

COMMERCIAL DISPUTES: JURISDICTION,  
APPLICABLE LAW, ARBITRATION,  
MEDIATION & NEGOTIATION

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TAIEX

Workshop on European Company Law and Corporate  
Governance

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# INTRODUCTION

JUSTICE PROGRAMME (2014-2020): contributes to the further development of a European Union area of justice based on **mutual recognition** and **mutual trust**, by **promoting judicial cooperation in civil and criminal matters and helping train judges and other legal practitioners**.

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ACT: Regulation (EU) No 1382/2013

WHAT DOES THIS REGULATION DO? It establishes the Justice programme for the period 2014-2020.

## KEY POINTS:

The Justice Programme aims to ensure that **EU law is fully and consistently applied**. Its mission is to **facilitate access to justice for people and businesses throughout the EU, particularly when they live, work, do business or even face trial in another EU country**. It promotes (inter alia):

- **judicial cooperation in civil matters, including civil and commercial matters, insolvencies**, family matters (such as divorce) and successions, etc.
- **judicial training**, including language training on legal terminology, with a view to fostering a EU common legal and judicial culture

# INTRODUCTION

- JUDICIAL COOPERATION IN CIVIL & COMMERCIAL MATTERS are EU HIGH PRIORITIES, but
- CIVIL & COMERCIAL LAW + CIVIL PROCEEDINGS are governed by the laws of the MS
- => need for harmonization
- EU legal instruments: directives and regulations
- PRIVATE INTERNATIONAL LAW: Jurisdiction and enforcement: Brussels Convention 1968 + Lugano Convention 1988 / 2007, later Regulation 44/2001, now Regulation 1215/2015
- PRIVATE INTERNATIONAL LAW: Applicable law: Rome I – contractual obligations, Rome II – non-contractual obligations
- “TECHNICAL” LEGAL INSTRUMENTS: Reg. 1026/2001 – taking of evidence, Reg. 1393/2007 – service of documents
- EUROPEAN SPECIAL PROCEDURES: Reg. 1896/2006 – order for payment, Reg. 861/2007 – small claims procedure, Reg. 655/2014 – account preservation order



# TECHNICAL LEGAL INSTRUMENTS

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- Regulation (EC) No 1206/2001 on cooperation between the courts of the EU countries in the taking of evidence in civil or commercial matters
- Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000

# REGULATION 1206/2001

## HISTORICAL BACKGROUD & OBJECTIVE

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- Before 2004, there was no binding instrument between all Member States concerning the taking of evidence.
- In 2001 the Council of the EU adopted Regulation (EC) No 1206/2001 on the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters which lays down procedural rules to make the taking of evidence in another MS easier.
- The Regulation is applicable throughout the Union **with the exception of Denmark** since 1 January 2004. Between the Member States concerned, it replaces the Hague Convention of 1970.
- Main objective: requests for the performance of the taking of evidence are executed expeditiously and by the most rapid means possible between the courts of the Member States.

# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- Art. 1(1) + art. 1(2 ): 4 conditions for the application of the Regulation. It applies to:
  - a) requests for the taking of evidence
  - b) evidence intended for use in judicial proceedings, commenced or contemplated
  - c) in civil or commercial matters (autonomous EU law concept)
  - d) by the court of a Member State



# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- The court of a Member State, in accordance with the provisions of the law of that State, **requests**:
  - - the competent court of another Member State to take evidence; or
  - - to take evidence directly in another Member State
- “Civil and commercial matters” is an autonomous concept of EU law which is to be interpreted in the light of the objectives of the Regulation and of the EC Treaty and in particular in accordance with its Article 65 (C-29/76, LTU v. Eurocontrol, C-814/79, Ruffler, C-172/91 Sontag, C-271/00, Steenbergen v. Baten).

# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- The Regulation applies to all civil and commercial proceedings whatever the nature of the court or tribunal in which they are taking place.
  - civil law
  - commercial law
  - consumer law
  - employment law
  - competition law (private proceedings only)
- The scope of application of the Regulation includes matters which are excluded from the scope of application of the Brussels I Regulation (no. 44/2001):
  - matters relating to the status or legal capacity of natural persons,
  - rights in property arising out of a matrimonial relationship, wills and succession;
  - bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.



# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- “Evidence” is not defined in the regulation. It includes:
  - hearings of:
    - witnesses of fact,
    - parties,
    - experts,
  - the production of documents,
  - verifications, establishment of facts,
  - expertise on family or child welfare.

# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- “Court” is not defined by the Regulation => broad interpretation, including all authorities in the Member States with jurisdiction in the matters falling within the scope of the present Regulation (similar to Regulation 2201/2003’s definition of “court”)
- “Court” does not cover arbitral tribunals.
- The request shall be made only to obtain evidence which is intended for use in judicial proceedings, **commenced** or **contemplated**.
- It includes the taking of evidence **before** the actual filing of the proceedings in which evidence is to be used (e.g. if there is a need to take evidence which would not be available later).

# REGULATION 1206/2001

## SUBSTANTIVE SCOPE OF THE REGULATION & RELATIONSHIP TO INTERNATIONAL AGREEMENTS

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- The Regulation shall, in relation to matters to which it applies, **prevail** over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States and especially over the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto - Article 21 (1)
- The Regulation does, however, not preclude Member States from maintaining or concluding agreements or arrangements between two or more of them to further facilitate the taking of evidence, provided that they are compatible with this Regulation - Article 21 (2)



