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### Legislation

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#### Contents

#### I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

#### REGULATIONS

- ★ **Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure** ..... 1
- ★ **Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers <sup>(1)</sup>** ..... 23
- ★ **Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers** ..... 30
- ★ **Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)** ..... 40

<sup>(1)</sup> Text with EEA relevance

## I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

## REGULATIONS

**REGULATION (EC) No 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 11 July 2007  
establishing a European Small Claims Procedure**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and Article 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Community is to adopt, *inter alia*, measures in the field of judicial cooperation in civil matters having cross-border implications and needed for the proper functioning of the internal market.
- (2) According to Article 65(c) of the Treaty, those measures are to include those eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.
- (3) In this respect, the Community has, among other measures, already adopted 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>(3)</sup>, Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(4)</sup>, Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters <sup>(5)</sup>, 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 <sup>(6)</sup> and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure <sup>(7)</sup>.

- (4) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to establish common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims.
- (5) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters <sup>(8)</sup>. The programme refers to simplifying and speeding up the settlement of cross-border litigation on small claims. This was taken forward by the Hague Programme <sup>(9)</sup>, adopted by the European Council on 5 November 2004, which called for work on small claims to be actively pursued.

<sup>(3)</sup> OJ L 160, 30.6.2000, p. 37.

<sup>(4)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

<sup>(5)</sup> OJ L 174, 27.6.2001, p. 25.

<sup>(6)</sup> OJ L 143, 30.4.2004, p. 15. Regulation as amended by Commission Regulation (EC) No 1869/2005 (OJ L 300, 17.11.2005, p. 6).

<sup>(7)</sup> OJ L 399, 30.12.2006, p. 1.

<sup>(8)</sup> OJ C 12, 15.1.2001, p. 1.

<sup>(9)</sup> OJ C 53, 3.3.2005, p. 1.

<sup>(1)</sup> OJ C 88, 11.4.2006, p. 61.

<sup>(2)</sup> Opinion of the European Parliament of 14 December 2006 (not yet published in the Official Journal) and Council Decision of 13 June 2007.

- (6) On 20 December 2002, the Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation. The Green Paper launched a consultation on measures concerning the simplification and the speeding up of small claims litigation.
- (7) Many Member States have introduced simplified civil procedures for small claims since costs, delays and complexities connected with litigation do not necessarily decrease proportionally with the value of the claim. The obstacles to obtaining a fast and inexpensive judgment are exacerbated in cross-border cases. It is therefore necessary to establish a European procedure for small claims (European Small Claims Procedure). The objective of such a procedure should be to facilitate access to justice. The distortion of competition within the internal market due to imbalances with regard to the functioning of the procedural means afforded to creditors in different Member States entails the need for Community legislation that guarantees a level playing-field for creditors and debtors throughout the European Union. It should be necessary to have regard to the principles of simplicity, speed and proportionality when setting the costs of dealing with a claim under the European Small Claims Procedure. It is appropriate that details of the costs to be charged be made public, and that the means of setting any such costs be transparent.
- (8) The European Small Claims Procedure should simplify and speed up litigation concerning small claims in cross-border cases, whilst reducing costs, by offering an optional tool in addition to the possibilities existing under the laws of the Member States, which will remain unaffected. This Regulation should also make it simpler to obtain the recognition and enforcement of a judgment given in the European Small Claims Procedure in another Member State.
- (9) This Regulation seeks to promote fundamental rights and takes into account, in particular, the principles recognised by the Charter of Fundamental Rights of the European Union. The court or tribunal should respect the right to a fair trial and the principle of an adversarial process, in particular when deciding on the necessity of an oral hearing and on the means of taking evidence and the extent to which evidence is to be taken.
- (10) For the purposes of facilitating calculation of the value of a claim, all interest, expenses and disbursements should be disregarded. This should affect neither the power of the court or tribunal to award these in its judgment nor the national rules on the calculation of interest.
- (11) In order to facilitate the commencement of the European Small Claims Procedure, the claimant should make an application by filling in a standard claim form and lodging it with the court or tribunal. The claim form should be submitted only to a court or tribunal that has jurisdiction.
- (12) The claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent the claimant from submitting, where appropriate, further evidence during the procedure. The same principle should apply to the response by the defendant.
- (13) The concepts of 'clearly unfounded' in the context of the dismissal of a claim and of 'inadmissible' in the context of the dismissal of an application should be determined in accordance with national law.
- (14) The European Small Claims Procedure should be a written procedure, unless an oral hearing is considered necessary by the court or tribunal or a party so requests. The court or tribunal may refuse such a request. Such refusal may not be contested separately.
- (15) The parties should not be obliged to be represented by a lawyer or another legal professional.
- (16) The concept of 'counterclaim' should be interpreted within the meaning of Article 6(3) of Regulation (EC) No 44/2001 as arising from the same contract or facts on which the original claim was based. Articles 2 and 4 as well as Article 5(3), (4) and (5) should apply, *mutatis mutandis*, to counterclaims.
- (17) In cases where the defendant invokes a right of set-off during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. Therefore, the defendant should not be obliged to use standard Form A, as set out in Annex I, for invoking such a right.
- (18) The Member State addressed for the purposes of the application of Article 6 is the Member State where service is to be effected or to where the document is to be dispatched. In order to reduce costs and delays, documents should be served on the parties primarily by postal service attested by an acknowledgment of receipt, including the date of receipt.
- (19) A party may refuse to accept a document at the time of service or by returning the document within one week if it is not written in, or accompanied by a translation into, the official language of the Member State addressed (or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched) or a language which the addressee understands.

- (20) In the context of oral hearings and the taking of evidence, the Member States should encourage the use of modern communication technology subject to the national law of the Member State where the court or tribunal is situated. The court or tribunal should use the simplest and least costly method of taking evidence.
- (21) The practical assistance to be made available to the parties should include technical information concerning the availability and the filling in of the forms.
- (22) The information about procedural questions can also be given by the court or tribunal staff in accordance with national law.
- (23) As the objective of this Regulation is to simplify and speed up litigation concerning small claims in cross-border cases, the court or tribunal should act as soon as possible even when this Regulation does not prescribe any time limit for a specific phase of the procedure.
- (24) For the purposes of calculating time limits as provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits <sup>(1)</sup> should apply.
- (25) In order to speed up the recovery of small claims, the judgment should be enforceable notwithstanding any possible appeal and without the condition of the provision of a security except as provided for in this Regulation.
- (26) Any reference in this Regulation to an appeal should include any possible means of appeal available under national law.
- (27) The court or tribunal must include a person qualified to serve as a judge in accordance with national law.
- (28) Whenever the court or tribunal is required to set a time limit, the party concerned should be informed of the consequences of not complying with it.
- (29) The unsuccessful party should bear the costs of the proceedings. The costs of the proceedings should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.
- (30) In order to facilitate recognition and enforcement, a judgment given in a Member State in the European Small Claims Procedure should be recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.
- (31) There should be minimum standards for the review of a judgment in situations where the defendant was not able to contest the claim.
- (32) Having regard to the objectives of simplicity and cost-effectiveness, the party seeking enforcement shall not be required to have an authorised representative or a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure in accordance with the national law of that Member State.
- (33) Chapter III of this Regulation should also apply to the determination of costs and expenses made by officers of the court or tribunal due to a judgment given pursuant to the procedure specified in this Regulation.
- (34) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>.
- (35) In particular, power should be conferred on the Commission to adopt measures necessary to update or make technical amendments to the forms set out in the Annexes. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation and/or to supplement this Regulation by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (36) Since the objectives of this Regulation, namely, the establishment of a procedure to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

<sup>(1)</sup> OJ L 124, 8.6.1971, p. 1.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(37) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation.

(38) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### SUBJECT MATTER AND SCOPE

#### Article 1

##### Subject matter

This Regulation establishes a European procedure for small claims (hereinafter referred to as the European Small Claims Procedure), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure.

#### Article 2

##### Scope

1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).

2. This Regulation shall not apply to matters concerning:

(a) the status or legal capacity of natural persons;

(b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;

(c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

(d) social security;

(e) arbitration;

(f) employment law;

(g) tenancies of immovable property, with the exception of actions on monetary claims; or

(h) violations of privacy and of rights relating to personality, including defamation.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

#### Article 3

##### Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.

2. Domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.

3. The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

## CHAPTER II

### THE EUROPEAN SMALL CLAIMS PROCEDURE

#### Article 4

##### Commencement of the Procedure

1. The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.



2. Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.

3. Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

4. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose.

Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

5. Member States shall ensure that the claim form is available at all courts and tribunals at which the European Small Claims Procedure can be commenced.

#### Article 5

##### Conduct of the Procedure

1. The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests. The court or tribunal may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

2. After receiving the properly filled in claim form, the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.

3. The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form.

4. Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant.

5. If, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit set out in Article 2(1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately.

6. Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt.

The claimant shall have 30 days from service to respond to any counterclaim.

7. If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, *mutatis mutandis*, to counterclaims.

#### Article 6

##### Languages

1. The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.

2. If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.

3. Where a party has refused to accept a document because it is not in either of the following languages:

(a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or

(b) a language which the addressee understands,

the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

*Article 7***Conclusion of the Procedure**

1. Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:

- (a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
- (b) take evidence in accordance with Article 9; or
- (c) summon the parties to an oral hearing to be held within 30 days of the summons.

2. The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.

3. If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.

*Article 8***Oral hearing**

The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.

*Article 9***Taking of evidence**

1. The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.

2. The court or tribunal may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making its decision, the court or tribunal shall take costs into account.

3. The court or tribunal shall use the simplest and least burdensome method of taking evidence.

*Article 10***Representation of parties**

Representation by a lawyer or another legal professional shall not be mandatory.

*Article 11***Assistance for the parties**

The Member States shall ensure that the parties can receive practical assistance in filling in the forms.

*Article 12***Remit of the court or tribunal**

1. The court or tribunal shall not require the parties to make any legal assessment of the claim.

2. If necessary, the court or tribunal shall inform the parties about procedural questions.

3. Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties.

*Article 13***Service of documents**

1. Documents shall be served by postal service attested by an acknowledgement of receipt including the date of receipt.

2. If service in accordance with paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No 805/2004.

*Article 14***Time limits**

1. Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it.

2. The court or tribunal may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), in exceptional circumstances, if necessary in order to safeguard the rights of the parties.

3. If, in exceptional circumstances, it is not possible for the court or tribunal to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible.

*Article 15***Enforceability of the judgment**

1. The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.

2. Article 23 shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given.

## Article 16

**Costs**

The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

## Article 17

**Appeal**

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.

2. Article 16 shall apply to any appeal.

## Article 18

**Minimum standards for review of the judgment**

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

- (a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and
  - (ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part,
- or
- (b) the defendant was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

2. If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force.

If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

## Article 19

**Applicable procedural law**

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

## CHAPTER III

**RECOGNITION AND ENFORCEMENT IN ANOTHER MEMBER STATE**

## Article 20

**Recognition and enforcement**

1. A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

## Article 21

**Enforcement procedure**

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.

Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

2. The party seeking enforcement shall produce:

- (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- (b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

3. The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have:

- (a) an authorised representative; or
- (b) a postal address

in the Member State of enforcement, other than with agents having competence for the enforcement procedure.



4. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

#### Article 22

##### Refusal of enforcement

1. Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- (a) the earlier judgment involved the same cause of action and was between the same parties;
- (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

2. Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

#### Article 23

##### Stay or limitation of enforcement

Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

#### CHAPTER IV

##### FINAL PROVISIONS

#### Article 24

##### Information

The Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the European Judicial Network in Civil and Commercial Matters established in accordance with Decision 2001/470/EC.

#### Article 25

##### Information relating to jurisdiction, means of communication and appeals

1. By 1 January 2008 the Member States shall communicate to the Commission:

- (a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
- (b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
- (c) whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;
- (d) which languages are accepted pursuant to Article 21(2)(b); and
- (e) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the *Official Journal of the European Union* and through any other appropriate means.

#### Article 26

##### Implementing measures

The measures designed to amend non-essential elements of this Regulation, including by supplementing it, relating to updates or technical amendments to the forms in the Annexes shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 27(2).

