

Denmark's ratification of the "parallel" agreements on Reg. 44/2001 and Reg. 1348/2000

As stated on recent news published on the European Judicial Network (EJN) website, on 18 January 2007 **Denmark notified the European Community that it has ratified the two "parallel" agreements** concluded between the European Community and Denmark to extend to the latter the provisions of Regulation 44/2001 ("Brussels I") and Regulation 1348/2000 on the service in the Member States of judicial and extrajudicial documents.

The **entry into force of the two agreements, on 1st July 2007**, will put an end to the current situation where the uniform rules contained in Reg. 44/2001 and in Reg. 1348/2000 are not in force in Denmark and they are not applied in the relations between other Member States and Denmark, due to the non-participation of the latter State in Title IV of the EC Treaty (see the *Protocol on the position of Denmark* annexed to the EC Treaty as amended by the Amsterdam Treaty).

As regards judicial cooperation in civil and commercial matters, the consequences of Denmark's opting-out have been strongly criticised by the Commission, in the *Explanatory memorandum* accompanying the *Proposals for Council Decisions concerning the conclusion and the signing of the Agreements between the European Community and the Kingdom of Denmark* (COM(2005) 145 def., as regards Reg. 44/2001, and COM(2005) 146 def., as regards Reg. 1348/2000):

The non-application of Regulation 44/2001 in Denmark results in a most unsatisfactory legal situation: not only does Denmark continue to apply the old rules of the Brussels Convention, but also all other Member States have to apply these rules, i.e. a set of rules different from the one they use in their mutual relations, when it comes to the recognition and enforcement of Danish decisions.

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 in all Member States. The current situation therefore jeopardizes the uniformity and

legal certainty of the Community rules.

Hence the necessity to extend, by way of traditional international law instruments, the provisions of Brussels I Reg. (and of Reg. 1348/2000, strictly related to the functioning of the former) to Denmark.

The negotiations procedure and its outcome are summarized as follows in the Commission's Proposals referred to above:

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

The Council decided on 8 May 2003 to exceptionally authorize the Commission to negotiate [...]. The Commission negotiated the parallel agreement [...] 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.*

The parallel agreements were signed on 19th October 2005, following two Council Decisions of 20th September 2005 (2005/790/EC, as regards Reg. 44/2001, and 2005/794/EC, as regards Reg. 1348/2000) and subject to their possible conclusion at a later date.

The Council decision on the conclusion of the agreements can be found here:

- for Regulation 44/2001: Council Decision 2006/325/EC (OJ 2006, L 120 p. 22);
- for Regulation 1348/2000: Council Decision 2006/326/EC (OJ 2006 L 120 p. 23).

The **text of the agreements** can be found here, as attachments to the Council Decisions on the signing of the agreements:

- **for Regulation 44/2001: Annex** to Council Decision 2005/790/EC;
- **for Regulation 1348/2000: Annex** to Council Decision 2005/794/EC.

(Many thanks to Pietro Franzina, University of Ferrara, for the initial tip-off).