# REGULATION 1206/2001

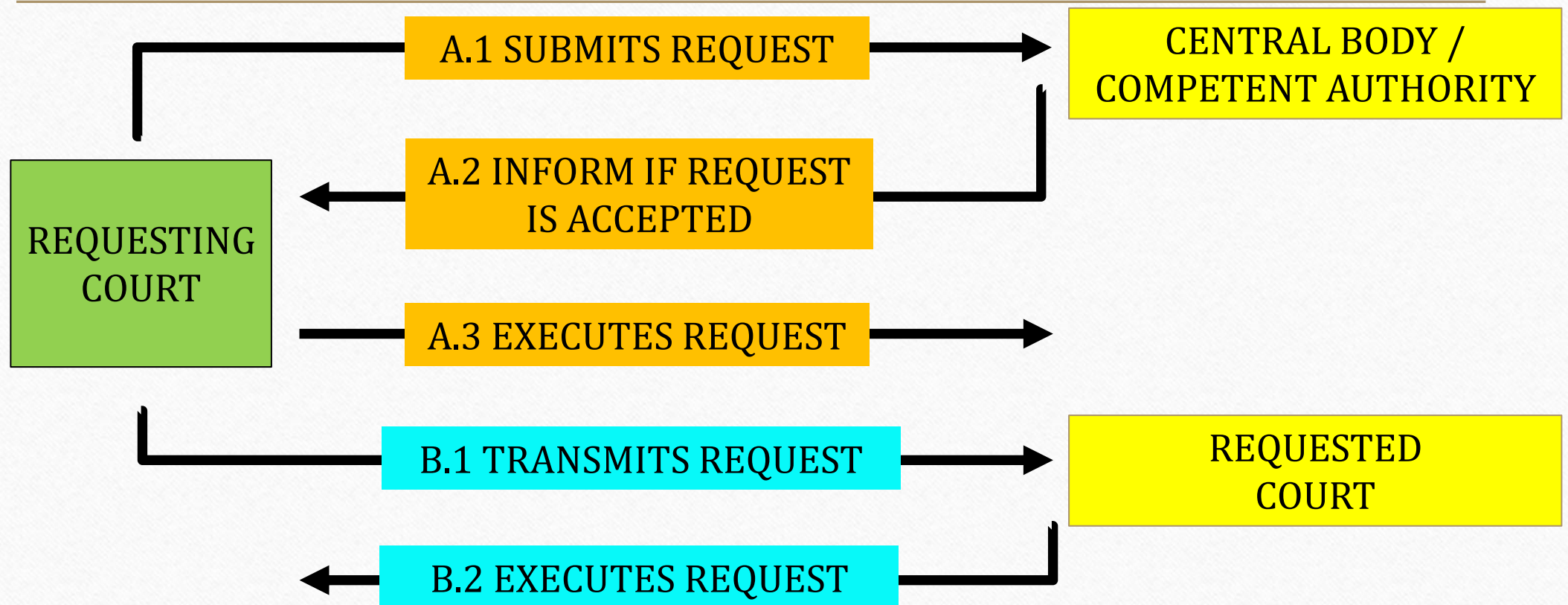
## COURTS & AUTHORITIES

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- **The requesting court** is the court before which proceedings are commenced or contemplated - Article 2
- **The requested court** is the competent court of another Member State for the performance of the taking of evidence - Article 2
- **The central body** supplies information to courts and seeks solutions to difficulties which may arise in respect of a request. It forwards - in exceptional cases - at the request of a requesting court, a request to the competent court. Federal states may designate more than one central bodies - Article 3 (1)
- **The competent authority** takes the decisions on requests to take evidence directly pursuant to Article 17. **The central body** may be designated as **the competent authority** - Article 3 (3)

# REGULATION 1026/2001

## METHODS OF TAKING EVIDENCE



# REGULATION 1026/2001

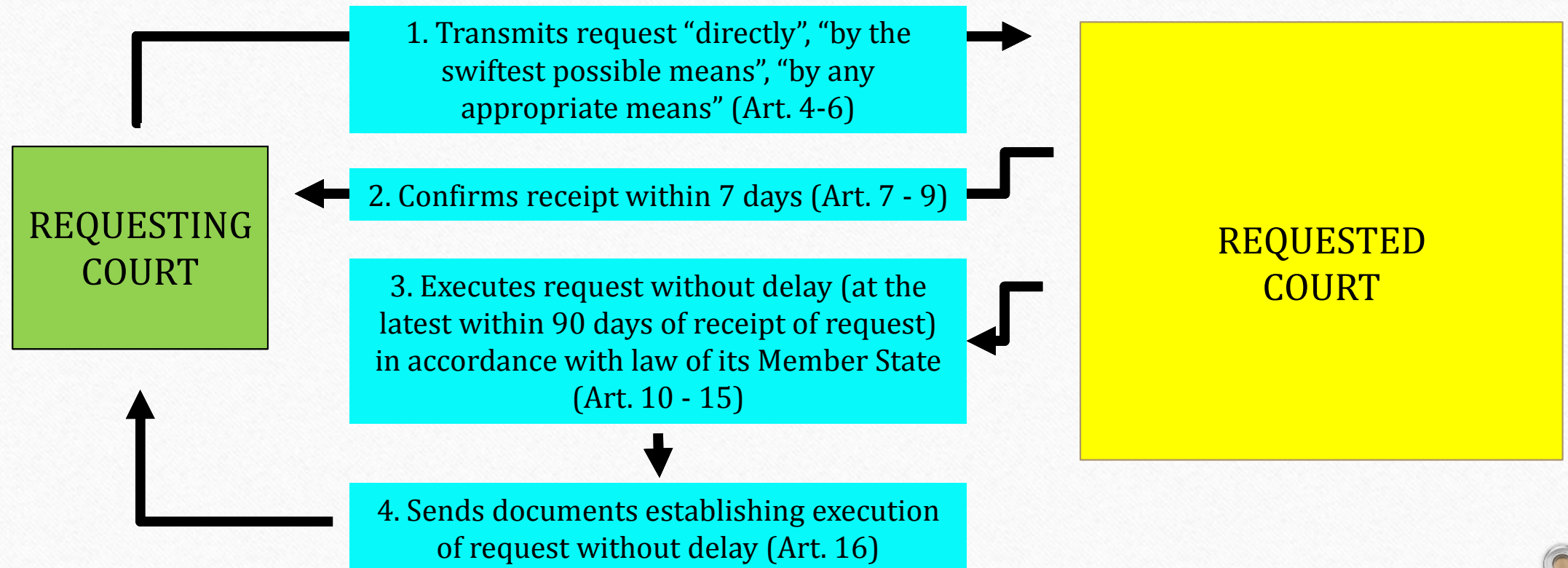
## METHODS OF TAKING EVIDENCE

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- In both cases evidence can be taken through local and distant means (such as through a videoconference).
- Which court is responsible for taking the evidence ?
  - A) The requesting court
  - B) The requested court
- In both cases the Regulation provides for the possibility that the court which does not have the responsibility over the taking of evidence nevertheless participates in it - Articles 12 and 17(4).
- => The court which does not have the responsibility over the taking of evidence, but participates in it, could ask questions to a witness in a hearing if the court with the responsibility over the taking of evidence agrees.



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4-16)



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Transmission of requests – Form A – shall contain:
- a) the requesting and, where appropriate, the requested court
- b) the names and addresses of the parties to the proceedings and their representatives, if any;
- (c) the nature and subject matter of the case and a brief statement of the facts; it may be useful to include with the summary of facts, the legal basis of the claim, a short description of the issues in the case and the relevance of the evidence to those issues (paragraph 11 of Form A).
- (d) a description of the taking of evidence to be performed;
- (see next slide)

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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e) where the request is for the examination of a person:

- - the name(s) and address(es) of the person(s) to be examined,
- - the questions to be asked the person(s) to be examined or a statement of the facts about which he/she is (they are) to be examined,
- - where appropriate, a reference to a right to refuse to testify under the law of the Member State of the requesting court,
- - any requirement that the examination is to be carried out under oath or affirmation in lieu thereof, and any special form to be used,
- - where appropriate, any other information that the requesting court deems necessary.