*Article 27***Committee**

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

*Article 28***Review**

By 1 January 2014, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European Small Claims Procedure, including the limit of the value of the claim referred to in Article 2(1). That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

To that end and in order to ensure that best practice in the European Union is duly taken into account and reflects the principles of better legislation, Member States shall provide the Commission with information relating to the cross-border operation of the European Small Claims Procedure. This information shall cover court fees, speed of the procedure, efficiency, ease of use and the internal small claims procedures of the Member States.

The Commission's report shall be accompanied, if appropriate, by proposals for adaptation.

*Article 29***Entry into force**

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2009, with the exception of Article 25, which shall apply from 1 January 2008.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
M. LOBO ANTUNES

## ANNEX I

## EUROPEAN SMALL CLAIMS PROCEDURE

## FORM A

## CLAIM FORM

(Article 4(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

Case number (\*):

Received by the court/tribunal on: \_\_\_\_/\_\_\_\_/\_\_\_\_ (\*)

(\*) To be filled in by the court/tribunal.

## IMPORTANT INFORMATION

PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION – THEY WILL HELP YOU TO FILL IN THIS FORM

**Language**

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). This may help you in filling in the form in the required language.

**Supporting documents**

Please note that the claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent you from submitting, where appropriate, further evidence during the procedure.

A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant. The defendant will have an opportunity to submit a response.

**1. Court/tribunal**

In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. *Before which court/tribunal are you making your claim?*

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

**2. Claimant**

This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a PO Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify you, for example, your date of birth, occupation, position in the company, personal ID code and the company registry code in certain Member States.

Where there is more than one claimant, please use additional sheets.

## 2. *The claimant's details*

- 2.1. Surname, first name/name of company or organisation:
- 2.2. Street and number/PO box:
- 2.3. City and postal code:
- 2.4. Country:
- 2.5. Telephone (\*):
- 2.6. E-mail (\*):
- 2.7. Claimant's representative, if any, and contact details (\*):
- 2.8. Other details (\*):

## 3. *Defendant*

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify the person, for example the date of birth, occupation, position in the company, personal ID code and company registry code in certain Member States. If there is more than one defendant, please use additional sheets.

## 3. *The defendant's details*

- 3.1. Surname, first name/name of company or organisation:
- 3.2. Street and number/PO box:
- 3.3. City and postal code:
- 3.4. Country:
- 3.5. Telephone (\*):
- 3.6. E-mail (\*):
- 3.7. Defendant's representative, if known, and contact details (\*):
- 3.8. Other details (\*):

## 4. *Jurisdiction*

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. The court/tribunal must have jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This section includes a non-exhaustive list of possible grounds for jurisdiction.

Information on the rules of jurisdiction can be found on the website of the European Judicial Atlas at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm).

You can also look at [http://ec.europa.eu/civiljustice/glossary/glossary\\_en.htm](http://ec.europa.eu/civiljustice/glossary/glossary_en.htm) for an explanation of some of the legal terms employed.

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(\*) Optional.

4. *On what ground do you consider the court/tribunal to have jurisdiction?*

- 4.1. Domicile of the defendant ☐
- 4.2. Domicile of the consumer ☐
- 4.3. Domicile of the policyholder, the insured or the beneficiary in insurance matters ☐
- 4.4. Place of performance of the obligation in question ☐
- 4.5. Place of the harmful event ☐
- 4.6. Place where the immovable property is situated ☐
- 4.7. Choice of court/tribunal agreed by the parties
- 4.8. Other (please specify): \_\_\_\_\_

5. *Cross-border nature of the case*

In order to make use of the European Small Claims Procedure, your case must be of a cross-border nature. A case is of a cross-border nature if at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court/tribunal.

5. *Cross-border nature of the case*

- 5.1. Country of domicile or habitual residence of claimant: \_\_\_\_\_
- 5.2. Country of domicile or habitual residence of defendant: \_\_\_\_\_
- 5.3. Member State of the court/tribunal: \_\_\_\_\_

6. *Bank details (optional)*

In field 6.1. you may inform the court/tribunal by which means you intend to pay the application fee. Please note that not all methods are necessarily available at the court/tribunal to which you are sending your application. You should verify which methods of payment will be accepted by the court/tribunal. You can do this by contacting the court/tribunal concerned or by consulting the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you choose to pay by credit card or to allow the court/tribunal to collect the fee from your bank account, you should give the necessary credit card or bank account details in the Appendix to this form. The Appendix will be for the information of the court/tribunal only and will not be forwarded to the defendant.

In field 6.2. you are given the possibility of indicating by which means you wish to receive payment from the defendant, for example if the defendant wishes to pay immediately even before the judgment is given. If you wish to be paid by bank transfer, please give the necessary bank details.

6. *Bank details (\*)*

- 6.1. How will you pay the application fee?
- 6.1.1. By bank transfer ☐
- 6.1.2. By credit card ☐ (please fill in the Appendix)
- 6.1.3. Direct debit from your bank account ☐ (please fill in the Appendix)
- 6.1.4. Other (please specify): \_\_\_\_\_
- 6.2. To which account do you wish the defendant to pay any amount claimed or awarded?
- 6.2.1. Account holder: \_\_\_\_\_
- 6.2.2. Bank name, BIC or other relevant bank code: \_\_\_\_\_
- 6.2.3. Account number/IBAN: \_\_\_\_\_



## 7. Claim

**Scope:** Please note that the European Small Claims Procedure has a limited scope. No claims of a value higher than EUR 2000 or which are listed in Article 2 of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure can be dealt with under this procedure. If your claim does not relate to an action within the scope of that Regulation in accordance with Article 2, proceedings will continue before the courts/tribunals with jurisdiction in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should withdraw your application.

**Monetary or other claim:** You should indicate whether you are claiming money and/or something else (non-monetary claim), for example, delivery of goods, and then fill in respectively either 7.1. and/or 7.2. If your claim is not for money, please indicate the estimated value of your claim. In the case of a non-monetary claim, you should indicate whether you have a secondary claim for compensation if it is not possible to satisfy the original claim.

If you wish to claim the costs of the proceedings (e.g. translation costs, lawyers' fees, costs relating to the service of documents etc.), then you should indicate this in 7.3. Please note that rules regarding the costs which courts/tribunals can award vary between different Member States. Details of categories of costs in the Member States can be found on the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you wish to claim any contractual interest, for example on a loan, you should indicate the rate and from what date it runs. The court/tribunal may award statutory interest on your claim, if you are successful. If you wish to claim interest, please indicate this and the date from which the interest should run.

### 7. About your claim

#### ☐ 7.1. Claim for money

7.1.1. Amount of principal (excluding interest and costs): \_\_\_\_\_

7.1.2. Currency

☐ Euro (EUR)

☐ Bulgarian lev (BGN)

☐ Cypriot pound (CYP)

☐ Czech koruna (CZK)

☐ Estonian kroon (EEK)

☐ Pound Sterling (GBP)

☐ Hungarian forint (HUF)

☐ Latvian lats (LVL)

☐ Lithuanian litas (LTL)

☐ Maltese lira (MTL)

☐ Polish zloty (PLN)

☐ Romanian leu (RON)

☐ Swedish kronor (SEK)

☐ Slovak koruna (SKK)

☐ Other (please specify): \_\_\_\_\_

#### ☐ 7.2. Other claim:

7.2.1. Please specify what you are claiming: \_\_\_\_\_

7.2.2. Estimated value of the claim: \_\_\_\_\_

Currency:

☐ Euro (EUR)

☐ Bulgarian lev (BGN)

☐ Cypriot pound (CYP)

☐ Czech koruna (CZK)

☐ Estonian kroon (EEK)

☐ Pound Sterling (GBP)

☐ Hungarian forint (HUF)

☐ Latvian lats (LVL)

☐ Lithuanian litas (LTL)

☐ Maltese lira (MTL)

☐ Polish zloty (PLN)

☐ Romanian leu (RON)

☐ Swedish kronor (SEK)

☐ Slovak koruna (SKK)

☐ Other (please specify): \_\_\_\_\_

#### 7.3. Are you claiming the costs of proceedings?

7.3.1. Yes ☐

7.3.2. No ☐

7.3.3. If yes, please specify which costs and indicate the amount claimed or incurred so far:

## 7.4. Are you claiming interest?

Yes ☐No ☐

If yes, is the interest:

Contractual? ☐ If so, go to 7.4.1Statutory? ☐ If so, go to 7.4.2

## 7.4.1. If contractual

(1) the rate is:

☐ \_\_\_\_\_ %☐ \_\_\_\_\_ % above the base rate of the ECB☐ other: \_\_\_\_\_

(2) the interest should run from: \_\_\_\_/\_\_\_\_/\_\_\_\_ (date)

## 7.4.2. If statutory

the interest should run from: \_\_\_\_/\_\_\_\_/\_\_\_\_ (date)

8. *Details of claim*

In 8.1. you should describe briefly the substance of your claim.

In 8.2. you should describe any relevant supporting evidence. This could, for example, be written evidence (e.g. contracts, receipts, etc.) or oral or written statements from witnesses. For each piece of evidence, please indicate which aspect of your claim it is intended to support.

If space is insufficient, you can add additional sheets.

8. *Details of claim*

8.1. Please give reasons for your claim, for example what happened, where and when.

8.2. Please describe the evidence you wish to put forward to support your claim and state which points of the claim it supports. Where appropriate, you should add relevant supporting documents.

8.2.1. Written evidence ☐ please specify below8.2.2. Witnesses ☐ please specify below8.2.3. Other ☐ please specify below

*Oral hearing:* Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

## 8.3. Do you want an oral hearing to be held?

Yes ☐No ☐

If yes, please indicate reasons (\*)

9. *Certificate*

A judgment given in a Member State in the European Small Claims Procedure can be recognised and enforced in another Member State. If you intend to ask for recognition and enforcement in a Member State other than that of the court/tribunal, you can request in this form that the court/tribunal, after having made a decision in your favour, issue a certificate concerning that judgment.

9. *Certificate*

I ask the court/tribunal to issue a certificate concerning the judgment

Yes ☐

No ☐

10. *Date and signature*

Please make sure that you write your name clearly and sign and date your application at the end.

10. *Date and signature*

I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim.

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at: \_\_\_\_\_

Date: \_\_/\_\_/\_\_\_\_

Name and signature:

*Appendix to the claim form (Form A)***Bank details (\*) for the purposes of payment of the application fee**

Account holder/credit card holder:

Bank name, BIC or other relevant bank code/credit card company:

Account number or IBAN/credit card number, expiry date and security number of the credit card:

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(\*) Optional.

## ANNEX II

## EUROPEAN SMALL CLAIMS PROCEDURE

## FORM B

## REQUEST BY THE COURT OR TRIBUNAL TO COMPLETE AND/OR RECTIFY THE CLAIM FORM

(Article 4(4) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

To be filled in by the court/tribunal

Case number:

Received by the court/tribunal on: \_\_\_\_/\_\_\_\_/\_\_\_\_.

1. *Court/tribunal*

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

2. *Claimant*

2.1. Surname, first name/name of company or organisation:

2.2. Street and number/PO box:

2.3. City and postal code:

2.4. Country:

2.5. Telephone (\*):

2.6. E-mail (\*):

2.7. Claimant's representative, if any, and contact details (\*):

2.8. Other details (\*):

3. *Defendant*

3.1. Surname, first name/name of company or organisation:

3.2. Street and number/PO box:

3.3. City and postal code:

3.4. Country:

3.5. Telephone (\*):

3.6. E-mail (\*):

3.7. Defendant's representative, if any, and contact details (\*):

3.8. Other details (\*):

(\*) Optional.



The court/tribunal has examined your claim form and considers it to be inadequate or insufficiently clear or not properly filled in: please complete and/or rectify your form in the language of the court/tribunal as indicated below as soon as possible and at the latest by \_\_\_\_\_.

The court/tribunal shall dismiss your application under the conditions provided for in Regulation (EC) No 861(\*)/2007 if you fail to complete and/or rectify it within the time limit set out above.

