

ECJ: Judgment on Service Regulation (Weiss und Partner)

Today, the ECJ delivered its judgment in case C-14/07 (*Weiss und Partner*).

The German Federal Supreme Court (*Bundesgerichtshof*) had referred the **following questions** to the ECJ for a preliminary ruling:

Must Article 8(1) 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') be interpreted as meaning that an addressee does not have the right to refuse to accept a document pursuant to Article 8(1) of the Regulation if only the annexes to a document to be served are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands?

If the answer to the first question is in the negative:

Must Article 8(1)(b) of the Regulation be interpreted as meaning that the addressee 'understands' the language of a Member State of transmission within the meaning of that regulation because, in the exercise of his business activity, he agreed in a contract with the applicant that correspondence was to be conducted in the language of the Member State of transmission?

If the answer to the second question is in the negative:

Must Article 8(1) of the Regulation be interpreted as meaning that the addressee may not in any event rely on that provision in order to refuse acceptance of such annexes to a document, which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, if the addressee concludes a contract in the exercise of his business activity in which he agrees that correspondence is to be conducted in the language of the Member State of transmission and the annexes transmitted concern that correspondence and are written in the agreed language?

The Court now held in its **judgment**:

1. Article 8(1) 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 is to be interpreted as meaning that the addressee of a document instituting the proceedings which is to be served does not have the right to refuse to accept that document, provided that it enables the addressee to assert his rights in legal proceedings in the Member State of transmission, where annexes are attached to that document consisting of documentary evidence which is not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, but which has a purely evidential function and is not necessary for understanding the subject-matter of the claim and the cause of action.

It is for the national court to determine whether the content of the document instituting the proceedings is sufficient to enable the defendant to assert his rights or whether it is necessary for the party instituting the proceedings to remedy the fact that a necessary annex has not been translated.

2. Article 8(1)(b) of Regulation No 1348/2000 is to be interpreted as meaning that the fact that the addressee of a document served has agreed in a contract concluded with the applicant in the course of his business that correspondence is to be conducted in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language, but is evidence which the court may take into account in determining whether that addressee understands the language of the Member State of transmission.

3. Article 8(1) of Regulation No 1348/2000 is to be interpreted as meaning that the addressee of a document served may not in any event rely on that provision in order to refuse acceptance of annexes to the document which are not in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands where the addressee concluded a contract in the course of his business in which he agreed that correspondence was to be conducted in the language of the Member State of transmission and the annexes concern that correspondence and are written in the agreed language.

See for the full judgment the website of the ECJ and with regard to the background of the case our previous post on the opinion of Advocate General

Trstenjak which can be found here.