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

- Special requests:
- - where the request is for the production of documents or for the inspection of objects, it shall contain their details - Article 4(1) (f)
- - if the requesting court has called for the request to be executed in accordance with a special procedure provided for by its own law, it shall use Form A with this indication - Article 4(1) (g)
- - the details and an explanation of the special procedure should be described in an annex to the Form. The special procedure could, e.g., cover the manner in which the evidence is to be recorded or the way a witness is to be examined or the parties are heard or an expert is appointed and heard or documents are produced etc. - paragraph 13 of Form A
- - if the requesting court has asked the requested court to use communications technology for the performance of the taking of evidence, in particular by using videoconference and teleconference, the request shall contain this demand in Form A - Article 4 (1) (g)

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Expeditious means of transmission of requests and other communications:
  - - all requests and communications have to be transmitted by the swiftest possible means, which the requested Member State has indicated it can accept. The related communications of the Member States are available in the European Judicial Atlas in Civil Matters - Article 6
  - - the transmission may be carried out by any appropriate means, provided that the document received accurately reflects the content of the document forwarded and that all information in it is legible.
- No authentication
- The request and all documents accompanying the request shall be exempted from authentication or any equivalent formality - Article 4 (2)

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

- Languages:
  - the request and any further correspondence have to be drawn up:
    - in the official language of the requested Member State;
    - or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the requested taking of evidence is to be performed,
    - or in another language which the requested Member State has indicated it accepts.
  - documents which the requesting court deems it necessary to enclose for the execution of the request shall be accompanied by a translation into the language in which the request was written.
  - the list of the official language or languages other than their own that the Members States have accepted pursuant to Articles 5 and 22 (4) for the completion of the forms is available in the Atlas.



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Receipt of request:
- Acknowledgement:
  - - the requested court shall send an acknowledgement of receipt to the requesting court - using Form B in the Annex - within seven days of receipt of the request - Article 7 (1)
  - - if the request does not comply with the language or transmission rules, the requested court shall enter a note to that effect in the acknowledgement of receipt – Articles 5 and 6
  - - if the execution of a request which complies with the language rules does not fall within the jurisdiction of the court to which it was transmitted, this court shall forward the request to the competent court of its Member State and shall inform the requesting court thereof, using paragraph 14 of Form A – Article 7 (2)

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Incomplete request:
- i) if the request does not contain all of the necessary information pursuant to Article 4 - Article 8 (1). In this case, the requested court shall inform the requesting court thereof without delay and, at the latest, within 30 days of receipt of the request using Form C, and shall request it to send the missing information, which should be indicated as precisely as possible.
- ii) if a deposit or an advance is necessary - Article 8(2).
- Rule: The execution of a request in accordance with Article 10 shall not give rise to a claim for any reimbursement of taxes or costs - Article 18 (1).

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Exceptions:
- 1. fees paid to experts and interpreters,
- 2. costs occasioned by the application of Article 10 (3) – when the requesting court calls for the request to be executed in accordance with a special procedure provided for by the law of its Member State, using form A in the Annex
- 3. costs occasioned by the application of Article 10 (4) – when the requesting court asks the requested court to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference
- 4. if the opinion of an expert is required, the requested court may, before executing the request, in addition, ask the requesting court for an adequate deposit or advance towards the requested costs - Article 18 (3).



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- In all other cases, a deposit or advance shall not be a condition for the execution of a request.
- If a deposit or advance is necessary, the requested court shall inform the requesting court thereof without delay (at the latest within 30 days of receipt of the request) using Form C and inform the requesting court how the deposit or advance should be made.
- The requested court shall acknowledge receipt of the deposit or advance without delay (at the latest within 10 days of receipt of the deposit or the advance), using Form D - Article 8 (2).

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Taking of evidence by the requested court:
- Time limits:
- Rule: If the request is complete and can be executed, the requested court shall execute it without delay and, at the latest, within 90 days of its receipt - Article 10(1)
- In case the request cannot be executed because it does not contain all the necessary information pursuant to Article 4 or does not comply with the conditions laid down in Articles 5 and 6, the time limit indicated in Article 10 shall begin to run only when the requested court received the request duly completed - Article 9
- If the requested court, before executing the request, has asked the requesting court for an adequate deposit or advance towards the requested costs, in accordance with Article 18(3), this time limit shall begin to run only when the deposit or the advance is made.

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Law applicable to the performance of the request:
- Rule: the requested court executes the request in accordance with its own law - Article 10(2).
- It may, however, execute the request pursuant to a special procedure provided for by the law of the Member State of the requesting court, if the latter so asks in accordance with para. 13 of Form A. If the requested court is in any doubt about the special procedure requested, additional information may be sought using Form C.
- However, if this procedure of the Member State of the requesting court is incompatible with the law of the Member State of the requested court or by reason of major practical difficulties, the requested court can refuse to comply with such a requirement - Article 10(3).
- A procedure can be considered as incompatible with the law of the Member State of the requested court if it is in conflict with fundamental principles of that law. In both cases, the requested court shall inform the requesting court using Form E.



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Lack of technical means:
- If there is no access to the technical means referred to in Article 10 (4) in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.
- Coercive measures:
- If such measures are necessary, the applicable law to coercive measures for executing a request is determined in accordance with the law of the Member State of the requested court to the extent that it provides for the execution of a request made for the same purpose by the national authorities of that Member State or one of the parties concerned - Article 13.

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Performance of the request with the presence and participation of the parties or of representatives of the requesting court:
- If it is provided for by the law of the Member State of the requesting court, the parties and, if any, their representatives, have the right to be present at the performance of the taking of evidence by the requested court - Article 11 (1)
- Representatives of the requesting court have the right to be present in the performance of the taking of evidence by the requested court, if this is compatible with the law of the Member State of the requesting court (Article 12 (1)).