Your claim form has not been filled in the correct language. Please fill it in one of the following languages.

|            |                          |                         |                          |           |                          |
|------------|--------------------------|-------------------------|--------------------------|-----------|--------------------------|
| Bulgarian  | <input type="checkbox"/> | Czech                   | <input type="checkbox"/> | German    | <input type="checkbox"/> |
| Estonian   | <input type="checkbox"/> | Spanish                 | <input type="checkbox"/> | Greek     | <input type="checkbox"/> |
| French     | <input type="checkbox"/> | Irish                   | <input type="checkbox"/> | Italian   | <input type="checkbox"/> |
| Latvian    | <input type="checkbox"/> | Lithuanian              | <input type="checkbox"/> | Hungarian | <input type="checkbox"/> |
| Maltese    | <input type="checkbox"/> | Dutch                   | <input type="checkbox"/> | Polish    | <input type="checkbox"/> |
| Portuguese | <input type="checkbox"/> | Romanian                | <input type="checkbox"/> | Slovak    | <input type="checkbox"/> |
| Slovene    | <input type="checkbox"/> | Finnish                 | <input type="checkbox"/> | Swedish   | <input type="checkbox"/> |
| English    | <input type="checkbox"/> | Other: (please specify) | _____                    |           |                          |

The following sections of the claim form must be completed and/or rectified as stated below:

—  
—  
—  
—

Done at:

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature and/or stamp:

## ANNEX III

## EUROPEAN SMALL CLAIMS PROCEDURE

## FORM C

## ANSWER FORM

(Article 5(2) and 5(3) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

## IMPORTANT INFORMATION AND GUIDELINES FOR THE DEFENDANT

A claim as set out in the attached claim form has been submitted against you using the European Small Claims Procedure.

You can answer by filling in Part II of this form and returning it to the court/tribunal, or in any other appropriate way, within 30 days after the claim form has been served on you together with the answer form.

Please note that if you do not answer within 30 days, the court/tribunal shall give a judgment.

Please make sure that you write your name clearly and sign and date the answer form at the end.

You should also read the guidelines included in the claim form; these may help you to prepare your response.

*Language:* You should reply to the claim in the language of the court/tribunal which has sent you this form.

Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). This may help you in filling in the form in the required language.

*Oral hearing:* Please note that the European Small Claims Procedure is a written procedure. However, you can ask for an oral hearing to be held. Please be aware that having regard to the circumstances of the case, the court/tribunal can refuse this request.

*Supporting documents:* You can indicate possible means of evidence, and add, where appropriate, supporting documents.

*Counterclaim:* If you want to make a claim against the claimant (counterclaim), you should fill in and attach a separate Form A which you can find on the Internet at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/fillinginformation\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/fillinginformation_en.htm) or obtain from the court/tribunal which sent you this form. Please note that for the purposes of the counterclaim you are considered to be the claimant.

*Correcting your details:* You can also correct or supplement information about yourself (e.g. contact details, representative etc.) in section 6 'Other information'.

*Extra space:* If space is insufficient, you can add additional sheets.

**Part I** (to be filled in by the court/tribunal)

Name of claimant:

Name of defendant:

Court/tribunal:

Claim:

Case number:

**Part II** (to be filled in by the defendant)

1. Do you accept the claim?
  - Yes ☐
  - No ☐
  - Partially ☐

If you have answered 'no' or 'partially', please indicate reasons:

The claim is outside the scope of the European Small Claims Procedure ☐  
 please specify below

Other ☐  
 please specify below
2. If you do not accept the claim please describe the evidence you wish to put forward to contest it. Please state which points of your answer the evidence supports. Where appropriate, you should add relevant supporting documents.
  - 2.1. Written evidence ☐ please specify below
  - 2.2. Witnesses ☐ please specify below
  - 2.3. Other ☐ please specify below
3. Do you want an oral hearing to be held?
  - Yes ☐
  - No ☐

If yes, please indicate reasons (\*):
4. Are you claiming the costs of proceedings?
  - 4.1. Yes ☐
  - 4.2. No ☐
  - 4.3. If yes, please specify which costs and if possible, indicate the amount claimed or incurred so far:
5. Do you want to make a counterclaim?
  - 5.1. Yes ☐
  - 5.2. No ☐
  - 5.3. If yes, please fill in and attach a separate Form A
6. Other information (\*)
7. Date and signature
 

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name and signature:

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(\*) Optional.

## ANNEX IV

## EUROPEAN SMALL CLAIMS PROCEDURE

## FORM D

## CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE

(Article 20(2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

To be filled in by the court/tribunal

1. *Court/tribunal*
  - 1.1. Name:
  - 1.2. Street and number/PO box:
  - 1.3. City and postal code:
  - 1.4. Country:
2. *Claimant*
  - 2.1. Surname, first name/name of company or organisation:
  - 2.2. Street and number/PO box:
  - 2.3. City and postal code:
  - 2.4. Country:
  - 2.5. Telephone (\*):
  - 2.6. E-mail (\*):
  - 2.7. Claimant's representative, if any, and contact details (\*):
  - 2.8. Other details (\*):
3. *Defendant*
  - 3.1. Surname, first name/name of company or organisation:
  - 3.2. Street and number/PO box:
  - 3.3. City and postal code:
  - 3.4. Country:
  - 3.5. Telephone (\*):
  - 3.6. E-mail (\*):
  - 3.7. Defendant's representative, if any, and contact details (\*):
  - 3.8. Other details (\*):

(\*) Optional.

4. *Judgment*

4.1. Date:

4.2. Case number:

4.3. The substance of the judgment:

4.3.1. The court/tribunal has ordered \_\_\_\_\_ to pay to \_\_\_\_\_

(1) Principal:

(2) Interest:

(3) Costs:

4.3.2. The court/tribunal has made an order against \_\_\_\_\_ to \_\_\_\_\_

(If the judgment was given by an appeal court in the case of a review of a judgment.)

This judgment supersedes the judgment given on \_\_\_\_/\_\_\_\_/\_\_\_\_, case number \_\_\_\_\_, and any certificate relative thereto.

THE JUDGMENT WILL BE RECOGNISED AND ENFORCED IN ANOTHER MEMBER STATE WITHOUT THE NEED FOR A DECLARATION OF ENFORCEABILITY AND WITHOUT ANY POSSIBILITY OF OPPOSING ITS RECOGNITION.

Done at: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature and/or stamp



**REGULATION (EC) No 862/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 11 July 2007**

**on Community statistics on migration and international protection and repealing Council Regulation  
(EEC) No 311/76 on the compilation of statistics on foreign workers**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(2)</sup>,

Whereas:

- (1) The conclusions of the Justice and Home Affairs Council of 28-29 May 2001 considered, regarding common analysis and the improved exchange of statistics on asylum and migration, that there is a need for a comprehensive and coherent framework for future action on improving statistics.
- (2) In April 2003, the Commission released a Communication to the Council and to the European Parliament, setting out an Action Plan for the collection and analysis of Community Statistics in the field of migration. This included a number of important changes designed to improve the completeness and degree of harmonisation of these statistics. Under the Action Plan, the Commission aimed to propose legislation on Community statistics on migration and asylum.
- (3) The Thessaloniki European Council of 19 and 20 June 2003 concluded that more effective mechanisms were needed for the collection and analysis of information on migration and asylum in the European Union.
- (4) The European Parliament in its resolution of 6 November 2003 <sup>(3)</sup> on the abovementioned Communication from the Commission noted that legislation was required to

ensure the production of comprehensive statistics necessary for the development of fair and effective Community policies on migration. The resolution supports the Commission's plans to propose legislation for migration and asylum statistics.

- (5) Enlargement of the European Union has brought an added geographical and political dimension to the scale of the phenomena associated with migration. It has also brought a further impetus to the demand for accurate, timely and harmonised statistical information. There is also an increasing need for statistical information regarding the profession, education, qualifications and type of activity of migrants.
- (6) Harmonised and comparable Community statistics on migration and asylum are essential for the development and monitoring of Community legislation and policies relating to immigration and asylum, and to the free movement of persons.
- (7) There is a need to reinforce the exchange of statistical information on asylum and migration and to improve the quality of Community statistical collections and outputs which have, hitherto, taken place on the basis of a series of 'gentlemen's agreements'.
- (8) It is essential that information be available, throughout the European Union, for the purposes of monitoring the development and implementation of Community legislation and policy. In the main, current practice does not sufficiently ensure, in a uniform manner, regular, timely and rapid delivery and dissemination of harmonised data.
- (9) This Regulation does not cover estimates of the number of persons illegally resident in the Member States. Member States should not provide such estimates or data on such persons to the Commission (Eurostat), although they may be included in population stocks due to surveys.
- (10) Wherever possible, the definitions used for the purposes of this Regulation are taken from the United Nations Recommendations on Statistics of International Migration, the United Nations Recommendations for the Censuses of Population and Housing in the ECE Region or EC legislation, and should be updated following the relevant procedures.

<sup>(1)</sup> OJ C 185, 8.8.2006, p. 31.

<sup>(2)</sup> Opinion of the European Parliament of 14 March 2007 (not yet published in the Official Journal) and Council Decision of 12 June 2007.

<sup>(3)</sup> OJ C 83 E, 2.4.2004, p. 94.

(11) New Community needs on statistics on migration and asylum render obsolete the provisions of Council Regulation (EEC) No 311/76 of 9 February 1976 on the compilation of statistics on foreign workers <sup>(1)</sup>.

(12) Regulation (EEC) No 311/76 should therefore be repealed.

(13) Since the objective of this Regulation to establish common rules for the collection and compilation of Community statistics on migration and international protection cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(14) Council Regulation (EC) No 322/97 of 17 February 1997 on Community Statistics <sup>(2)</sup> constitutes the reference framework for the provisions of this Regulation. In particular, it requires conformity to standards of impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality.

(15) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(3)</sup>.

(16) In particular, the Commission should be empowered to update the definitions, to decide on the groupings of data and additional disaggregations and to lay down the rules on accuracy and quality standards. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation and to supplement it by the addition of new non-essential elements, they should be adopted in accordance with the regulatory procedure with scrutiny laid down in Article 5a of Decision 1999/468/EC.

(17) The Statistical Programme Committee, established by Council Decision 89/382/EEC, Euratom of 19 June 1989 establishing a Committee on the Statistical Programmes of the European Communities <sup>(4)</sup>, has been consulted in accordance with Article 3 of that Decision,

HAVE ADOPTED THIS REGULATION:

#### Article 1

#### Subject matter

This Regulation establishes common rules for the collection and compilation of Community statistics on:

- (a) immigration to and emigration from the Member State territories, including flows from the territory of one Member State to that of another Member State and flows between a Member State and the territory of a third country;
- (b) the citizenship and country of birth of persons usually resident in the territory of the Member States;
- (c) administrative and judicial procedures and processes in the Member States relating to immigration, granting of permission to reside, citizenship, asylum and other forms of international protection and the prevention of illegal immigration.

#### Article 2

#### Definitions

1. For the purposes of this Regulation, the following definitions shall apply:

- (a) 'usual residence' means the place at which a person normally spends the daily period of rest, regardless of temporary absences for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage or, in default, the place of legal or registered residence;
- (b) 'immigration' means the action by which a person establishes his or her usual residence in the territory of a Member State for a period that is, or is expected to be, of at least 12 months, having previously been usually resident in another Member State or a third country;
- (c) 'emigration' means the action by which a person, having previously been usually resident in the territory of a Member State, ceases to have his or her usual residence in that Member State for a period that is, or is expected to be, of at least 12 months;
- (d) 'citizenship' means the particular legal bond between an individual and his or her State, acquired by birth or naturalisation, whether by declaration, choice, marriage or other means according to national legislation;

<sup>(1)</sup> OJ L 39, 14.2.1976, p. 1.

<sup>(2)</sup> OJ L 52, 22.2.1997, p. 1. Regulation as amended by Regulation (EC) No 1882/2003 of the European Parliament and the Council (OJ L 284, 31.10.2003, p. 1).

<sup>(3)</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

<sup>(4)</sup> OJ L 181, 28.6.1989, p. 47.

