

**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on service in the Member States of judicial and extrajudicial documents in civil or commercial matters**

(COM(2005) 305 final — 2005/0126 (COD))

(2006/C 88/02)

On 1 September 2005, the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 23 January 2006. The rapporteur was Ms Sánchez Miguel.

At its 424th plenary session, held on 14 and 15 February 2006 (meeting of 14 February), the European Economic and Social Committee adopted the following opinion by 134 votes with two abstentions

## 1. Conclusions

1.1 The EESC congratulates the Commission on the content of the proposed reform, which clarifies the Regulation — a Regulation that has such a key role in making the area of freedom, security and justice a reality in the EU — and will make it easier to comply with. Some of the new points create a degree of confusion, however, as to how its content should be interpreted, in particular Article 8(3), which establishes an exception for calculating deadlines when the addressee refuses to accept a document on the grounds that he or she does not know the language in which it is drawn up, to protect the applicant in line with national provisions.

1.2 Article 14, where it refers to arrangements *equivalent* to acknowledgement of receipt, should also provide further details of the other arrangements for proof of receipt applying to service or transmission effected by the postal services.

1.3 Both of these issues would need to be clarified and most importantly, the different language versions would need to be checked, because there are a number of discrepancies between them. This problem must be solved before the Regulation is published, given that it will be implemented by each Member State in line with its own language version.

1.4 The EESC wishes to express its concern at the lack of consideration the Commission gives to the Regulation's implementation in the new Member States, despite having adapted the annexes to accommodate this new situation.

1.5 In any event, the EESC wishes to state that the procedure adopted in the reform is the right one, because it takes account of all parties concerned and, above all, because it has used one of the instruments created for this purpose — the European Judicial Network — which enables account to be taken of the shortcomings that have been identified in the implementation of both procedures.

## 2. Introduction

2.1 The European Commission has drawn up this proposal in line with the provisions of Article 24 of Regulation (EC)

1348/2000<sup>(1)</sup> establishing that, once the Regulation's application in the indicated period has been evaluated, it will, by no later than 1 June 2004, adapt the content of its regulations to reflect the evolution of notification systems. Nevertheless, the proposed amendment goes beyond a simple revision of the Regulation's form, because it fits into the process of legislative simplification started by the EU, and because it takes account of the large volume of legislation proposed during this period, in order to comply with the Tampere Council resolution, which is to create an area of freedom, security and justice that guarantees the free movement of persons within the EU.

2.2 This Regulation has an extremely important role to play in the proper functioning of the internal market. Cross-border transactions and trade and especially new trading systems, which rely on the new technologies, require a regulation that establishes the procedure for the service and transmission of judicial and extrajudicial documents between Member States. It should be emphasised in this context that the EESC has already stated its view<sup>(2)</sup> that the legal instrument governing this procedure should be a regulation and not a directive, since the stated aim is to ensure total harmonisation.

## 3. Content of the reform

3.1 As part of the process of simplification that the proposal for reform seeks to achieve, amendments are included improving legal certainty for both the applicant and the addressee, because the aim is to provide a fundamental principle that will uphold confidence in the internal market.

3.2 Firstly, clear rules are established for calculating periods (Article 7(2)), thus replacing earlier provisions with a time limit of one month, starting from receipt of the document and, only in relations between the administrative authorities of each State, will it be the relevant national legislation that applies in each case (Article 9(1) and (2)).

<sup>(1)</sup> OJ L 160 of 30.6.2000.

<sup>(2)</sup> OJ C 368 of 20.12.1999 (point 3.2).

3.3 The regulation clarifies refusal to accept a document if it is in a language not understood by the addressee, and considers the option of having the document translated into in a language which the addressee does know, with the date of the translation being the start date of the period set (Article 8.1)). Nevertheless, the new paragraph 3 provides for an exception to cases in which national legislation lays down specific time limits, in order to preserve the rights of the applicant. In this case the date will be the date of service of the initial document.

3.4 Also important is the amendment proposed on the costs of service or transmission (Article 11(2)), which determines that each Member State will set a fixed fee laid down in advance.

3.5 With regard to service or transmission by postal services (Article 14), Member States are given the option of requiring proof, as constituted by acknowledgement of receipt or 'equivalent', without this affecting the right of persons interested in judicial proceedings to serve or transmit judicial documents through the intermediary of judicial officers, officials or other competent persons in the Member State addressed (Article 15).

#### 4. Comments on the proposal for amendment

4.1 The EESC welcomes any proposal for a change to legislation in line with the principle of simplification<sup>(3)</sup> and which at the same time guarantees legal certainty in the area concerned. In this case, it points out that the Commission has fulfilled its duty of drawing up the report provided for in Article 24 of the Regulation itself and that, furthermore, in the meetings of the European Judicial Network<sup>(4)</sup>, experiences of the Regulation's application have been studied and discussed and, once the relevant information and studies had been collected, the Commission adopted the report<sup>(5)</sup> that has provided the basis for the proposal now under consideration.

4.2 In this context, it must be acknowledged that bringing the calculation of time limits for the service and transmission of documents into the ambit of Community legislation represents a major step towards simplification. This is because previously, differing national provisions applied, which delayed

proceedings. This new approach also gives the parties involved an understanding of the procedures without having to find out about those in force in each Member State. Nevertheless, it is acknowledged that national law applies to relations between States, as set out in the amended Article 9, without this affecting the individuals concerned.

4.3 As regards the proposed new wording for Article 8<sup>(6)</sup>, on the addressee's 'refusal to accept a document' if it is in a language that the addressee does not understand, and the obligation to have the document translated, this appears to be more concerned than the current wording about protecting the interests of the parties involved, in particular because it does not reduce the time limits set and instead the period is deemed to start only from the date of translation. Nevertheless, the wording of the new Article 8(3) poses a serious problem of implementation by Member States with regard to the above, by providing for an exception that would allow the use of national provisions for the calculation of deadlines, which could result in the document's recipient being unable to defend himself or herself.

4.4 The EESC also welcomes the inclusion of a fixed fee laid down in advance by each Member State because there is often distrust between the parties concerned regarding the lack of clarity in the costs. This arrangement will improve the transparency of the procedure.

4.5 In line with the EESC opinion<sup>(7)</sup>, the committee considers that there is a need to examine the use of technical innovations and new means of transmission accepted by receiving agencies, such as e-mail or the Internet, for the service and transmission of judicial and extrajudicial documents in civil and commercial matters, provided that legal certainty is guaranteed for the parties concerned.

4.6 Another issue that should be considered is the wording of the forms set out in the annexes, which have been drawn up with the judicial services of the Member States, in other words, the agencies transmitting and receiving the documents, in mind. The EESC considers that consideration should also be given to the interests of the applicant and the addressee, by simplifying the wording and making it comprehensible to the parties concerned in judicial and extrajudicial proceedings.

Brussels, 14 February 2006.

The President  
of the European Economic and Social Committee  
Anne-Marie SIGMUND

<sup>(3)</sup> OJ C 24 of 31.1.2006.

<sup>(4)</sup> European Judicial Network in civil and commercial matters. OJ C 139 of 11.5.2001.

<sup>(5)</sup> Report on the application of Council Regulation (EC) 1348/2000. 1 October 2004 - COM(2004) 603 final.

<sup>(6)</sup> The new proposal for Article 8, concerning refusal to accept a document on the grounds that it is not in an official language of the Member State addressed, is in line with the case-law of the ECJ; see the recent judgment C-443/03 of 8.3.2005.

<sup>(7)</sup> OJ C 368 of 20.12.1999.