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- “representative” of the requesting court = members of the judicial personnel designated by this court, in accordance with the law of its Member State, or any other person, such as an expert designated by this court
- The requesting court shall, in its request (Form A), inform the requested court that the parties and, if any, their representatives, will be present and, where appropriate, that their participation is requested, or that its representatives will be present and, where appropriate, that their participation is requested. This information may also be given at any other appropriate time - Article 11(2) and 12 (3)
- If this participation of the parties or, if any of their representatives or of the representatives of the requesting court is requested at the performance of the taking of evidence, the requested court determines the conditions under which they may participate, unless this procedure is incompatible with the law of the MS the requested court or by reason of major practical difficulties - Articles 11 (3), 12 (4) and 10 (3)



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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## Refusal of execution of a request:

### 1. Right or duty of a person to refuse to give evidence – Article 14

A request for the hearing of a person shall not be executed when the person concerned claims:

- the right to refuse to give evidence or
- to be prohibited from giving evidence.

The person may invoke:

- the law of the Member State of the requested court; or
- the law of the MS of the requesting court. In that case, the right must have been specified in the request, or, if necessary, been confirmed by the requesting court at the instance of the requested court

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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## 2. Miscellaneous grounds for refusal

The execution of a request may be refused only if:

- the request does not fall within the scope of the Regulation - Article 1; or
- the requested court does not have the power to instruct the requested measure - Article 14 (2) b); or
- the requesting court does not comply with the request of the requested court to complete the request pursuant to Article 8 within 30 days after the requested court asked it to do so; or
- a deposit or advance asked for in accordance with Article 18(3) is not made within 60 days after the requested court asked for such a deposit or advance.

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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Rule: the performance of a request may not be refused solely on the ground that under the law of the requested court a court of the same Member State has exclusive jurisdiction over the subject matter of the action or that the law of that Member State would not admit the right of action on it - Article 14(3)

Rule: No public policy (“*ordre public*”) exception can be invoked to justify the refusal of the taking of evidence by the requested court.

Since the Regulation aims at facilitating the taking of evidence in cross-border cases, the refusal of a request should be absolutely exceptional.

Whether or not there is an appeal against a refusal is a matter of national law. The grounds for refusal are strictly limited.



# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Consequences of refusal:
- If the execution of the request is refused by the requested court on one of the grounds referred to in Article 14 (2), the requested court shall notify the requesting court thereof within 60 days of receipt of the request using Form H - Article 14(4)

# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Notification of delay or of refusal by the requested court:
- If the requested court is not in a position to execute the request within 90 days of receipt, it shall inform the requesting court thereof, using Form G. When doing so, the grounds for the delay shall be given as well as the estimated time that the requested court expects it will need to execute the request - Article 15
- If the requested court has been asked to use communications technology at the performance of the taking of evidence, in particular by using videoconference and teleconference in accordance with Article 10 (4), and if the requested court cannot comply with the demand for one of the reasons provided for in Article 10 (4) second indent, it informs the requesting court, using Form E

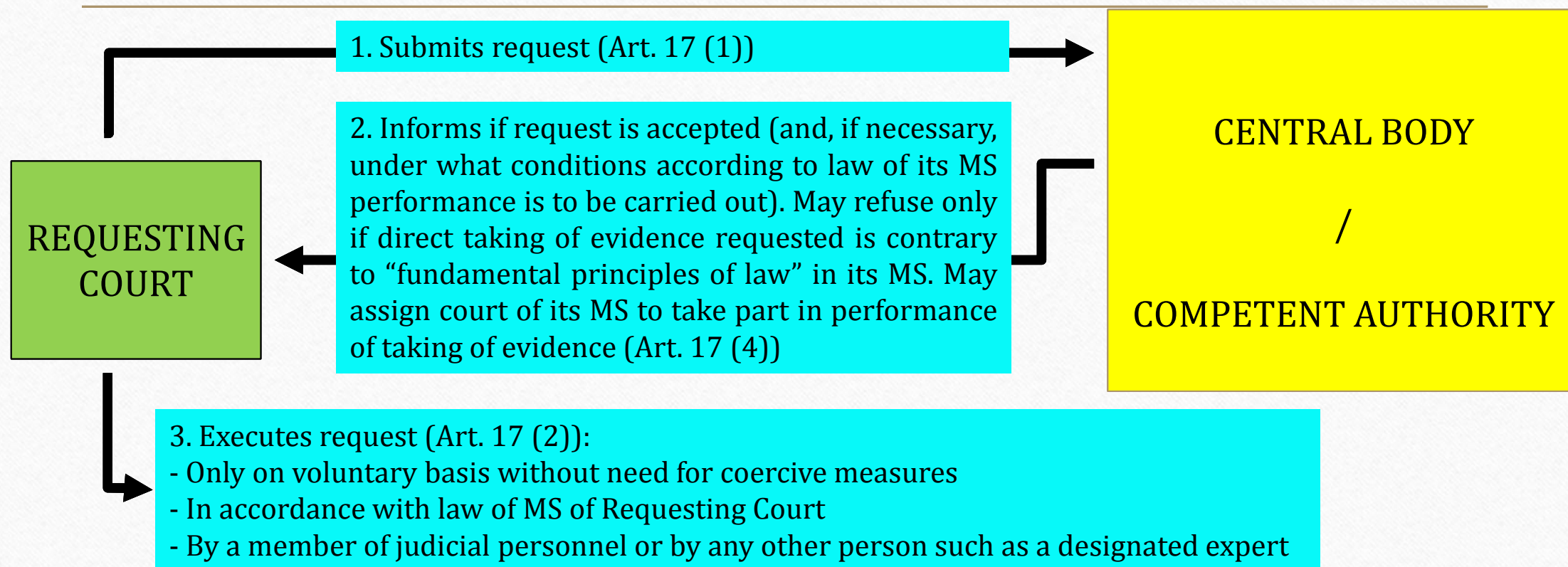
# REQUEST BY THE REQUESTING COURT TO THE COMPETENT COURT (ARTICLES 4–16)

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- Procedure after the execution of the request:
- When the requested court has executed the request, it sends the documents establishing the execution without delay to the requesting court and, where appropriate, returns the documents received from the requesting court. The documents shall be accompanied by a confirmation of execution using Form H - Article 16



# DIRECT TAKING OF EVIDENCE (ARTICLE 17)



# DIRECT TAKING OF EVIDENCE (ARTICLE 17)

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- The procedure:
- The court which requests to take evidence directly in another Member State submits its request to the Central Body or the Competent Authority referred to in Article 3(3) of that Member State, using Form I - Article 17 (1)
- Within 30 days of receiving the request, that central Body or the Competent Authority shall inform the requesting court if its request is accepted and, if necessary, under what conditions according to its law such performance is to be carried out, using Form J - Article 17 (4)
- In particular, these authorities may assign a court of their Member State to take part in the performance of the taking of evidence in order to ensure the proper application of Article 17 and in particular the conditions in Article 17 (4)

# DIRECT TAKING OF EVIDENCE (ARTICLE 17)

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- Grounds for refusal:
- The Central Body or the Competent Authority of the requested State may refuse the direct taking of evidence only if: - Article 17 (5):
  - - the request does not contain all of the necessary information pursuant to Article 4 (Form A);
  - - the request does not fall within the scope of the Regulation - Article 1;
  - - the direct taking of evidence requested is contrary to fundamental principles of law in its Member State. The Regulation does not define those principles.