- (e) 'country of birth' means the country of residence (in its current borders, if the information is available) of the mother at the time of the birth or, in default, the country (in its current borders, if the information is available) in which the birth took place;
  - (f) 'immigrant' means a person undertaking an immigration;
  - (g) 'emigrant' means a person undertaking an emigration;
  - (h) 'long-term resident' means long-term resident as defined in Article 2(b) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents <sup>(1)</sup>;
  - (i) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty, including stateless persons;
  - (j) 'application for international protection' means application for international protection as defined in Article 2(g) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted <sup>(2)</sup>;
  - (k) 'refugee status' means refugee status as defined in Article 2(d) of Directive 2004/83/EC;
  - (l) 'subsidiary protection status' means subsidiary protection status as defined in Article 2(f) of Directive 2004/83/EC;
  - (m) 'family members' means family members as defined in Article 2(i) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national <sup>(3)</sup>;
  - (n) 'temporary protection' means temporary protection as defined in Article 2(a) of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof <sup>(4)</sup>;
  - (o) 'unaccompanied minor' means an unaccompanied minor as defined in Article 2(i) of Directive 2004/83/EC;
  - (p) 'external borders' means external borders as defined in Article 2(2) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) <sup>(5)</sup>;
  - (q) 'third-country nationals refused entry' means third-country nationals who are refused entry at the external border because they do not fulfil all the entry conditions laid down in Article 5(1) of Regulation (EC) No 562/2006 and do not belong to the categories of persons referred to in Article 5(4) of that Regulation;
  - (r) 'third-country nationals found to be illegally present' means third-country nationals who are officially found to be on the territory of a Member State and who do not fulfil, or no longer fulfil, the conditions for stay or residence in that Member State;
  - (s) 'resettlement' means the transfer of third-country nationals or stateless persons on the basis of an assessment of their need for international protection and a durable solution, to a Member State, where they are permitted to reside with a secure legal status.
2. Member States shall report to the Commission (Eurostat) on the use and probable effects of estimations or other methods of adapting statistics based on national definitions to comply with the harmonised definitions set out in paragraph 1.
3. For the reference year 2008, the statistics supplied to the Commission (Eurostat) under this Regulation may be based on alternative (national) definitions. In such cases, Member States shall notify the Commission (Eurostat) of these alternative definitions.
4. If a Member State is not bound by one or more of the legal texts referred to in the definitions in paragraph 1, statistics comparable with those required under this Regulation should be provided by that Member State where they can be provided under existing legislative and/or administrative procedures.

### Article 3

#### Statistics on international migration, usually resident population and acquisition of citizenship

1. Member States shall supply to the Commission (Eurostat) statistics on the numbers of:
- (a) immigrants moving to the territory of the Member State, disaggregated as follows:
    - (i) groups of citizenship by age and sex;
    - (ii) groups of country of birth by age and sex;
    - (iii) groups of country of previous usual residence by age and sex;

<sup>(1)</sup> OJ L 16, 23.1.2004, p. 44.

<sup>(2)</sup> OJ L 304, 30.9.2004, p. 12.

<sup>(3)</sup> OJ L 50, 25.2.2003, p. 1.

<sup>(4)</sup> OJ L 212, 7.8.2001, p. 12.

<sup>(5)</sup> OJ L 105, 13.4.2006, p. 1.

(b) emigrants moving from the territory of the Member State disaggregated as follows:

(i) groups of citizenships;

(ii) age;

(iii) sex;

(iv) groups of countries of next usual residence;

(c) persons having their usual residence in the Member State at the end of the reference period, disaggregated as follows:

(i) groups of citizenship by age and sex;

(ii) groups of country of birth by age and sex;

(d) persons having their usual residence in the territory of the Member State and having acquired during the reference year the citizenship of the Member State and having formerly held the citizenship of another Member State or a third country or having formerly been stateless, disaggregated by age and sex, and by the former citizenship of the persons concerned and by whether the person was formerly stateless.

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within 12 months of the end of the reference year. The first reference year shall be 2008.

#### Article 4

##### Statistics on international protection

1. Member States shall supply to the Commission (Eurostat) statistics on the numbers of:

(a) persons having submitted an application for international protection or having been included in such an application as a family member during the reference period;

(b) persons who are the subject of applications for international protection under consideration by the responsible national authority at the end of the reference period;

(c) applications for international protection having been withdrawn during the reference period.

These statistics shall be disaggregated by age and sex, and by the citizenship of the persons concerned. They shall relate to reference periods of one calendar month and shall be supplied to the Commission (Eurostat) within two months of the end of the reference month. The first reference month shall be January 2008.

2. Member States shall supply to the Commission (Eurostat) statistics on the numbers of:

(a) persons covered by first instance decisions rejecting applications for international protection, such as decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies during the reference period;

(b) persons covered by first instance decisions granting or withdrawing refugee status, taken by administrative or judicial bodies during the reference period;

(c) persons covered by first instance decisions granting or withdrawing subsidiary protection status, taken by administrative or judicial bodies during the reference period;

(d) persons covered by first instance decisions granting or withdrawing temporary protection, taken by administrative or judicial bodies during the reference period;

(e) persons covered by other first instance decisions granting or withdrawing authorisation to stay for humanitarian reasons under national law concerning international protection, taken by administrative or judicial bodies during the reference period.

These statistics shall be disaggregated by age and sex, and by the citizenship of the persons concerned. They shall relate to reference periods of three calendar months and shall be supplied to the Commission (Eurostat) within two months of the end of the reference period. The first reference period shall be January to March 2008.

3. Member States shall supply to the Commission (Eurostat) statistics on the numbers of:

(a) applicants for international protection who are considered by the responsible national authority to be unaccompanied minors during the reference period;

(b) persons covered by final decisions rejecting applications for international protection, such as decisions considering applications as inadmissible or as unfounded and decisions under priority and accelerated procedures, taken by administrative or judicial bodies in appeal or review during the reference period;

(c) persons covered by final decisions granting or withdrawing refugee status taken by administrative or judicial bodies in appeal or review during the reference period;

- (d) persons covered by final decisions granting or withdrawing subsidiary protection status taken by administrative or judicial bodies in appeal or review during the reference period;
- (e) persons covered by final decisions granting or withdrawing temporary protection taken by administrative or judicial bodies in appeal or review during the reference period;
- (f) persons covered by other final decisions, taken by administrative or judicial bodies in appeal or review, granting or withdrawing authorisations to stay for humanitarian reasons under national law concerning international protection during the reference period;
- (g) persons who have been granted an authorisation to reside in a Member State within the framework of a national or Community resettlement scheme during the reference period, where such a scheme is implemented in that Member State.

These statistics shall be disaggregated by age and sex, and by the citizenship of the persons concerned. They shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within three months of the end of the reference year. The first reference year shall be 2008.

4. Member States shall supply to the Commission (Eurostat) the following statistics on the application of Regulation (EC) No 343/2003 and Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 <sup>(1)</sup>:

- (a) the numbers of requests for taking back or taking charge of an asylum seeker;
- (b) the provisions on which the requests referred to in point (a) are based;
- (c) the decisions taken in response to the requests referred to in point (a);
- (d) the numbers of transfers to which the decisions referred to in point (c) lead;
- (e) the number of requests for information.

These statistics shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within three months of the end of the reference year. The first reference year shall be 2008.

<sup>(1)</sup> OJ L 222, 5.9.2003, p. 3.

#### Article 5

##### Statistics on the prevention of illegal entry and stay

1. Member States shall supply to the Commission (Eurostat) statistics on the numbers of:

- (a) third-country nationals refused entry to the Member State's territory at the external border;
- (b) third-country nationals found to be illegally present in the Member State's territory under national laws relating to immigration.

The statistics under point (a) shall be disaggregated in accordance with Article 13(5) of Regulation (EC) No 562/2006.

The statistics under point (b) shall be disaggregated by age and sex, and by citizenship of the persons concerned.

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within three months of the end of the reference year. The first reference year shall be 2008.

#### Article 6

##### Statistics on residence permits and residence of third-country nationals

1. Member States shall supply to the Commission (Eurostat) statistics on:

- (a) the number of residence permits issued to persons who are third-country nationals, disaggregated as follows:
  - (i) permits issued during the reference period whereby the person is being granted permission to reside for the first time, disaggregated by citizenship, by the reason for the permit being issued and by the length of validity of the permit;
  - (ii) permits issued during the reference period and granted on the occasion of a person changing immigration status or reason for stay, disaggregated by citizenship, by the reason for the permit being issued and by the length of validity of the permit;
  - (iii) valid permits at the end of the reference period (number of permits issued, not withdrawn and not expired), disaggregated by citizenship, by the reason for the issue of the permit and by the length of validity of the permit;
- (b) the number of long-term residents at the end of the reference period, disaggregated by citizenship.



2. Where the national laws and administrative practices of a Member State allow for specific categories of long-term visa or immigration status to be granted instead of residence permits, counts of such visas and grants of status are to be included in the statistics required under paragraph 1.

3. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within six months of the end of the reference year. The first reference year shall be 2008.

#### Article 7

##### Statistics on returns

1. Member States shall supply to the Commission (Eurostat) statistics relating to:

- (a) the number of third-country nationals found to be illegally present in the territory of the Member State who are subject to an administrative or judicial decision or act stating or declaring that their stay is illegal and imposing an obligation to leave the territory of the Member State, disaggregated by citizenship of the persons concerned;
- (b) the number of third-country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision or act, as referred to in point (a), disaggregated by the citizenship of the persons returned.

2. The statistics referred to in paragraph 1 shall relate to reference periods of one calendar year and shall be supplied to the Commission (Eurostat) within three months of the end of the reference year. The first reference year shall be 2008.

3. The statistics referred to in paragraph 1 shall not include third-country nationals who are transferred from one Member State to another Member State under the mechanism established by Regulations (EC) No 343/2003 and (EC) No 1560/2003.

#### Article 8

##### Additional disaggregations

1. The Commission may adopt measures relating to the definition of additional disaggregations as set out below for the following statistics:

- (a) for statistics required under Article 4 as a whole, disaggregations by:
  - (i) year of submission of the application;
- (b) for statistics required under Article 4(4), disaggregations by:
  - (i) number of persons concerned by the request, decision and transfer;

(c) for statistics required under Article 5(1)(a), disaggregations by:

- (i) age;
- (ii) sex;

(d) for statistics required under Article 5(1)(b), disaggregations by:

- (i) grounds for the apprehension;
- (ii) place of the apprehension;

(e) for statistics required under Article 6, disaggregations by:

- (i) year in which permission to reside was first granted;
- (ii) age;
- (iii) sex;

(f) for statistics required under Article 7, disaggregations by:

- (i) reason for the decision or act imposing an obligation to leave;
- (ii) age;
- (iii) sex.

2. The additional disaggregations mentioned in paragraph 1 shall be supplied only separately, and not cross-classified with the disaggregations required under Articles 4 to 7.

3. When deciding whether additional disaggregations are required, the Commission shall consider the need for this information for the purposes of developing and monitoring Community policies and shall consider the availability of appropriate data sources and the costs involved.

Negotiations on additional disaggregations that may be needed for the application of Articles 4 to 7 shall be initiated not later than 20 August 2009. The earliest reference year for the implementation of additional disaggregations shall be 2010.

#### Article 9

##### Data sources and quality standards

1. The statistics shall be based on the following data sources according to their availability in the Member State and in accordance with national laws and practices:

- (a) records of administrative and judicial actions;
- (b) registers relating to administrative actions;

- (c) registers of the population of persons or of a particular subgroup of that population;
- (d) censuses;
- (e) sample surveys;
- (f) other appropriate sources.

As part of the statistics process, scientifically based and well documented statistical estimation methods may be used.

2. Member States shall report to the Commission (Eurostat) on the data sources used, the reasons for the selection of these sources and the effects of the selected data sources on the quality of the statistics, and on the estimation methods used, and shall keep the Commission (Eurostat) informed of changes thereto.

3. At the request of the Commission (Eurostat), Member States shall provide it with all the information necessary to evaluate the quality, comparability and completeness of the statistical information.

4. Member States shall inform the Commission (Eurostat) without delay of revisions and corrections to the statistics supplied under this Regulation, and of any changes in the methods and data sources used.

5. The measures relating to the definition of the appropriate formats for the transmission of data shall be adopted in accordance with the regulatory procedure referred to in Article 11(2).

#### Article 10

##### Implementing measures

1. The measures necessary for the implementation of this Regulation laying down the rules on the appropriate formats for the transmission of data as provided for in Article 9 shall be adopted in accordance with the regulatory procedure referred to in Article 11(2).

