



Service of documents

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CROSS-BORDER LITIGATION IN PRACTICE
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Historical perspective

- ◉ Part of the law on civil procedure => national principle
- ◉ 1965 Hague Convention on service abroad of judicial and extrajudicial documents in civil or commercial matters in majority of MSs and Article IV of the Protocol to the 1968 Brussels Convention
- ◉ EU competences introduced by the Treaty of Amsterdam => Article 65(a) of the EC Treaty

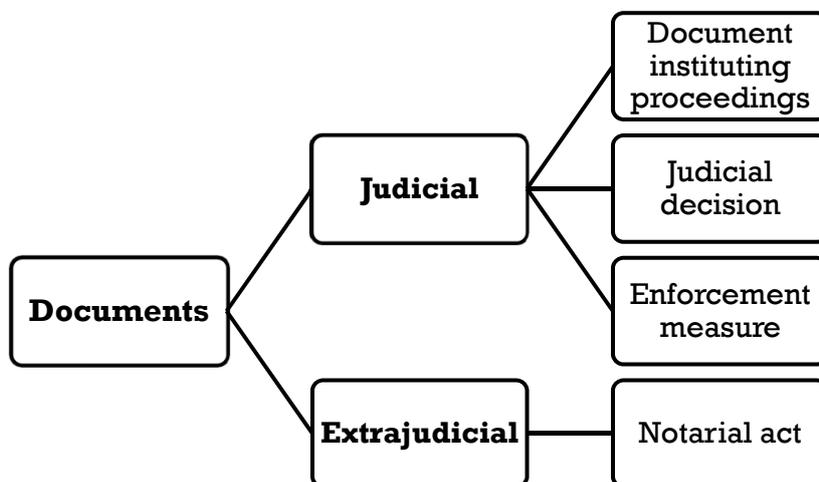
Legal source

- ◉ Council Regulation (EC) No 1393/2007 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
- ◉ Finland applies the 1974 Nordic Agreement vis-à-vis Sweden and Denmark on mutual assistance regarding the service of documents

Scope of application

- ◉ **Material:** in **civil and commercial matters**, where **judicial or extrajudicial document** has to be transmitted from one MS to another for service there (does not apply if addressee's address is unknown)
- ◉ **Territorial:** all MSs
- ◉ **Temporal:** 13 November 2008

Type of documents



Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin

- ⊙ whether an addressee has the right to refuse to accept service where only the annexes to a document to be served are not in the language of the MS addressed or in a language of the MS of transmission which the addressee understands?
- ⊙ whether an addressee is deemed to “understand” the language of a MS of transmission where, in the course of his business, he agreed in a contract with the applicant that correspondence was to be conducted in the language of the MS of transmission?

Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin

- ◎ the notion 'document to be served' in Article 8(1) of Regulation, where such a document is a document instituting the proceedings, must be interpreted as meaning the **document or documents** which must be served on the defendant in due time in order to enable him to assert his rights in legal proceedings in MS of transmission. Such a document must make it possible:
 - to identify with a degree of certainty at the very least:
 - the subject-matter of the claim and
 - the cause of action and
 - the summons to appear before the court
 - or, depending on the nature of the pending proceedings,
 - to be aware that it is possible to appeal.
- ◎ documents having a purely evidential function and unnecessary for the purpose of understanding the subject-matter of the claim and the cause of action do not form an integral part of the document instituting the proceedings

Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin

- ◎ addressee does not have the right to refuse to accept a document instituting proceedings, provided that it enables him to assert his rights in legal proceedings in the MS of transmission, where annexes are attached to that document consisting of documentary evidence which is not in the language of the MS addressed or in a language of the MS 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

Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin

- ◎ 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 MS of transmission
 - creates **no 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 MS of transmission

Case C-14/08,
Roda Golf & Beach Resort SL

- ◎ whether a document, executed before a notary in Spain, for the purpose of transmitting sixteen letters to addressees with an address for service in the UK and Ireland through the registry of the *Juzgado de Primera Instancia de Instrucción de San Javier* (Spain) is considered an 'extrajudicial document'?

**Case C-14/08,
*Roda Golf & Beach Resort SL***

- ⊙ the definition of 'extrajudicial document' for the purposes of the Regulation on service of documents must be regarded as an EU law concept and not as a national law concept
- ⊙ judicial cooperation under the Regulation may take place both in the context of and in the absence of legal proceedings if that cooperation has cross-border implications and is necessary for the proper functioning of the internal market
- ⊙ document in question, transmitted to the clerk of the referring court in order to be served, was drawn up by a notary and constitutes, as such, an extrajudicial document within the meaning of the Regulation