# DIRECT TAKING OF EVIDENCE (ARTICLE 17)

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- On voluntary basis only:
- The direct taking of evidence by the requesting court is only possible if it can be performed on a voluntary basis without the need for coercive measures - Article 17 (2). Consequently, where the direct taking of evidence involves the hearing of a person, the requesting court shall inform that person that the performance shall take place on a voluntary basis.
- Without prejudice to the conditions in accordance with the law of the requested Member State (mentioned in Article 17 (4)), the requesting court shall execute the request in accordance with its own law - Article 17 (6). The taking of evidence is to be performed by a member of the judicial personnel or by any other person such as an expert, consular or diplomatic officer or commissioner, who will be designated, in accordance with the law of the Member State of the requesting court.

# RULES ON THE APPLICATION OF MODERN MEANS OF COMMUNICATION

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- The central body or the competent authority shall encourage the use of communications technology, such as videoconferences and teleconferences – Article 17 (4)
- The requesting court may ask the requested court to use communications technology for the performance of the taking of evidence, in particular by using videoconference and teleconference (Article 10 (4)).
- If, however, the requesting court wishes to have the responsibility over the taking of evidence, the rules in Article 17 on direct taking of evidence apply and an authorization by the requested Member State is required (see again slide 12)
- Member States will in the future provide information in which courts video- and teleconference can be used. This information will be made available in the Atlas.

# RULES ON THE APPLICATION OF MODERN MEANS OF COMMUNICATION

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- The requested court has to comply with a demand to use communications technology unless it is incompatible with its own law or by reason of major practical difficulties.
- This second ground for refusal is in practice the more relevant, because most of the courts in the Member States have not yet obtained facilities to take evidence by modern means of communication, especially by videoconference or teleconference.
- If there is no access to these technical means in the requesting or in the requested court, such means may be made available by the courts by mutual agreement.



# COSTS

- The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs.
- Nevertheless, if the requested court so requires, the requesting court shall ensure the reimbursement, without delay, of:
  - — the fees paid to experts and interpreters, and
  - — the costs occasioned by the application of Article 10(3) and(4)
- The duty for the parties to bear these fees or costs shall be governed by the law of the Member State of the requesting court
- 3. Where the opinion of an expert is required, the requested court may, before executing the request, ask the requesting court for an adequate deposit or advance towards the requested costs. In all other cases, a deposit or advance shall not be a condition for the execution of a request. The deposit or advance shall be made by the parties if that is provided for by the law of the Member State of the requesting court.

# REGULATION 1393/2007

## HISTORICAL BACKGROUND

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- Prior to any Union action on this matter (2000), the cross-border service of documents between Member States was mainly governed by the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.
- On 29 May 2000, the European Union adopted Regulation (EC) No 1348/2000 laying down procedural rules to facilitate the cross-border transmission of documents. The Regulation applied to all Member States of the European Union except Denmark. However, its application was extended to Denmark by the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters that entered into force on the 1<sup>st</sup> of July 2007.
- As of 13 November 2008, the 2000 Regulation was replaced by Regulation (EC) No 1393/2007 of the European Parliament and the Council. This Regulation equally applies to Denmark under the parallel agreement between the EU and Denmark.

# REGULATION 1393/2007

## SCOPE OF THE REGULATION

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- Regulation 1393/2007 applies in:
  - - civil and commercial matters
  - - where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there.
- It does NOT apply:
  - -in revenue, customs or administrative matters or
  - - to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).
  - - where the address of the person to be served with the document is not known.



# REGULATION 1393/2007

## SCOPE OF THE REGULATION

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How and by which means to find the address of the defendant ? What may be expected as "necessary steps" to be undertaken, and by whom ? (by the court seized, by the parties, by the Central Body or by the receiving agency in the State addressed ?)

Regulation 44/2001 / Regulation 1215/2012 and Regulation 2201/2003 impose a stay of proceedings so long as it is not shown that the defendant has been able to receive the document instituting proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.

Some courts have used Reg. 1206/2001 (outside its scope) in order to obtain the defendant's address.

ECJ ruled, with respect to Article 26(2) of Regulation 44/2001, that a court in such a situation may reasonably continue proceedings, only if it is satisfied that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant (C-327/10 Hypoteční banka v. Lindner, paragraph 52 and C-292/10 Cornelius de Visser, paragraph 55).

# REGULATION 1393/2007

## SCOPE OF THE REGULATION

- SERVING DOCUMENTS ON THE MEMBER STATES

- In disputes between a public authority and a private person, such disputes may be covered by the Regulation to the extent that they concern civil claims and the State concerned acted as a private person (*acta iure gestionis*) (Joined Cases C-226/13, C-245/13, C-247/13 and C-578/13, *Fahnenbrock*). Even if the addressee of a judicial or extrajudicial document in a civil or commercial matter is a State or a State entity, all methods of transmission provided for by the Regulation may be used for purposes of serving documents abroad.
- In *Fahnenbrock*, the Court held: “Article 1(1) of Regulation (EC) No 1393/2007 must be interpreted as meaning that legal actions for compensation for disturbance of ownership and property rights, contractual performance and damages, such as those at issue in the main proceedings, brought by private persons who are holders of government bonds against the issuing State, fall within the scope of that regulation in so far as it does not appear that they are manifestly outside the concept of civil or commercial matters.”



# REGULATION 1393/2007

## SCOPE OF THE REGULATION

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- “Civil and commercial matters” is an autonomous concept of EU law which is to be interpreted in the light of the objectives of the Regulation and of the EC Treaty and in particular in accordance with its Article 65 (C-29/76, LTU v. Eurocontrol, C-814/79, Ruffler, C-172/91 Sontag, C-271/00, Steenbergen v. Baten).
- “Judicial or extrajudicial documents” is an autonomous concept of EU law which is to be interpreted in the light of the objectives of objectives of the Treaty and of the Regulation, which aim at establishing a system for intra-Union service the purpose of which is the proper functioning of the internal market, judicial cooperation cannot be limited to legal proceedings alone but may also apply in the absence of legal proceedings => the service of a notarial act in the absence of legal proceedings falls within the scope of the Regulation. (C-14/08 (Roda Golf))



# REGULATION 1393/2007

## SCOPE OF THE REGULATION

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- It is NOT for the national law to determine in which situations a document must be transmitted, in accordance with the Regulation. Where the addressee of the document resides in another Member State the service of a judicial document must necessarily be effected in conformity with the requirements of the Regulation. As a result, a system that requires a representative in the forum Member State for purposes of serving judicial documents to parties residing in other Member States does not comply with the Regulation. (C-325/11, Adler)
- The Regulation does not mention electronic service => not valid (yet) as means of communication
- Disparities between Member States' procedural rules => legal uncertainty => the need of common minimum standards on which documents should be served on foreign parties, on whom such service may take place, and at which moment in time service should take place.