2. The following measures necessary for the implementation of this Regulation and designed to amend its non-essential elements, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(3):

- (a) updating the definitions set out in Article 2(1);

- (b) defining the categories of groups of country of birth, groups of country of previous and next usual residence and groups of citizenship as provided for in Article 3(1);
- (c) defining the categories of the reasons for the permit as provided for in Article 6(1)(a);
- (d) defining the additional disaggregations and the levels of disaggregations to be applied to the variables as provided for in Article 8;
- (e) laying down the rules on accuracy and quality standards.

#### Article 11

##### Committee

1. In adopting the implementing measures, the Commission shall be assisted by the Statistical Programme Committee, established by Decision 89/382/EEC, Euratom.

2. Where reference is made to this paragraph, Article 5 and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### Article 12

##### Report

By 20 August 2012 and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council on the statistics compiled pursuant to this Regulation and on their quality.

#### Article 13

##### Repeal

Regulation (EEC) No 311/76 is hereby repealed.

#### Article 14

##### Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 11 July 2007.

For the European Parliament  
The President  
H.-G. PÖTTERING

For the Council  
The President  
M. LOBO ANTUNES

**REGULATION (EC) No 863/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 11 July 2007****establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 62(2)(a) and 66 thereof,

Having regard to the proposal from the Commission,

After consulting the European Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(1)</sup>,

Whereas:

(1) On 26 October 2004, the Council adopted Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union <sup>(2)</sup> (the Agency).

(2) A Member State facing circumstances requiring increased technical and operational assistance at its external borders may, without prejudice to Article 64(2) of the Treaty and in accordance with Articles 7 and 8 of Regulation (EC) No 2007/2004, ask the Agency for assistance in the form of coordination, where other Member States are involved.

(3) Effective management of the external borders through checks and surveillance helps to combat illegal immigration and trafficking in human beings and to prevent any threat to the internal security, public policy, public health and international relations of the Member States. Border control is in the interests not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control.

(4) Responsibility for the control of the external borders lies with the Member States. Bearing in mind the critical situations which Member States from time to time have to deal with at their external borders, in particular the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member States illegally, it may be necessary to assist Member States by providing appropriate and sufficient resources, in particular personnel.

(5) The current possibilities for providing efficient practical assistance with regard to checking persons at the external borders and the surveillance of the external borders at European level are not considered sufficient, in particular where Member States are faced with the arrival of large numbers of third-country nationals trying to enter the territory of the Member States illegally.

(6) A Member State should accordingly have the possibility of requesting the deployment, within the framework of the Agency, of Rapid Border Intervention Teams comprising specially trained experts from other Member States on its territory to assist its national border guards on a temporary basis. The deployment of the Rapid Border Intervention Teams will contribute to increasing solidarity and mutual assistance between Member States.

(7) The deployment of Rapid Border Intervention Teams to provide support for a limited period of time should take place in exceptional and urgent situations. Situations of this kind would arise where a Member State was faced with a mass influx of third-country nationals attempting to enter its territory illegally which required an immediate response and where the deployment of a Rapid Border Intervention Team would contribute to providing an effective response. Rapid Border Intervention Teams are not intended to provide long-term assistance.

(8) Rapid Border Intervention Teams will depend on the planned duties, availability and frequency of deployment. To ensure the effective operation of the Rapid Border Intervention Teams, Member States should make available an appropriate number of border guards (the Rapid Pool) reflecting in particular the specialisation and size of their own border guard organisations. The Member States should therefore create national pools of experts to help increase the effectiveness of this Regulation. The different sizes of the Member States and the technical specialisation of their border guard organisations should be taken into consideration by the Agency.

(9) Best practices from many Member States show that knowing the profiles (skills and qualifications) of available border guards before deployment significantly contributes to the efficient planning and conduct of operations. The Agency should therefore determine the profiles and overall number of border guards to be provided for the Rapid Border Intervention Teams.

<sup>(1)</sup> Opinion of the European Parliament of 26 April 2007 (not yet published in the Official Journal) and Council Decision of 12 June 2007.

<sup>(2)</sup> OJ L 349, 25.11.2004, p. 1.

- (10) A mechanism for the creation of Rapid Border Intervention Teams which offers both the Agency and the Member States sufficient flexibility and ensures that operations are carried out with a high level of efficiency and effectiveness should be established.
- (11) The Agency should, *inter alia*, coordinate the composition, training and deployment of the Rapid Border Intervention Teams. It is therefore necessary to introduce new provisions in Regulation (EC) No 2007/2004 concerning the role of the Agency with respect to those teams.
- (12) When a Member State is faced with a mass influx of third-country nationals attempting to enter its territory illegally, or another exceptional situation substantially affecting the discharge of national tasks, it may refrain from making its national border guards available for deployment.
- (13) In order to work effectively together with national border guards, the members of the teams should be able to carry out tasks related to the checks of persons at and the surveillance of the external borders while deployed on the territory of the Member State requesting their assistance.
- (14) Similarly, the efficiency of joint operations coordinated by the Agency should be further improved by enabling, on a temporary basis, guest officers from other Member States to carry out tasks related to the checks of persons at and the surveillance of the external borders.
- (15) It is therefore also necessary to introduce new provisions in Regulation (EC) No 2007/2004 concerning the tasks and powers of guest officers deployed on the territory of a Member State at its request within the framework of the Agency.
- (16) This Regulation contributes to the correct application of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) <sup>(1)</sup>. To this end, members of the teams and guest officers, while carrying out border checks and surveillance, should not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Any measures taken in the performance of their tasks and in the exercise of their powers should be proportionate to the objectives pursued by such measures.
- (17) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. It should be applied in accordance with the Member States' obligations as regards international protection and non-refoulement.
- (18) This Regulation should be applied with full respect for obligations arising under the international law of the sea, in particular as regards search and rescue.
- (19) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(2)</sup> applies to the processing of personal data by the Member States in application of this Regulation.
- (20) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* <sup>(3)</sup> which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC <sup>(4)</sup> on certain arrangements for the application of that Agreement.
- (21) As regards Switzerland, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 4(1) of Council Decisions 2004/849/EC <sup>(5)</sup> and 2004/860/EC <sup>(6)</sup>.

<sup>(2)</sup> OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

<sup>(3)</sup> OJ L 176, 10.7.1999, p. 36.

<sup>(4)</sup> OJ L 176, 10.7.1999, p. 31.

<sup>(5)</sup> Council Decision 2004/849/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 368, 15.12.2004, p. 26).

<sup>(6)</sup> Council Decision 2004/860/EC of 25 October 2004 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation, concerning the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 370, 17.12.2004, p. 78).

<sup>(1)</sup> OJ L 105, 13.4.2006, p. 1.



(22) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds on the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark should, in accordance with Article 5 of that Protocol, decide within a period of six months after the date of adoption of this Regulation whether it will transpose it in its national law or not.

(23) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* <sup>(1)</sup>. The United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(24) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* <sup>(2)</sup>. Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(25) In this Regulation, the provisions of Article 6(8) and (9) constitute, to the extent that they refer to access being given to the Schengen Information System, provisions building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 and Article 4(2) of the 2005 Acts of Accession,

HAVE ADOPTED THIS REGULATION:

#### Article 1

##### Subject matter

1. This Regulation establishes a mechanism for the purposes of providing rapid operational assistance for a limited period to a requesting Member State facing a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of the Member State illegally, in the form of Rapid Border Intervention Teams (hereinafter referred to as teams). This Regulation also defines the tasks to be performed and powers to be exercised by members of the teams during operations in a Member State other than their own.

<sup>(1)</sup> OJ L 131, 1.6.2000, p. 43.

<sup>(2)</sup> OJ L 64, 7.3.2002, p. 20.

2. This Regulation amends Regulation (EC) No 2007/2004 as a result of the establishment of the mechanism referred to in paragraph 1 and with a view to defining the tasks to be performed and powers to be exercised by border guards of the Member States participating in joint operations and pilot projects in another Member State.

3. Necessary technical assistance shall be provided to a requesting Member State in accordance with Articles 7 and 8 of Regulation (EC) No 2007/2004.

#### Article 2

##### Scope

This Regulation shall apply without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.

#### CHAPTER I

##### RAPID BORDER INTERVENTION TEAMS

#### Article 3

##### Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'the Agency' means the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union;
2. 'members of the teams' means border guards of Member States serving with the Rapid Border Intervention Teams other than those of the host Member State;
3. 'requesting Member State' means a Member State whose competent authorities request the Agency to deploy Rapid Border Intervention Teams on its territory;
4. 'host Member State' means a Member State on the territory of which a deployment of a Rapid Border Intervention Team takes place;
5. 'home Member State' means the Member State of which a member of the team is a border guard.

#### Article 4

##### Composition and deployment of Rapid Border Intervention Teams

1. The composition of teams shall be determined by the Agency in accordance with Article 8b of Regulation (EC) No 2007/2004 as amended by this Regulation. Their deployment shall be governed by Article 8d of that Regulation.

2. On a proposal by the Executive Director of the Agency, the Agency's Management Board shall decide by a three-quarters' majority on the profiles and the overall number of border guards to be made available for the teams (the Rapid Pool). The same procedure shall apply with regard to any subsequent changes in the profiles and the overall number of border guards of the Rapid Pool. Member States shall contribute to the Rapid Pool via a national expert pool on the basis of the various defined profiles by nominating border guards corresponding to the required profiles.

3. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks. The autonomy of the home Member State in relation to the selection of staff and the duration of their deployment shall remain unaffected.

4. The costs relating to the activities referred to in paragraph 1 shall be met by the Agency in accordance with Article 8h of Regulation (EC) No 2007/2004.

#### *Article 5*

##### **Instructions to the Rapid Border Intervention Teams**

1. During deployment of the teams, instructions to the teams shall be issued by the host Member State in accordance with the operational plan referred to in Article 8e of Regulation (EC) No 2007/2004.

2. The Agency, via its coordinating officer as referred to in Article 8g of Regulation (EC) No 2007/2004, may communicate its views on those instructions to the host Member State. If it does so, the host Member State shall take those views into consideration.

3. In accordance with Article 8g of Regulation (EC) No 2007/2004, the host Member State shall give the coordinating officer all necessary assistance, including full access to the teams at all times throughout the deployment.

#### *Article 6*

##### **Tasks and powers of the members of the teams**

1. Members of the teams shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 and that are necessary for the realisation of the objectives of that Regulation. The details for each deployment shall be specified in the operational plan of that deployment in accordance with Article 8e of Regulation (EC) No 2007/2004.

2. Members of the teams shall, in the performance of their tasks and in the exercise of their powers, fully respect human dignity. Any measures taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures. While performing their tasks and exercising their powers, members of the teams shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

3. Members of the teams may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.

4. Members of the teams shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a deployment of the teams. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, members of the teams shall at all times carry an accreditation document, as provided for in Article 8, which they shall present on request.

5. While performing their tasks and exercising their powers, members of the teams may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the teams, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to all Member States participating in the deployment.

6. While performing their tasks and exercising their powers, members of the teams shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of members of the teams or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State may authorise the members of the teams to consult its national and European databases which are necessary for border checks and surveillance. The members of the teams shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the teams, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

10. Decisions to refuse entry in accordance with Article 13 of Regulation (EC) No 562/2006 shall be taken only by border guards of the host Member State.

#### Article 7

##### **Status, rights and obligations of members of the teams**

1. Members of the teams shall remain national border guards of their home Member States and shall be paid by them.

2. Border guards who are made available to the Rapid Pool pursuant to Article 4 shall participate in advanced training relevant to their tasks and powers as well as in the regular exercises conducted by the Agency in accordance with Article 8c of Regulation (EC) No 2007/2004.

3. Border guards shall receive a daily subsistence allowance, including accommodation costs, for the duration of their participation in training and exercises organised by the Agency and of their periods of deployment in accordance with Article 8h of Regulation (EC) No 2007/2004.

#### Article 8

##### **Accreditation document**

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the European Union to members of the teams for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 6(1). The document shall include the following features of the member of the team:

- (a) name and nationality;
- (b) rank; and
- (c) a recent digitised photograph.

2. The document shall be returned to the Agency at the end of the deployment of the team.

#### Article 9

##### **Applicable law**

1. While performing the tasks and exercising the powers as referred to in Article 6(1), the members of the teams shall comply with Community law and the national law of the host Member State.