**C-325/11, *Krystyna & Ewald Alder
v Sabina & Czeslaw Orlowski***

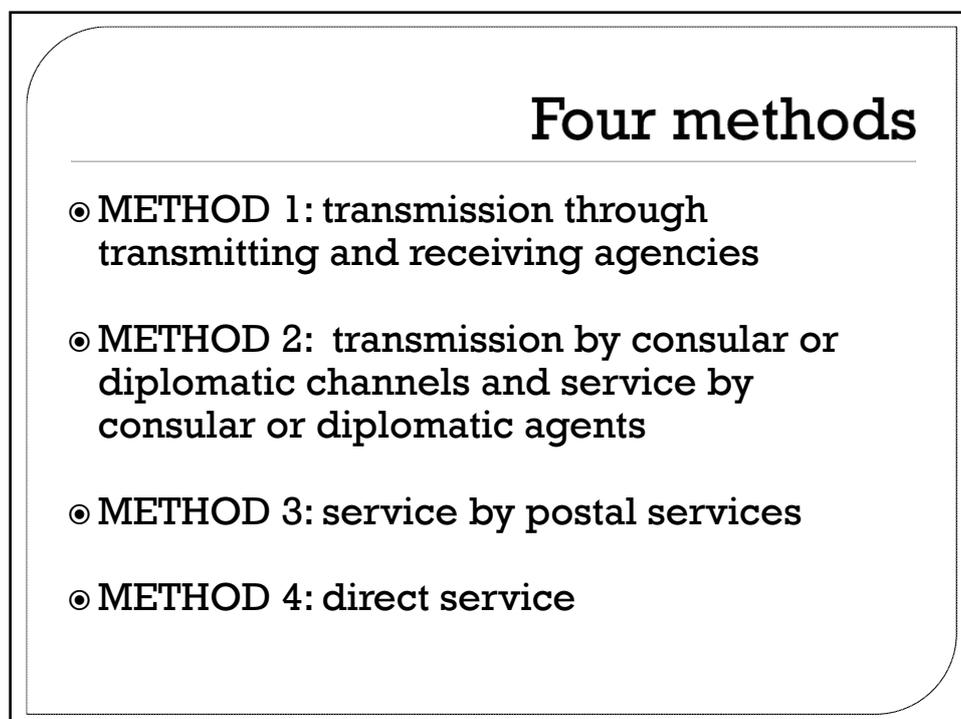
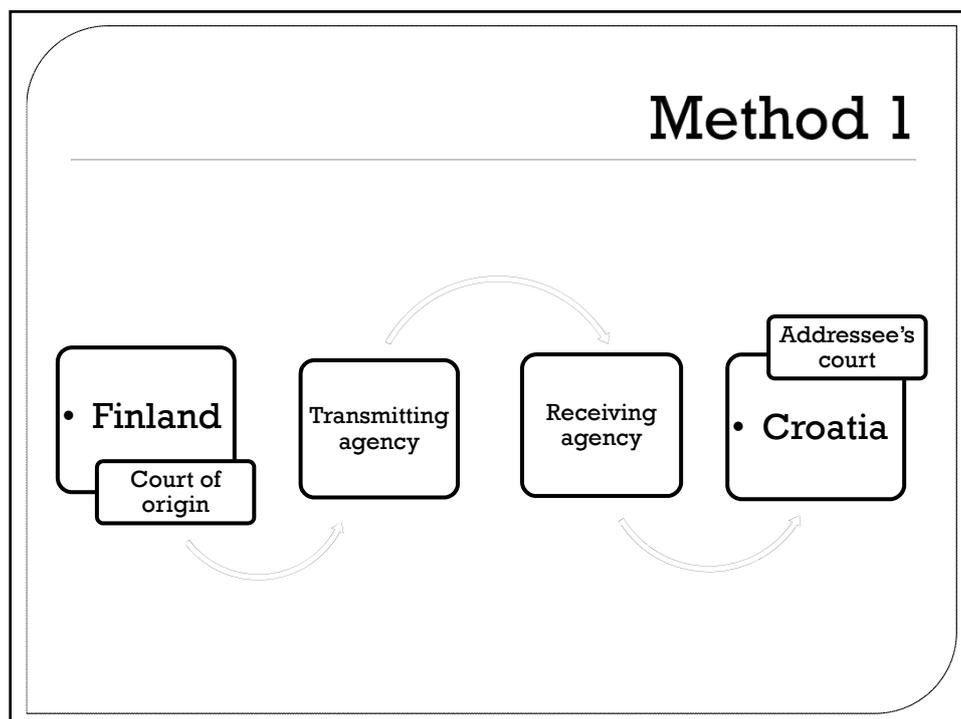
- ⊙ whether the Regulation covers the service of judicial documents in the circumstances including, inter alia, those referred to by the national legislation at issue in the main proceedings?
- or
- ⊙ whether the Regulation applies only where such documents have to be served in another MS pursuant to the procedural rules in force in the MS in which the proceedings take place?