# REGULATION 1393/2007

## TRANSMITTING AND RECEIVING AGENCIES

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- Each Member State shall provide the Commission with the following information:
  - (a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;
  - (b) the geographical areas in which they have jurisdiction;
  - (c) the means of receipt of documents available to them; and
  - (d) the languages that may be used for the completion of the standard form set out in Annex I.
- Member States shall notify the Commission of any subsequent modification of such information.

# REGULATION 1393/2007

## TRANSMITTING AND RECEIVING AGENCIES

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- TRANSMITTING AGENCIES: Each MS shall designate the public officers, authorities or other persons, hereinafter referred to as 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another MS – Article 2(1)
- RECEIVING AGENCIES: Each MS shall designate the public officers, authorities or other persons, hereinafter referred to as 'receiving agencies', competent for the receipt of judicial or extrajudicial documents from another MS – Article 2(2)
- A MS may designate one transmitting agency and one receiving agency, or one agency to perform both functions. A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one such agency. The designation shall have effect for a period of five years and may be renewed at five-year intervals.



# REGULATION 1393/2007

## CENTRAL BODY

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- CENTRAL BODY
- Each Member State shall designate a central body responsible for:
  - (a) supplying information to the transmitting agencies;
  - (b) seeking solutions to any difficulties which may arise during transmission of documents for service;
  - (c) forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.
- A federal State, a State in which several legal systems apply or a State with autonomous territorial units shall be free to designate more than one central body.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - TRANSMISSION

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FORM F.1 (Request for Service of Documents)

TRANSMITTING AGENCY



RECEIVING AGENCY

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JUDICIAL DOCUMENTS

Judicial documents shall be transmitted between the agencies designated pursuant to Article 2 directly and as soon as possible.

The transmission of documents, requests, confirmations, receipts, certificates and any other papers between transmitting agencies and receiving agencies may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document forwarded and that all information in it is easily legible.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - TRANSMISSION

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The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed

- - in 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
- - in another language which that Member State has indicated it can accept.

Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.

The documents and all papers that are transmitted shall be exempted from legalisation or any equivalent formality.

When the transmitting agency wishes a copy of the document to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - TRANSLATION

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The applicant shall be advised by the transmitting agency to which he forwards the document for transmission that the addressee may refuse to accept it if it is not in one of the languages provided for in Article 8.

The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decision by the court or competent authority on liability for such costs.

All Member States except Luxembourg accept English as a language for the receipt of requests to serve documents (see Annex 2). There thus appears to be one language used between almost all Member States. In addition, it appears that all Member States, except Ireland, Luxembourg and Malta, accept requests in at least one other language in addition to their official language(s). More than half of the Member States accept requests in three, four or even five (France) languages.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - RECEIPT

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FORM F.2 (Acknowledgement of receipt)

TRANSMITTING AGENCY



RECEIVING AGENCY

On receipt of a document, a receiving agency shall, as soon as possible and in any event within 7 days of receipt, send a receipt to the transmitting agency by the swiftest possible means of transmission using the standard form set out in Annex I.

Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency by the swiftest possible means in order to secure the missing information or documents.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - RECEIPT

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FORM F.3 (Notice of return of request and document )

TRANSMITTING AGENCY



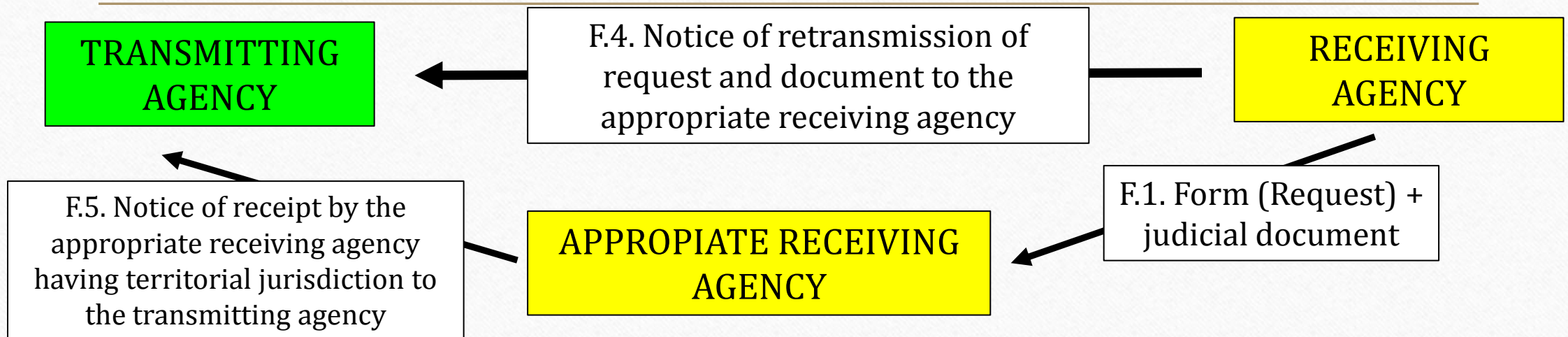
RECEIVING AGENCY

If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.