2. While performing the tasks and exercising the powers as referred to in Article 6(1), the members of the teams shall remain subject to the disciplinary measures of their home Member State.

3. Specific rules concerning the carrying and use of service weapons, ammunition and equipment, as well as the use of force are set out in Article 6(5), (6) and (7).

4. Specific rules concerning civil and criminal liability are set out in Articles 10 and 11 respectively.

#### Article 10

##### **Civil liability**

1. Where members of the teams are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.

4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Communities in accordance with Article 239 of the Treaty.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

#### Article 11

##### **Criminal liability**

During the deployment of the teams, members of the teams shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.



## CHAPTER II

## AMENDMENTS TO REGULATION (EC) No 2007/2004

## Article 12

## Amendments

Regulation (EC) No 2007/2004 is hereby amended as follows:

1. Article 1(4) shall be deleted;
2. the following Article shall be inserted:

*'Article 1a*

**Definitions**

For the purposes of this Regulation, the following definitions shall apply:

1. "external borders of the Member States" means the land and sea borders of the Member States and their airports and seaports, to which the provisions of Community law on the crossing of external borders by persons apply;
  2. "host Member State" means a Member State on the territory of which a deployment of a Rapid Border Intervention Team or a joint operation or a pilot project takes place;
  3. "home Member State" means the Member State of which a member of the team or the guest officer is a border guard;
  4. "members of the teams" means border guards of Member States serving with the Rapid Border Intervention Team other than those of the host Member State;
  5. "requesting Member State" means a Member State whose competent authorities request the Agency to deploy the Rapid Border Intervention Teams on its territory;
  6. "guest officers" means the officers of border guard services of Member States other than the host Member State participating in joint operations and pilot projects.;
3. in Article 2(1), the following point shall be added:
- (g) deploy Rapid Border Intervention Teams to Member States in accordance with Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers (\*).

(\*) OJ L 199, 31.7.2007, p. 30.'

4. Article 8(3) shall be replaced by the following:

'3. The Agency may acquire technical equipment for checks and surveillance of external borders to be used by its experts and within the framework of the Rapid Border Intervention Teams for the duration of their deployment.;

5. the following Articles shall be inserted:

*'Article 8a*

**Rapid Border Intervention Teams**

At the request of a Member State faced with a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally, the Agency may deploy for a limited period one or more Rapid Border Intervention Teams (hereinafter referred to as "team(s)") on the territory of the requesting Member State for the appropriate duration, in accordance with Article 4 of Regulation (EC) No 863/2007.

*Article 8b*

**Composition of teams**

1. In the event of a situation as described in Article 8a, Member States shall, at the request of the Agency, immediately communicate the number, names and profiles of border guards from their national pool which they are able to make available within five days to be members of a team. Member States shall make the border guards available for deployment at the request of the Agency unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

2. When determining the composition of a team for deployment, the Executive Director shall take into account the particular circumstances which the requesting Member State is facing. The team shall be composed in accordance with the operational plan referred to in Article 8e.

*Article 8c*

**Training and exercises**

The Agency shall provide border guards who are part of the Rapid Pool, as referred to in Article 4(2) of Regulation (EC) No 863/2007 with advanced training relevant to their tasks and powers and shall conduct regular exercises with those border guards in accordance with the advanced training and exercise schedule referred to in the Agency's annual working programme.

*Article 8d***Procedure for deciding on deployment of the teams**

1. A request for deployment of the teams in accordance with Article 8a shall include a description of the situation, possible aims and envisaged needs for the deployment. If required, the Executive Director may send experts from the Agency to assess the situation at the external borders of the requesting Member State.

2. The Executive Director shall immediately inform the Management Board of a Member State's request for deployment of the teams.

3. When deciding on the request of a Member State, the Executive Director shall take into account the findings of the Agency's risk analyses as well as any other relevant information provided by the requesting Member State or another Member State.

4. The Executive Director shall take a decision on the request for deployment of the teams as soon as possible and no later than five working days from the date of the receipt of the request. The Executive Director shall simultaneously notify the requesting Member State and the Management Board in writing of the decision. The decision shall state the main reasons on which it is based.

5. If the Executive Director decides to deploy one or more teams, an operational plan shall immediately be drawn up by the Agency and the requesting Member State in accordance with Article 8e.

6. As soon as the operational plan has been agreed, the Executive Director shall inform the Member States of the requested number and profiles of border guards which are to be deployed in the teams. This information shall be provided, in writing, to the national contact points designated under Article 8f and shall indicate the date on which the deployment is to take place. A copy of the operational plan shall also be provided to them.

7. If the Executive Director is absent or indisposed, the decisions related to the deployment of the teams shall be taken by the Deputy Executive Director.

8. Member States shall make the border guards available for deployment at the request of the Agency, unless they are faced with an exceptional situation substantially affecting the discharge of national tasks.

9. Deployment of the teams shall take place no later than five working days after the date on which the operational plan is agreed between the Executive Director and the requesting Member State.

*Article 8e***Operational plan**

1. The Executive Director and the requesting Member State shall agree on an operational plan detailing the precise conditions for deployment of the teams. The operational plan shall include the following:

- (a) description of the situation, with *modus operandi* and objectives of the deployment, including the operational aim;
- (b) the foreseeable duration of deployment of the teams;
- (c) the geographical area of responsibility in the requesting Member State where the teams will be deployed;
- (d) description of tasks and special instructions for members of the teams, including on permissible consultation of databases and permissible service weapons, ammunition and equipment in the host Member State;
- (e) the composition of the teams;
- (f) the names and ranks of the host Member State's border guards responsible for cooperating with the teams, in particular those of the border guards who are in command of the teams during the period of deployment, and the place of the teams in the chain of command;
- (g) the technical equipment to be deployed together with the teams in accordance with Article 8.

2. Any amendments to or adaptations of the operational plan shall require the agreement of both the Executive Director and the requesting Member State. A copy of the amended or adapted operational plan shall immediately be sent by the Agency to the participating Member States.

*Article 8f***National contact point**

Member States shall designate a national contact point for communication with the Agency on all matters pertaining to the teams. The national contact point shall be reachable at all times.

*Article 8g***Coordinating Officer**

1. The Executive Director shall appoint one or more experts from the staff of the Agency to be deployed as coordinating officer. The Executive Director shall notify the host Member State of the appointment.

2. The coordinating officer shall act on behalf of the Agency in all aspects of the deployment of the teams. In particular, the coordinating officer shall:

- (a) act as an interface between the Agency and the host Member State;

- (b) act as an interface between the Agency and the members of the teams, providing assistance, on behalf of the Agency, on all issues relating to the conditions for their deployment with the teams;
  - (c) monitor the correct implementation of the operational plan;
  - (d) report to the Agency on all aspects of the deployment of the teams.
3. In accordance with Article 25(3)f, the Executive Director may authorise the coordinating officer to assist in resolving any disagreement on the execution of the operational plan and deployment of the teams.
4. In discharging his duties, the coordinating officer shall take instructions only from the Agency.

#### Article 8h

##### Costs

1. The Agency shall fully meet the following costs incurred by Member States in making available their border guards for the purposes mentioned in Articles 8a and 8c:
- (a) travel costs from the home Member State to the host Member State and from the host Member State to the home Member State;
  - (b) costs related to vaccinations;
  - (c) costs related to special insurance needs;
  - (d) costs related to health care;
  - (e) daily subsistence allowances, including accommodation costs;
  - (f) costs related to the Agency's technical equipment.
2. Detailed rules concerning the payment of the daily subsistence allowance of members of the teams shall be established by the Management Board.;
6. Article 10 shall be replaced by the following:

#### 'Article 10

##### Tasks and powers of guest officers

1. Guest officers shall have the capacity to perform all tasks and exercise all powers for border checks or border surveillance in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (\*), and that are necessary for the realisation of the objectives of that Regulation.

2. While performing their tasks and exercising their powers guest officers shall comply with Community law and the national law of the host Member State.

3. Guest officers may only perform tasks and exercise powers under instructions from and, as a general rule, in the presence of border guards of the host Member State.

4. Guest officers shall wear their own uniform while performing their tasks and exercising their powers. They shall wear a blue armband with the insignia of the European Union and the Agency on their uniforms, identifying them as participating in a joint operation or pilot project. For the purposes of identification vis-à-vis the national authorities of the host Member State and its citizens, guest officers shall at all times carry an accreditation document, as provided for in Article 10a, which they shall present on request.

5. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers may carry service weapons, ammunition and equipment as authorised according to the home Member State's national law. However, the host Member State may prohibit the carrying of certain service weapons, ammunition and equipment, provided that its own legislation applies the same prohibition to its own border guards. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the permissible service weapons, ammunition and equipment and of the conditions for their use. The Agency shall make this information available to Member States.

6. By way of derogation from paragraph 2, while performing their tasks and exercising their powers, guest officers shall be authorised to use force, including service weapons, ammunition and equipment, with the consent of the home Member State and the host Member State, in the presence of border guards of the host Member State and in accordance with the national law of the host Member State.

7. By way of derogation from paragraph 6, service weapons, ammunition and equipment may be used in legitimate self-defence and in legitimate defence of guest officers or of other persons, in accordance with the national law of the host Member State.

8. For the purpose of this Regulation, the host Member State may authorise guest officers to consult its national and European databases which are necessary for border checks and surveillance. The guest officers shall consult only those data which are required for performing their tasks and exercising their powers. The host Member State shall, in advance of the deployment of the guest officers, inform the Agency of the national and European databases which may be consulted. The Agency shall make this information available to all Member States participating in the deployment.

9. The consultation as referred to in paragraph 8 shall be carried out in accordance with Community law and the national law of the host Member State in the area of data protection.

10. Decisions to refuse entry in accordance with Article 13 of Regulation (EC) No 562/2006 shall be taken only by border guards of the host Member State.

#### Article 10a

##### Accreditation document

1. The Agency shall, in cooperation with the host Member State, issue a document in the official language of the host Member State and another official language of the institutions of the European Union to guest officers for the purpose of identifying them and as proof of the holder's rights to perform the tasks and exercise the powers as referred to in Article 10(1). The document shall include the following features of the guest officer:

- (a) name and nationality;
- (b) rank; and
- (c) a recent digitised photograph.

2. The document shall be returned to the Agency at the end of the joint operation or pilot project.

#### Article 10b

##### Civil liability

1. Where guest officers are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations.

2. Where such damage is caused by gross negligence or wilful misconduct, the host Member State may approach the home Member State in order to have any sums it has paid to the victims or persons entitled on their behalf reimbursed by the home Member State.

3. Without prejudice to the exercise of its rights vis-à-vis third parties, each Member State shall waive all its claims against the host Member State or any other Member State for any damage it has sustained, except in cases of gross negligence or wilful misconduct.

This Regulation shall be binding in its entirety and directly applicable in the Member States, in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

For the European Parliament  
The President  
H.-G. PÖTTERING

4. Any dispute between Member States relating to the application of paragraphs 2 and 3 which cannot be resolved by negotiations between them shall be submitted by them to the Court of Justice of the European Communities in accordance with Article 239 of the Treaty.

5. Without prejudice to the exercise of its rights vis-à-vis third parties, the Agency shall meet costs related to damage caused to the Agency's equipment during deployment, except in cases of gross negligence or wilful misconduct.

#### Article 10c

##### Criminal liability

During the deployment of a joint operation or a pilot project, guest officers shall be treated in the same way as officials of the host Member State with regard to any criminal offences that might be committed against them or by them.

(\*) OJ L 105, 13.4.2006, p. 1.

#### CHAPTER III

##### FINAL PROVISIONS

#### Article 13

##### Evaluation

The Commission shall evaluate the application of this Regulation one year after its entry into force and present a report to the European Parliament and the Council accompanied, if necessary, by proposals to amend this Regulation.

#### Article 14

##### Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

For the Council  
The President  
M. LOBO ANTUNES

## ANNEX

**Statement by the European Parliament, the Council and the Commission**

The European Parliament, the Council and the Commission stress that in a situation of urgent and exceptional pressure at the external borders requiring the intervention of a Rapid Border Intervention Team, and possible insufficiency of financial means in the budget of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) to do so, all possibilities to ensure funding should be explored. The Commission will verify with extreme urgency whether funds could possibly be redeployed. In the event of a decision of the budgetary authority becoming necessary, the Commission will initiate a procedure in accordance with the provisions of the Financial Regulation, namely Articles 23 and 24, in order to secure a timely decision of the two arms of the budgetary authority on the means of providing for additional funding for FRONTEX to deploy a Rapid Border Intervention Team. The budgetary authority commits itself to act as quickly as possible, taking into account the urgency.

