COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0056 (CNS)

Proposal for a

COUNCIL DECISION

concerning the signing of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

Proposal for a

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concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Political and legal background

Pursuant to Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community, Denmark does not participate in Title IV of the Treaty. As a consequence, Community instruments adopted in the field of, among others, judicial cooperation in civil matters are not binding upon or applicable in Denmark.

One of these Community instruments is Council Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The United Kingdom and Ireland having exercised their right to opt in, this Regulation applies to all Member States except Denmark. Regulation 1348/2000 plays an important role for the functioning of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, since the latter refers to its provisions for the service of documents instituting proceedings or equivalent documents[1]. Regulation 44/2001 also applies to all Member States except Denmark. It revised and modernized the rules of the Brussels Convention of 1968 on jurisdiction and the recognition and enforcement of judgements to which all Member States including Denmark are a party. The non-application in Denmark of Regulation 44/2001 results in an unsatisfactory legal situation, where applicable rules on jurisdiction, recognition and enforcement of judgments in Denmark and in other Member States of the European Union differ from each other. This constitutes a step backwards given that prior to the entry into force of Regulation 44/2001 the rules of the Brussels Convention applied uniformly to all Member States. The current situation therefore jeopardizes the uniformity and legal certainty of the Community rules.

Denmark has expressed on several occasions its interest to participate in the regime constituted by Regulations 44/2001 and 1348/2000. After in depth discussions, the Commission accepted to negotiate parallel agreements with Denmark, provided that the following conditions were fulfilled: Such a solution would have to be of an exceptional nature and for a transitional period only, the participation of Denmark in the Community regime would have to be fully in the interests of the Community and its citizens and the requirements imposed on Denmark would have to be identical to those imposed on all Member States, so as to ensure that rules with the same content are applied in Denmark and in the other Member States.

In view of the situation outlined above, the Commission considered it to be in the Community interest to extend to Denmark the provisions of Regulation 44/2001 and Regulation 1348/2000. The agreement extending the provisions of Regulation 44/2001 to Denmark is the subject matter of a separate Council decision. In particular, the Commission considered that if the provisions of Regulation 44/2001 are extended to Denmark by virtue of a parallel agreement, the provisions of Regulation 1348/2000 had to be so extended as well due to the close link of the two instruments.

The Commission presented on 28th June 2002 a recommendation for a Council Decision authorizing the Commission to open negotiations for the conclusion of two agreements

[1] Cf. Art. 26 (3) of Regulation 44/2001.

between the European Community and Denmark, extending both Regulation 44/2001 and Regulation 1348/2000 to Denmark.

The Council decided on 8 Mai 2003 to exceptionally authorize the Commission to negotiate an agreement with Denmark with the view to make the provisions of Regulation (EC) 44/2001 as well as the provisions of Regulation (EC) No 1348/2000 applicable to Denmark under international law.

2. Results of the Negotiations

The Commission negotiated the parallel agreement extending to Denmark the provisions of Regulation 1348/2000 on the service of judicial and extrajudicial documents in civil and commercial matters in accordance with the Council's negotiating directives, carefully ensuring that rights and obligations of Denmark under this agreement correspond to rights and obligations of the other Member States.

As a result, the parallel agreement contains in particular the following provisions:

- appropriate rules on the role of the Court of Justice to ensure the uniform interpretation of the instrument applied by the parallel agreement between Denmark and the other Member States;

- a mechanism to enable Denmark to accept future amendments by the Council to the basic instrument and the future implementing measures to be adopted under Article 202 of the EC Treaty;

- a clause providing that the agreement is considered terminated if Denmark refuses to accept such future amendments and implementing measures;

- rules specifying Denmark's obligations in negotiations with third countries for agreements concerning matters covered by the parallel agreement;

- the possibility of denouncing the parallel agreement by giving notice to the other Contracting Party.

3. Conclusions

In view of the positive outcome of the negotiations, the Commission recommends that the Council adopt the following two decisions:

Firstly, a decision concerning the signing of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

Secondly, a decision concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission[2],

Whereas:

(1) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not bound by the provisions of Regulation (EC) No 1348/2000[3], nor subject to their application.

(2) By Decision of 8 May 2003, the Council authorised the Commission to negotiate an agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of the above-mentioned Regulation.

(3) The Commission has negotiated such agreement, on behalf of the Community, with the Kingdom of Denmark.

(4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the TEU and the TEC, are taking part in the adoption and application of this Decision.

(5) In accordance with Articles 1 and 2 of the above-mentioned Protocol on the position of Denmark, Denmark is not taking part in the adoption and application of this Decision.