# REGULATION 1393/2007

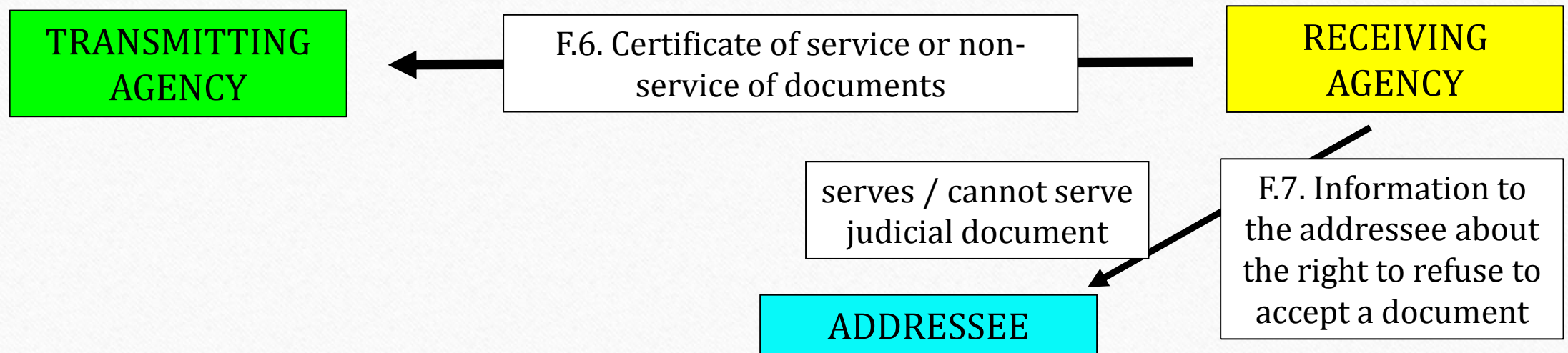
## JUDICIAL DOCUMENTS - RECEIPT



A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, to the receiving agency having territorial jurisdiction in the same MS if the request complies with the conditions laid down in Article 4(3) and shall inform the transmitting agency accordingly using the standard form set out in Annex I. That receiving agency shall inform the transmitting agency when it receives the document, in the manner provided for in paragraph 1.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - RECEIPT



The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS - RECEIPT

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The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within 1 month of receipt. If it has not been possible to effect service within 1 month of receipt, the receiving agency shall:

- (a) immediately inform the transmitting agency by means of the certificate in the standard form set out in Annex I, which shall be drawn up under the conditions referred to in Article 10(2); and
- (b) continue to take all necessary steps to effect the service of the document, unless indicated otherwise by the transmitting agency, where service seems to be possible within a reasonable period of time.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week if it is not written in, or accompanied by a translation into, either of the following languages:

- (a) a language which the addressee understands; or
- (b) 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.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

If the addressee has refused to accept the document pursuant to paragraph 1, the service of the document can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1.

In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

For the purposes above described, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, shall inform the addressee that he may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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C-14/07 (Weiss) - the addressee refused to accept service on the basis that only the application was translated into the language prescribed in Article 8 of the Regulation, but not the annexes attached to it.

The Court held that an addressee of a document instituting proceedings does not have the right to refuse to accept that document, if the non-translated annexes of that document consist of documentary evidence which has a purely evidential function and is not necessary for understanding the subject-matter of the claim and the cause of action.

ECJ also held that a contractual clause between the addressee and the applicant in which the addressee agreed that correspondence between the parties was to be carried out in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language on the part of the addressee, but that it nevertheless constitutes evidence which the court may take into account in determining whether that addressee understands the language of the MS of transmission.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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In C-384/14 (Alta Realitat), ECJ held that Regulation 1393/2007 must be interpreted to the effect that, when serving a document on its addressee residing in the territory of another Member State, in a situation where the document has not been drafted in or accompanied by a translation in either a language which the person concerned understands, or the official language of the Member State addressed, or, if there are a number of official languages in that Member State, the official language or one of the official languages of the place where service is to be effected:

1) the court seised in the transmitting Member State must ensure that the addressee has been properly informed, by means of the standard form in Annex II to that regulation, of his right to refuse to accept that document;

2) where that procedural requirement has not been complied with, it falls to that court to return the proceedings to a lawful footing in accordance with the provisions of that regulation;

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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3) it is not for the court seised to prevent the addressee from exercising his right to refuse to accept that document;

4) it is only after the addressee has effectively exercised his right to refuse to accept the document that the court seised may verify whether that refusal was well founded; for that purpose, that court must take into account all the relevant information on the court file in order to determine whether or not the party concerned understands the language in which the document was drafted; and

5) where that court finds that the refusal by the addressee of the document was not justified, it may in principle apply the consequences under its national law in such a case, provided that the effectiveness of Regulation 1393/2007 is preserved.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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In C-519/13 (Alpha Bank Cyprus), ECJ held that Regulation 1393/2007 must be interpreted as meaning that:

1. the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to that regulation, and

2. the fact that that agency, when serving a document on its addressee, fails to enclose the standard form set out in Annex II to Regulation No 1393/2007, does not constitute a ground for the procedure to be declared invalid, but an omission which must be rectified in accordance with the provisions set out in that regulation.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – REFUSAL TO ACCEPT DOC

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- Problems:

1) The addressee may refuse to accept the document to be served either at the time of service (directly with the person serving the document) or by returning the document to the receiving agency. At the same time, Annex II suggests that the form itself should be returned with the document to be served. How can an addressee validly exercise the right of refusal ? In some instances, addressees have not exercised their right of refusal at the time of service but have returned the Annex II properly filled out (declaring the refusal) without however returning the document to be served itself. It is questionable whether this is a satisfactory interpretation: if simply returning the document constitutes a valid refusal, *a fortiori* an express declaration in the form, even without the document itself, should be valid.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – DATE OF SERVICE

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Without prejudice to Article 8, the date of service of a document pursuant to Article 7 shall be the date on which it is served in accordance with the law of the Member State addressed.

However, where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State.

2) the determination of the date of service according to the law of the Member State addressed (Article 9(1)) in cases where service is requested by a particular method under Article 7(1) and such method is not known in the Member State addressed even if it is not incompatible with its law. Obviously, in such cases the law of the Member State addressed might not necessarily provide for the date of service. The question has arisen whether Article 9(1) would permit the conclusion, in such a situation, that the date of service is governed by the law of the requesting Member State where the particular method exists.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – CERTIFICATE OF SERVICE

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When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, together with, where Article 4(5) applies, a copy of the document served.

The certificate shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it can accept. Each Member State shall indicate the official language or languages of the institutions of the European Union other than its own which is or are acceptable to it for completion of the form.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – COSTS

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The service of judicial documents coming from a Member State shall not give rise to any payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

However, the applicant shall pay or reimburse the costs occasioned by:

(a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;

(b) the use of a particular method of service.

Costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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### Transmission by consular or diplomatic channels – Article 12

Each Member State shall be free, in exceptional circumstances, to use consular or diplomatic channels to forward judicial documents, for the purpose of service, to those agencies of another Member State which are designated pursuant to Articles 2 or 3.

### Service by diplomatic or consular agents – Article 13

Each Member State shall be free to effect service of judicial documents on persons residing in another Member State, without application of any compulsion, directly through its diplomatic or consular agents.

Any Member State may make it known, in accordance with Article 23(1), that it is opposed to such service within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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### Service by postal services – Article 14

Each Member State shall be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent.