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**REGULATION (EC) No 864/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 11 July 2007**  
**on the law applicable to non-contractual obligations (Rome II)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and 67 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty in the light of the joint text approved by the Conciliation Committee on 25 June 2007 <sup>(2)</sup>,

Whereas:

- (1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice. For the progressive establishment of such an area, the Community is to adopt measures relating to judicial cooperation in civil matters with a cross-border impact to the extent necessary for the proper functioning of the internal market.
- (2) According to Article 65(b) of the Treaty, these measures are to include those promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction.
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments and other decisions of judicial authorities as the cornerstone of judicial cooperation in civil matters and invited the Council and the Commission to adopt a programme of measures to implement the principle of mutual recognition.
- (4) On 30 November 2000, the Council adopted a joint Commission and Council programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters <sup>(3)</sup>. The programme identifies measures relating to the harmonisation of conflict-of-law rules as those facilitating the mutual recognition of judgments.

(5) The Hague Programme <sup>(4)</sup>, adopted by the European Council on 5 November 2004, called for work to be pursued actively on the rules of conflict of laws regarding non-contractual obligations (Rome II).

(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>(5)</sup> (Brussels I) and the instruments dealing with the law applicable to contractual obligations.

(8) This Regulation should apply irrespective of the nature of the court or tribunal seised.

(9) Claims arising out of *acta iure imperii* should include claims against officials who act on behalf of the State and liability for acts of public authorities, including liability of publicly appointed office-holders. Therefore, these matters should be excluded from the scope of this Regulation.

(10) Family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised.

(11) The concept of a non-contractual obligation varies from one Member State to another. Therefore for the purposes of this Regulation non-contractual obligation should be understood as an autonomous concept. The conflict-of-law rules set out in this Regulation should also cover non-contractual obligations arising out of strict liability.

(12) The law applicable should also govern the question of the capacity to incur liability in tort/delict.

<sup>(1)</sup> OJ C 241, 28.9.2004, p. 1.

<sup>(2)</sup> Opinion of the European Parliament of 6 July 2005 (OJ C 157 E, 6.7.2006, p. 371), Council Common Position of 25 September 2006 (OJ C 289 E, 28.11.2006, p. 68) and Position of the European Parliament of 18 January 2007 (not yet published in the Official Journal), European Parliament Legislative Resolution of 10 July 2007 and Council Decision of 28 June 2007.

<sup>(3)</sup> OJ C 12, 15.1.2001, p. 1.

<sup>(4)</sup> OJ C 53, 3.3.2005, p. 1.

<sup>(5)</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

- (13) Uniform rules applied irrespective of the law they designate may avert the risk of distortions of competition between Community litigants.
- (14) The requirement of legal certainty and the need to do justice in individual cases are essential elements of an area of justice. This Regulation provides for the connecting factors which are the most appropriate to achieve these objectives. Therefore, this Regulation provides for a general rule but also for specific rules and, in certain provisions, for an 'escape clause' which allows a departure from these rules where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country. This set of rules thus creates a flexible framework of conflict-of-law rules. Equally, it enables the court seised to treat individual cases in an appropriate manner.
- (15) The principle of the *lex loci delicti commissi* is the basic solution for non-contractual obligations in virtually all the Member States, but the practical application of the principle where the component factors of the case are spread over several countries varies. This situation engenders uncertainty as to the law applicable.
- (16) Uniform rules should enhance the foreseeability of court decisions and ensure a reasonable balance between the interests of the person claimed to be liable and the person who has sustained damage. A connection with the country where the direct damage occurred (*lex loci damni*) strikes a fair balance between the interests of the person claimed to be liable and the person sustaining the damage, and also reflects the modern approach to civil liability and the development of systems of strict liability.
- (17) The law applicable should be determined on the basis of where the damage occurs, regardless of the country or countries in which the indirect consequences could occur. Accordingly, in cases of personal injury or damage to property, the country in which the damage occurs should be the country where the injury was sustained or the property was damaged respectively.
- (18) The general rule in this Regulation should be the *lex loci damni* provided for in Article 4(1). Article 4(2) should be seen as an exception to this general principle, creating a special connection where the parties have their habitual residence in the same country. Article 4(3) should be understood as an 'escape clause' from Article 4(1) and (2), where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with another country.
- (19) Specific rules should be laid down for special torts/delicts where the general rule does not allow a reasonable balance to be struck between the interests at stake.
- (20) The conflict-of-law rule in matters of product liability should meet the objectives of fairly spreading the risks inherent in a modern high-technology society, protecting consumers' health, stimulating innovation, securing undistorted competition and facilitating trade. Creation of a cascade system of connecting factors, together with a foreseeability clause, is a balanced solution in regard to these objectives. The first element to be taken into account is the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country. The other elements of the cascade are triggered if the product was not marketed in that country, without prejudice to Article 4(2) and to the possibility of a manifestly closer connection to another country.
- (21) The special rule in Article 6 is not an exception to the general rule in Article 4(1) but rather a clarification of it. In matters of unfair competition, the conflict-of-law rule should protect competitors, consumers and the general public and ensure that the market economy functions properly. The connection to the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected generally satisfies these objectives.
- (22) The non-contractual obligations arising out of restrictions of competition in Article 6(3) should cover infringements of both national and Community competition law. The law applicable to such non-contractual obligations should be the law of the country where the market is, or is likely to be, affected. In cases where the market is, or is likely to be, affected in more than one country, the claimant should be able in certain circumstances to choose to base his or her claim on the law of the court seised.
- (23) For the purposes of this Regulation, the concept of restriction of competition should cover prohibitions on agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition within a Member State or within the internal market, as well as prohibitions on the abuse of a dominant position within a Member State or within the internal market, where such agreements, decisions, concerted practices or abuses are prohibited by Articles 81 and 82 of the Treaty or by the law of a Member State.
- (24) 'Environmental damage' should be understood as meaning adverse change in a natural resource, such as water, land or air, impairment of a function performed by that resource for the benefit of another natural resource or the public, or impairment of the variability among living organisms.



- (25) Regarding environmental damage, Article 174 of the Treaty, which provides that there should be a high level of protection based on the precautionary principle and the principle that preventive action should be taken, the principle of priority for corrective action at source and the principle that the polluter pays, fully justifies the use of the principle of discriminating in favour of the person sustaining the damage. The question of when the person seeking compensation can make the choice of the law applicable should be determined in accordance with the law of the Member State in which the court is seised.
- (26) Regarding infringements of intellectual property rights, the universally acknowledged principle of the *lex loci protectionis* should be preserved. For the purposes of this Regulation, the term 'intellectual property rights' should be interpreted as meaning, for instance, copyright, related rights, the *sui generis* right for the protection of databases and industrial property rights.
- (27) The exact concept of industrial action, such as strike action or lock-out, varies from one Member State to another and is governed by each Member State's internal rules. Therefore, this Regulation assumes as a general principle that the law of the country where the industrial action was taken should apply, with the aim of protecting the rights and obligations of workers and employers.
- (28) The special rule on industrial action in Article 9 is without prejudice to the conditions relating to the exercise of such action in accordance with national law and without prejudice to the legal status of trade unions or of the representative organisations of workers as provided for in the law of the Member States.
- (29) Provision should be made for special rules where damage is caused by an act other than a tort/delict, such as unjust enrichment, *negotiorum gestio* and *culpa in contrahendo*.
- (30) *Culpa in contrahendo* for the purposes of this Regulation is an autonomous concept and should not necessarily be interpreted within the meaning of national law. It should include the violation of the duty of disclosure and the breakdown of contractual negotiations. Article 12 covers only non-contractual obligations presenting a direct link with the dealings prior to the conclusion of a contract. This means that if, while a contract is being negotiated, a person suffers personal injury, Article 4 or other relevant provisions of this Regulation should apply.
- (31) To respect the principle of party autonomy and to enhance legal certainty, the parties should be allowed to make a choice as to the law applicable to a non-contractual obligation. This choice should be expressed or demonstrated with reasonable certainty by the circumstances of the case.
- Where establishing the existence of the agreement, the court has to respect the intentions of the parties. Protection should be given to weaker parties by imposing certain conditions on the choice.
- (32) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. In particular, the application of a provision of the law designated by this Regulation which would have the effect of causing non-compensatory exemplary or punitive damages of an excessive nature to be awarded may, depending on the circumstances of the case and the legal order of the Member State of the court seised, be regarded as being contrary to the public policy (*ordre public*) of the forum.
- (33) According to the current national rules on compensation awarded to victims of road traffic accidents, when quantifying damages for personal injury in cases in which the accident takes place in a State other than that of the habitual residence of the victim, the court seised should take into account all the relevant actual circumstances of the specific victim, including in particular the actual losses and costs of after-care and medical attention.
- (34) In order to strike a reasonable balance between the parties, account must be taken, in so far as appropriate, of the rules of safety and conduct in operation in the country in which the harmful act was committed, even where the non-contractual obligation is governed by the law of another country. The term 'rules of safety and conduct' should be interpreted as referring to all regulations having any relation to safety and conduct, including, for example, road safety rules in the case of an accident.
- (35) A situation where conflict-of-law rules are dispersed among several instruments and where there are differences between those rules should be avoided. This Regulation, however, does not exclude the possibility of inclusion of conflict-of-law rules relating to non-contractual obligations in provisions of Community law with regard to particular matters.
- This Regulation should not prejudice the application of other instruments laying down provisions designed to contribute to the proper functioning of the internal market in so far as they cannot be applied in conjunction with the law designated by the rules of this Regulation. The application of provisions of the applicable law designated by the rules of this Regulation should not restrict the free movement of goods and services as regulated by Community instruments, such as Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) <sup>(1)</sup>.

<sup>(1)</sup> OJ L 178, 17.7.2000, p. 1.

- (36) Respect for international commitments entered into by the Member States means that this Regulation should not affect international conventions to which one or more Member States are parties at the time this Regulation is adopted. To make the rules more accessible, the Commission should publish the list of the relevant conventions in the *Official Journal of the European Union* on the basis of information supplied by the Member States.
- (37) The Commission will make a proposal to the European Parliament and the Council concerning the procedures and conditions according to which Member States would be entitled to negotiate and conclude on their own behalf agreements with third countries in individual and exceptional cases, concerning sectoral matters, containing provisions on the law applicable to non-contractual obligations.
- (38) Since the objective of this Regulation cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity set out in Article 5 of the Treaty. In accordance with the principle of proportionality set out in that Article, this Regulation does not go beyond what is necessary to attain that objective.
- (39) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland are taking part in the adoption and application of this Regulation.
- (40) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application,
2. The following shall be excluded from the scope of this Regulation:
- (a) non-contractual obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects including maintenance obligations;
  - (b) non-contractual obligations arising out of matrimonial property regimes, property regimes of relationships deemed by the law applicable to such relationships to have comparable effects to marriage, and wills and succession;
  - (c) non-contractual obligations arising under bills of exchange, cheques and promissory notes and other negotiable instruments to the extent that the obligations under such other negotiable instruments arise out of their negotiable character;
  - (d) non-contractual obligations arising out of the law of companies and other bodies corporate or unincorporated regarding matters such as the creation, by registration or otherwise, legal capacity, internal organisation or winding-up of companies and other bodies corporate or unincorporated, the personal liability of officers and members as such for the obligations of the company or body and the personal liability of auditors to a company or to its members in the statutory audits of accounting documents;
  - (e) non-contractual obligations arising out of the relations between the settlors, trustees and beneficiaries of a trust created voluntarily;
  - (f) non-contractual obligations arising out of nuclear damage;
  - (g) non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.
3. This Regulation shall not apply to evidence and procedure, without prejudice to Articles 21 and 22.
4. For the purposes of this Regulation, 'Member State' shall mean any Member State other than Denmark.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### SCOPE

#### Article 1

##### Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to non-contractual obligations in civil and commercial matters. It shall not apply, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).

