Opinion on European Service Regulation

Yesterday, Advocate General *Trstenjak* delivered her opinion in case C-14/07 (*Weiss und Partner*).

The background of the case was as follows: The Chamber of Industry and Commerce Berlin (*Industrie- und Handelskammer Berlin*) sued Nicholas Grimshaw & Partners Ltd. for damages under a architect contract. The parties had agreed in this contract that correspondence was to be conducted in German. The defendant was served with a statement of claim as well as annexes which were drafted in German. After Grimshaw had refused acceptance of the statement of claim and the annexes, Grimshaw was served with an English translation of the statement of claim and annexes written in German without an English translation. Subsequently, Grimshaw referred to Art. 8 (1) Service Regulation (Regulation (EC) No 1348/2000) and refused to accept the documents due to the fact that the annexes had not been translated into English. After the appeal of Grimshaw against an interim judgment of the Regional Court (*Landgericht*) Berlin declaring the claim having been served properly was refused by the Court of Appeal (*Kammergericht*) Berlin, the third party (Weiss and Partner GbR) appealed to the Federal Supreme Court (*Bundesgerichtshof*).

Since the *Bundesgerichtshof* had doubts on the interpretation of Regulation (EC) No 1348/2000, it 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?*
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> *If the answer to the first question is in the negative:*
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> *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?

Advocate General *Trstenjak* recommended in her **opinion** that the ECJ should decide in the following way:

With regard to the **first question,** the Advocate General suggests that Art. 8 (1) Service Regulation should be interpreted as providing in case of the service of a document including annexes a right of the addressee to refuse acceptance pursuant to Art. 8 (1) Service Regulation also in cases where only the annexes to the document to be served have not been written in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands.

In respect of the **second question**, the Advocate General recommends that Art. 8 (1) b) Service Regulation should be construed in this sense that there exists a refutable presumption that the addressee of a document understands the language of a Member State of transmission in terms of this Regulation if he agrees contractually in the exercise of his business activity that correspondence between the contracting parties on the one side and with authorities and public institutions of the Member State of transmission on the other side is conducted in the language of this Member State of transmission. However, since this constitutes only a refutable presumption, the addressee can refute this presumption under the rules of evidence of the Member State where the lawsuit

is conducted.

In regard to the **third question**, the Advocate General submits that Art. 8 (1) Service Regulation should be interpreted as not granting a right to the addressee to refuse the acceptance of annexes to a statement of claim which are not drafted in the language of the Member State addressed, but in the language which has been agreed upon contractually between the parties in the exercise of their business activity for correspondence with authorities and public institutions of the Member State of transmission, if he concludes a contract in excercise of his business activity and agrees that correspondence with authorities and public institutions of the Member State of transmission is conducted in the language of this State and if the transmitted annexes concern this correspondence and are drafted in the agreed language.

(Approximate translation from the German version of the opinion available at the ECJ website.)

See for the full opinion (in German, French, Spanish, Estonian, Dutch, Slovene, Finnish and Swedish) and the reference the website of the ECJ. The referring decision can be found (in German) at the website of the Bundesgerichtshof.