(6) The Agreement, initialled at Brussels on 17 January 2005, should be signed.

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2 OJ C […] […], p.[…]

3 OJ L 160, 30.6.2000, p. 37.

HAS DECIDED AS FOLLOWS:

Sole Article

Subject to a possible conclusion at a later date, the President of the Council is hereby authorised to designate the person(s) empowered to sign, on behalf of the European Community, the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Regulation (EC) No. 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

Done at Brussels,

For the Council
The President

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concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) and in conjunction with the first subparagraph of Article 300(2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission[4],

Having regard to the opinion of the European Parliament[5],

Whereas:

(1) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark is not bound by the provisions of Regulation (EC) No 1348/2000[6], nor subject to their application.

(2) The Commission has negotiated an agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of the above-mentioned Regulation.

(3) The Agreement was signed, on behalf of the European Community, on ……2005, subject to its possible conclusion at a later date, in accordance with Decision .../…/EC of the Council of […….].

(4) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the TEU and the TEC, are taking part in the adoption and application of this Decision.

(5) In accordance with Articles 1 and 2 of the above-mentioned Protocol on the position of Denmark, Denmark is not taking part in the adoption and application of this Decision.

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4 OJ C […] […], p.[…]
5 OJ C […] […], p.[…]
6 OJ L 160, 30.6.2000, p. 37.

(6) This Agreement should be approved.

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters is approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to make the notification provided for in Article 10(2) of the Agreement.

Done at Brussels,

For the Council
The President

ANNEX

AGREEMENT

between the European Community and

the Kingdom of Denmark

on

the service of judicial and extrajudicial documents in civil or commercial matters

THE EUROPEAN COMMUNITY,

hereinafter referred to as "the Community", of the one part, and

THE KINGDOM OF DENMARK,

hereinafter referred to as "Denmark", of the other part,

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

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

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

4. CONSIDERING that security in transmission requires that the document to be transmitted be accompanied by a pre-printed form, to be completed in the language of the place where the service is to be effected, or in another language accepted by the receiving Member State,

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

6. WHEREAS the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters drawn up by the Council of the European Union by Act of 26 May 1997[7] has not entered into force and that continuity in the results of the negotiations for conclusion of the Convention should be ensured,

7. WHEREAS the main content of that Convention has been taken over in the Council of the European Union Regulation No. 1348/2000 of 29 May 2000 on the service in

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[7] OJ C 261, 27.8.1997, p. 1. On the same day as the Convention was drawn up the Council took note of the explanatory report on the Convention which is set out on p. 26 of the aforementioned Official Journal.

the Member States of judicial and extrajudicial documents in civil or commercial matters[8] ("the Regulation on the service of documents"),

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

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

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

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

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

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

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

15. REFERRING to the provision that, pursuant to Article 68(3) of the Treaty establishing the European Community, the Council of the European Union, the European Commission and the Member States may request the Court of Justice of the European Communities to give a ruling on the interpretation of acts of the

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[8] OJ L 160, 30.6.2000, p. 37.

institutions of the Community based on Title IV of the Treaty, including the interpretation of this Agreement, and the circumstance that this provision shall not be binding upon or applicable in Denmark, as results from the Protocol on the position of Denmark,

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

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

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

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

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Aim

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

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

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

ARTICLE 2

Cooperation on the service of documents

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

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

ARTICLE 3

Amendments to the Regulation on the service of documents

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

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

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

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

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

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

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

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

7. In case:

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

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

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

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days or, in the situation referred to under c, legislative measures in Denmark enter into force within the same period. Termination shall take effect 3 months after the expiry of the 90 days period.

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

ARTICLE 4

Implementing measures

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

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

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

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

5. In case:

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

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

this Agreement shall be considered terminated unless the parties decide otherwise within 90 days. Termination shall take effect 3 months after the expiry of the 90 days period.

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

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

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

ARTICLE 5

International agreements which affect the Regulation on the service of documents

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

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

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

ARTICLE 6

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

1. Where a question on the validity or interpretation of this Agreement is raised in a case pending before a Danish court or tribunal, that court or tribunal shall request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of the Regulation on the service of documents and its implementing measures referred to in Article 2(1).

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

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

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

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

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

   In such a case this Agreement shall be considered terminated. Termination shall take effect 3 months after the notification.

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

ARTICLE 7

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

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

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

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

ARTICLE 8

Territorial application

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

ARTICLE 9

Termination of the Agreement

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

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

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

ARTICLE 10

Entry into force

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

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

ARTICLE 11

Authenticity of texts

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

Annex

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.