#### Article 2

##### Non-contractual obligations

1. For the purposes of this Regulation, damage shall cover any consequence arising out of tort/delict, unjust enrichment, *negotiorum gestio* or *culpa in contrahendo*.

2. This Regulation shall apply also to non-contractual obligations that are likely to arise.

3. Any reference in this Regulation to:
- (a) an event giving rise to damage shall include events giving rise to damage that are likely to occur; and
  - (b) damage shall include damage that is likely to occur.

#### Article 3

### Universal application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

#### CHAPTER II

### TORTS/DELICTS

#### Article 4

### General rule

1. Unless otherwise provided for in this Regulation, the law applicable to a non-contractual obligation arising out of a tort/delict shall be the law of the country in which the damage occurs irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occur.
2. However, where the person claimed to be liable and the person sustaining damage both have their habitual residence in the same country at the time when the damage occurs, the law of that country shall apply.
3. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

#### Article 5

### Product liability

1. Without prejudice to Article 4(2), the law applicable to a non-contractual obligation arising out of damage caused by a product shall be:
  - (a) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country; or, failing that,
  - (b) the law of the country in which the product was acquired, if the product was marketed in that country; or, failing that,

- (c) the law of the country in which the damage occurred, if the product was marketed in that country.

However, the law applicable shall be the law of the country in which the person claimed to be liable is habitually resident if he or she could not reasonably foresee the marketing of the product, or a product of the same type, in the country the law of which is applicable under (a), (b) or (c).

2. Where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a pre-existing relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

#### Article 6

### Unfair competition and acts restricting free competition

1. The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.
2. Where an act of unfair competition affects exclusively the interests of a specific competitor, Article 4 shall apply.
3.
  - (a) The law applicable to a non-contractual obligation arising out of a restriction of competition shall be the law of the country where the market is, or is likely to be, affected.
  - (b) When the market is, or is likely to be, affected in more than one country, the person seeking compensation for damage who sues in the court of the domicile of the defendant, may instead choose to base his or her claim on the law of the court seised, provided that the market in that Member State is amongst those directly and substantially affected by the restriction of competition out of which the non-contractual obligation on which the claim is based arises; where the claimant sues, in accordance with the applicable rules on jurisdiction, more than one defendant in that court, he or she can only choose to base his or her claim on the law of that court if the restriction of competition on which the claim against each of these defendants relies directly and substantially affects also the market in the Member State of that court.

4. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

*Article 7***Environmental damage**

The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred.

*Article 8***Infringement of intellectual property rights**

1. The law applicable to a non-contractual obligation arising from an infringement of an intellectual property right shall be the law of the country for which protection is claimed.

2. In the case of a non-contractual obligation arising from an infringement of a unitary Community intellectual property right, the law applicable shall, for any question that is not governed by the relevant Community instrument, be the law of the country in which the act of infringement was committed.

3. The law applicable under this Article may not be derogated from by an agreement pursuant to Article 14.

*Article 9***Industrial action**

Without prejudice to Article 4(2), the law applicable to a non-contractual obligation in respect of the liability of a person in the capacity of a worker or an employer or the organisations representing their professional interests for damages caused by an industrial action, pending or carried out, shall be the law of the country where the action is to be, or has been, taken.

## CHAPTER III

**UNJUST ENRICHMENT, NEGOTIORUM GESTIO AND CULPA IN CONTRAHENDO***Article 10***Unjust enrichment**

1. If a non-contractual obligation arising out of unjust enrichment, including payment of amounts wrongly received, concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that unjust enrichment, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1 and the parties have their habitual residence in the same country when the event giving rise to unjust enrichment occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the unjust enrichment took place.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of unjust enrichment is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

*Article 11***Negotiorum gestio**

1. If a non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person concerns a relationship existing between the parties, such as one arising out of a contract or a tort/delict, that is closely connected with that non-contractual obligation, it shall be governed by the law that governs that relationship.

2. Where the law applicable cannot be determined on the basis of paragraph 1, and the parties have their habitual residence in the same country when the event giving rise to the damage occurs, the law of that country shall apply.

3. Where the law applicable cannot be determined on the basis of paragraphs 1 or 2, it shall be the law of the country in which the act was performed.

4. Where it is clear from all the circumstances of the case that the non-contractual obligation arising out of an act performed without due authority in connection with the affairs of another person is manifestly more closely connected with a country other than that indicated in paragraphs 1, 2 and 3, the law of that other country shall apply.

*Article 12***Culpa in contrahendo**

1. The law applicable to a non-contractual obligation arising out of dealings prior to the conclusion of a contract, regardless of whether the contract was actually concluded or not, shall be the law that applies to the contract or that would have been applicable to it had it been entered into.

2. Where the law applicable cannot be determined on the basis of paragraph 1, it shall be:

- (a) the law of the country in which the damage occurs, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event occurred; or
- (b) where the parties have their habitual residence in the same country at the time when the event giving rise to the damage occurs, the law of that country; or
- (c) where it is clear from all the circumstances of the case that the non-contractual obligation arising out of dealings prior to the conclusion of a contract is manifestly more closely connected with a country other than that indicated in points (a) and (b), the law of that other country.



*Article 13***Applicability of Article 8**

For the purposes of this Chapter, Article 8 shall apply to non-contractual obligations arising from an infringement of an intellectual property right.

## CHAPTER IV

**FREEDOM OF CHOICE***Article 14***Freedom of choice**

1. The parties may agree to submit non-contractual obligations to the law of their choice:

- (a) by an agreement entered into after the event giving rise to the damage occurred;

or

- (b) where all the parties are pursuing a commercial activity, also by an agreement freely negotiated before the event giving rise to the damage occurred.

The choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case and shall not prejudice the rights of third parties.

2. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

3. Where all the elements relevant to the situation at the time when the event giving rise to the damage occurs are located in one or more of the Member States, the parties' choice of the law applicable other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

## CHAPTER V

**COMMON RULES***Article 15***Scope of the law applicable**

The law applicable to non-contractual obligations under this Regulation shall govern in particular:

- (a) the basis and extent of liability, including the determination of persons who may be held liable for acts performed by them;
- (b) the grounds for exemption from liability, any limitation of liability and any division of liability;

- (c) the existence, the nature and the assessment of damage or the remedy claimed;

- (d) within the limits of powers conferred on the court by its procedural law, the measures which a court may take to prevent or terminate injury or damage or to ensure the provision of compensation;

- (e) the question whether a right to claim damages or a remedy may be transferred, including by inheritance;

- (f) persons entitled to compensation for damage sustained personally;

- (g) liability for the acts of another person;

- (h) the manner in which an obligation may be extinguished and rules of prescription and limitation, including rules relating to the commencement, interruption and suspension of a period of prescription or limitation.

*Article 16***Overriding mandatory provisions**

Nothing in this Regulation shall restrict the application of the provisions of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the non-contractual obligation.

*Article 17***Rules of safety and conduct**

In assessing the conduct of the person claimed to be liable, account shall be taken, as a matter of fact and in so far as is appropriate, of the rules of safety and conduct which were in force at the place and time of the event giving rise to the liability.

*Article 18***Direct action against the insurer of the person liable**

The person having suffered damage may bring his or her claim directly against the insurer of the person liable to provide compensation if the law applicable to the non-contractual obligation or the law applicable to the insurance contract so provides.

*Article 19***Subrogation**

Where a person (the creditor) has a non-contractual claim upon another (the debtor), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person's duty to satisfy the creditor shall determine whether, and the extent to which, the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship.

## Article 20

**Multiple liability**

If a creditor has a claim against several debtors who are liable for the same claim, and one of the debtors has already satisfied the claim in whole or in part, the question of that debtor's right to demand compensation from the other debtors shall be governed by the law applicable to that debtor's non-contractual obligation towards the creditor.

## Article 21

**Formal validity**

A unilateral act intended to have legal effect and relating to a non-contractual obligation shall be formally valid if it satisfies the formal requirements of the law governing the non-contractual obligation in question or the law of the country in which the act is performed.

## Article 22

**Burden of proof**

1. The law governing a non-contractual obligation under this Regulation shall apply to the extent that, in matters of non-contractual obligations, it contains rules which raise presumptions of law or determine the burden of proof.

2. Acts intended to have legal effect may be proved by any mode of proof recognised by the law of the forum or by any of the laws referred to in Article 21 under which that act is formally valid, provided that such mode of proof can be administered by the forum.

## CHAPTER VI

**OTHER PROVISIONS**

## Article 23

**Habitual residence**

1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.

Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business.

## Article 24

**Exclusion of renvoi**

The application of the law of any country specified by this Regulation means the application of the rules of law in force in that country other than its rules of private international law.

## Article 25

**States with more than one legal system**

1. Where a State comprises several territorial units, each of which has its own rules of law in respect of non-contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Regulation.

2. A Member State within which different territorial units have their own rules of law in respect of non-contractual obligations shall not be required to apply this Regulation to conflicts solely between the laws of such units.

## Article 26

**Public policy of the forum**

The application of a provision of the law of any country specified by this Regulation may be refused only if such application is manifestly incompatible with the public policy (*ordre public*) of the forum.

## Article 27

**Relationship with other provisions of Community law**

This Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to non-contractual obligations.

## Article 28

**Relationship with existing international conventions**

1. This Regulation shall not prejudice the application of international conventions to which one or more Member States are parties at the time when this Regulation is adopted and which lay down conflict-of-law rules relating to non-contractual obligations.

2. However, this Regulation shall, as between Member States, take precedence over conventions concluded exclusively between two or more of them in so far as such conventions concern matters governed by this Regulation.

CHAPTER VII  
**FINAL PROVISIONS**

*Article 29*

**List of conventions**

1. By 11 July 2008, Member States shall notify the Commission of the conventions referred to in Article 28(1). After that date, Member States shall notify the Commission of all denunciations of such conventions.

2. The Commission shall publish in the *Official Journal of the European Union* within six months of receipt:

- (i) a list of the conventions referred to in paragraph 1;
- (ii) the denunciations referred to in paragraph 1.

*Article 30*

**Review clause**

1. Not later than 20 August 2011, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals to adapt this Regulation. The report shall include:

- (i) a study on the effects of the way in which foreign law is treated in the different jurisdictions and on the extent to

which courts in the Member States apply foreign law in practice pursuant to this Regulation;

- (ii) a study on the effects of Article 28 of this Regulation with respect to the Hague Convention of 4 May 1971 on the law applicable to traffic accidents.

2. Not later than 31 December 2008, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality, taking into account rules relating to freedom of the press and freedom of expression in the media, and conflict-of-law issues related to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(1)</sup>.

*Article 31*

**Application in time**

This Regulation shall apply to events giving rise to damage which occur after its entry into force.

*Article 32*

**Date of application**

This Regulation shall apply from 11 January 2009, except for Article 29, which shall apply from 11 July 2008.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Strasbourg, 11 July 2007.

*For the European Parliament*  
*The President*  
H.-G. PÖTTERING

*For the Council*  
*The President*  
M. LOBO ANTUNES

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<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.



**Commission Statement on the review clause (Article 30)**

The Commission, following the invitation by the European Parliament and the Council in the frame of Article 30 of the 'Rome II' Regulation, will submit, not later than December 2008, a study on the situation in the field of the law applicable to non-contractual obligations arising out of violations of privacy and rights relating to personality. The Commission will take into consideration all aspects of the situation and take appropriate measures if necessary.

**Commission Statement on road accidents**

The Commission, being aware of the different practices followed in the Member States as regards the level of compensation awarded to victims of road traffic accidents, is prepared to examine the specific problems resulting for EU residents involved in road traffic accidents in a Member State other than the Member State of their habitual residence. To that end the Commission will make available to the European Parliament and to the Council, before the end of 2008, a study on all options, including insurance aspects, for improving the position of cross-border victims, which would pave the way for a Green Paper.

**Commission Statement on the treatment of foreign law**

The Commission, being aware of the different practices followed in the Member States as regards the treatment of foreign law, will publish at the latest four years after the entry into force of the 'Rome II' Regulation and in any event as soon as it is available a horizontal study on the application of foreign law in civil and commercial matters by the courts of the Member States, having regard to the aims of the Hague Programme. It is also prepared to take appropriate measures if necessary.

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