***C-325/11, Krystyna & Ewald Alder
v Sabina & Czeslaw Orlowski***

- ⊙ Regulation provides for different means of transmission, but without establishing a hierarchy between them, but they are exhaustively laid down, hence, the Regulation does not provide any place for, and therefore precludes, a procedure for notional service (such as that in force in Poland by virtue of Article 1135(5) of the Code of Civil Procedure).
- ⊙ Regulation also provides for service of judicial documents to be effected using a standard form translated into a language understood by the addressee or the official language of the MS addressed, as well as that service is executed by registered letter with acknowledgment of receipt, all that to enable the defendant to present a defence

***C-325/11, Krystyna & Ewald Alder
v Sabina & Czeslaw Orlowski***

- ⊙ legislation of a MS, which provides that judicial documents addressed to a party whose place of residence or habitual abode is in another MS are placed in the case file, and deemed to have been effectively served, if that party has failed to appoint a representative who is authorised to accept service and is resident in the first MS in which the judicial proceedings are taking place, is precluded by the Regulation



Method 1

- ⊙ transmitting agencies competent for the transmission of documents to be served in another MS
- ⊙ receiving agencies competent for the receipt of documents from another MS
- ⊙ transmission of documents to be served goes directly and as soon as possible between the agencies

Procedure under method 1

- ⊙ Document to be served received by T-agency in the MS of origin is delivered to R-agency in the addressee's MS together with request for service – Form 1
- ⊙ R-agency sends acknowledgment of the receipt to the T-agency – Form 2 within 7 days
- ⊙ If the request is manifestly outside the scope of the Regulation or non-fulfilment of formal conditions required makes service impossible R-agency informs the T-agency – Form 3
- ⊙ R-agency without territorial jurisdiction retransmits request and document to the appropriate R-agency and notifies the T-agency – Form 4, then the latter R-agency informs the T-agency of this receipt – Form 5
- ⊙ Certificate of performed service – Form 6 within 1 month
- ⊙ Information on impossibility to serve the document – Form 6
- ⊙ If the addressee refuses to take the document, the R-agency has to inform the T-agency – Form 7

Forms

- F.1. Request for service of documents**
- F.2. Acknowledgement of receipt**
- F.3. Notice of return of request and document**
- F.4. Notice of retransmission of request and document to the appropriate receiving agency**
- F.5. Notice of receipt by the appropriate receiving agency having territorial jurisdiction to the transmitting agency**
- F.6. Certificate of service or non-service of documents**
- F.7. Information to the addressee about the right to refuse to accept a document**

Issues under method 1

Time limits	<ul style="list-style-type: none"> • Very strict • For each action by agencies
Language	<ul style="list-style-type: none"> • Official language • Specially indicated
Costs of translation	<ul style="list-style-type: none"> • Born by applicant • Advice by T-agency
Applicable law	<ul style="list-style-type: none"> • Receiving MS • Specially requested method

Method 2a

- ⦿ **transmission by consular or diplomatic channels**
- ⦿ **in exceptional circumstances**
- ⦿ **used only for forwarding the documents to the transmitting or receiving agencies in other MSs to be then served through these agencies**

Method 2b

- ⦿ **service by consular or diplomatic agents**
- ⦿ **directly on persons residing in another MS**
- ⦿ **without application of any compulsion**

- ⦿ **any MS may oppose to such service in its territory, unless the documents are to be served on nationals of the MS in which the documents originate**

Method 3

- ◉ service by postal services
- ◉ by each MS directly by postal services on persons residing in another MS
- ◉ provided there is a registered letter with acknowledgement of receipt or equivalent

Method 4

- ◉ direct service through judicial officers, officials or other competent persons of the MS addressed
- ◉ by any person interested in a judicial proceeding
- ◉ if such direct service is permitted under the law of that SM

**Case C-473/04,
*Plumex v Young Sports NV***

- ⊙ whether any hierarchy exists between service through agencies and service by post, whereby the first method takes precedence over the second where both have been validly effected?
- ⊙ which date of service is relevant to determine vis-à-vis the person on whom service is effected the point from which time starts to run for the purposes of a procedural time-limit linked to effecting service where service is being effected both through agencies and by post?

**Case C-473/04,
*Plumex v Young Sports NV***

- ⊙ nothing in the wording indicates a hierarchy, while spirit and purpose of the Regulation reveals it is intended to ensure that judicial documents are served effectively, respecting the legitimate interests of the persons on whom they are served
- ⊙ it is possible to serve a judicial document by one or other or both of those methods, and reference must be made to the date of the first service validly effected

Important Internet links

- ◎ European Judicial Atlas:
http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_en.htm
- ◎ Forms: https://e-justice.europa.eu/content_serving_documents_forms-269-en.do and
http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_fillingforms_uk_en.htm

Thank you!

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