, still do not have sufficient knowledge about the Regulation. Consequently, there is a clear need for more training about the Regulation.
 - Furthermore, the application of certain provisions of the Regulation, in particular of Article 11, is not fully satisfactory. Adaptations of these provisions should be considered in order to further improve and facilitate the application of the Regulation. This concerns especially Articles 8, 11, 14, 15, 17, 19 and 23.

The Commission welcomes all reactions to this Report. Suggestions with respect to two issues are of particular interest for the Commission:

- Suggestions for possible solutions to the problems with the application of the Regulation addressed in this Report.
- Suggestions how more training on the Regulation could be provided to persons involved in the application of the Regulation.

Taking into account the reactions to this Report, the Commission will consider presenting a legislative proposal in 2005.