Advantages: low-cost, very expeditious

Problems: 1) the diverging solutions which national rules of civil procedure foresee when determining the circle of persons on whom a postal delivery may be effected. In certain MS, certain civil procedures require delivery on the addressee *in personam*. In other MS, there is room for so-called 'substituted service', where the document is not handed to the addressee personally, but to another person at the same address or the document is placed in the mailbox or is deposited at a specified place for a certain period of time for the purpose of collection by the addressee.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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Cases of 'substituted service' result in valid service of the document under the law of the requested Member State but they may not comply with the requirements imposed by the civil procedural law of the requesting Member State.

2) Acknowledgments of receipt which are often filled in improperly or incompletely, because they are not able to provide appropriate evidence on the relevant facts of the performed or attempted service. Courts in the requesting Member States often are unable to determine from the return receipt to whom the delivery was performed or when.

ECJ held in C-473/04 (Plumex) that all methods of transmission provided for in the Regulation are considered equal.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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### Direct service - Article 15

Any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

Advantages: very expeditious

Problems:

- 1) There is no general acceptance of this mechanism of service of documents.



# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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The situation is currently as follows.

Direct service is possible in Belgium, Denmark, Greece, France, Italy, Cyprus, Malta, the Netherlands, Portugal, Finland, Sweden (in principle), United Kingdom (Scotland and Gibraltar).

Is not possible in: Bulgaria, Czech Republic, Estonia, Spain, Ireland, Latvia, Lithuania, Hungary, Austria, Poland, Romania, Slovenia, Slovakia, United Kingdom (England, Wales, and Northern Ireland).

In Germany, the acceptance of direct service depends on the nature of the documents to be served. Luxembourg allows for direct service on the basis of reciprocity.

# REGULATION 1393/2007

## JUDICIAL DOCUMENTS – OTHER MEANS OF TRANSMISSION AND SERVICE OF DOCS

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This method of transmission of documents is successful particularly in Member States where bailiffs carry out the service of documents. There seems more hesitation to use this method in other Member States due to an uncertainty on who are the judicial officers, officials or other competent persons referred to in Article 15 of the Regulation and on the conditions under which service will take place in the Member State addressed. The contact details of persons authorized to perform direct service are not listed on the Judicial Atlas and it is not sure to what extent these persons are different from the receiving agencies. In order to improve this method of service and make it acceptable to all Member States, it should be considered to increase transparency on who effects such direct service and whether any minimum standards should be set (as in the case of postal service).

# REGULATION 1393/2007

## DEFENDANT NOT ENTERING AN APPEARANCE

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Article 19 (1) - Where a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that:

a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or

b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;

- **and** that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.



# REGULATION 1393/2007

## DEFENDANT NOT ENTERING AN APPEARANCE

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Article 19(2) - Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- a) the document was transmitted by one of the methods provided for in this Regulation;
- b) a period of time of not less than 6 months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.

Article 19(3) - Notwithstanding paragraphs 1 and 2, the judge may order, in case of urgency, any provisional or protective measures.

# REGULATION 1393/2007

## DEFENDANT NOT ENTERING AN APPEARANCE

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Article 19 (4) (5) - With the exception of judgments concerning the status or capacity of persons, when a writ of summons or an equivalent document has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

- a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
- b) the defendant has disclosed a *prima facie* defence to the action on the merits.

# REGULATION 1393/2007

## DEFENDANT NOT ENTERING AN APPEARANCE

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An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.

ECJ held in C-70/15 (Lebek), that “The last subparagraph of Article 19(4) of Regulation 1393/2007 must be interpreted as excluding the application of provisions of national law concerning the system of applying for relief where the period for filing such applications, as specified in the communication of a Member State to which that provision refers, has expired.”



# REGULATION 1393/2007

## EXTRAJUDICIAL DOCUMENTS

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Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation.

- extrajudicial document: autonomous EU law concept

ECJ held that Article 16 of Regulation 1393/2007 must be interpreted as meaning that the concept of an 'extrajudicial document' referred to in that article encompasses not only documents drawn up or certified by a public authority or official but also private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. (C-223/14 Tecom Mican SL and José Arias Domínguez)

# REGULATION 1393/2007

## EXTRAJUDICIAL DOCUMENTS

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The Court has already held in C-14/08, *Roda Golf & Beach Resort*, paragraphs 49 and 50, that the concept of an 'extrajudicial document' referred to in Art. 16 of Regulation 1348/2000, which was repealed and replaced by Regulation 1393/2007, must be regarded as an autonomous concept of EU law. Moreover, the Court has already held that the concept of an 'extrajudicial document' must be given a broad definition and cannot be limited to documents that are connected to legal proceedings alone; it may include documents drawn up by notaries.

ECJ also held that Regulation 1393/2007 must be interpreted as meaning that service of an extrajudicial document, pursuant to the detailed rules laid down by that regulation, can be effected even where the applicant has already effected an earlier service of that document through a means of transmission not provided for in the regulation, or through another of the means of transmission put in place by it (C-223/14 *Tecom Mican SL and José Arias Domínguez*).

# REGULATION 1393/2007

## EXTRAJUDICIAL DOCUMENTS

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Moreover, Article 16 of Regulation 1393/2007 must be interpreted as meaning that, where the conditions of that article are satisfied, it is not necessary to ascertain, on a case-by-case basis, whether the service of an extrajudicial document has cross-border implications and is necessary for the proper functioning of the internal market(C-223/14 Tecom Mican SL and José Arias Domínguez).



# REGULATION 1393/2007

## RELATIONSHIP WITH AGREEMENTS OR ARRANGEMENTS TO WHICH MS ARE PARTY

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The Regulation shall, in relation to matters to which it applies, prevail over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965.

The Council adopted in 2009 a decision providing for a procedure to implement Article 5(2) of the Agreement between the EC and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters. This procedure prescribes how the coordination between Denmark and the Union should take place in case of negotiations on international agreements which may affect or alter the scope of the Regulation.

# REGULATION 1393/2007

## RELATIONSHIP WITH AGREEMENTS OR ARRANGEMENTS TO WHICH MS ARE PARTY

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As regards the non EU States which are contracting parties to the 2007 Lugano Convention, namely Norway, Switzerland and Iceland, the Commission has recommended, in 2012, to the Council to authorise negotiations for the conclusion of an agreement with these States, among others, on the service of documents. The agreement would strengthen the existing level of judicial cooperation by speeding and simplifying the service of documents between the EU Member States and these States. In addition, it would support the effective functioning of the 2007 Lugano Convention where service of documents is an important element in protecting the rights of the defendant in the event of default and in the recognition and enforcement of judgments.

# REGULATION 1393/2007

## RELATIONSHIP WITH AGREEMENTS OR ARRANGEMENTS TO WHICH MS ARE PARTY

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