



This project is co-financed by the European Union

CROSS-BORDER CIVIL LITIGATION

Budapest, 19-20 May 2016

Cross-border service of documents and
taking of evidence: key EU law issues -
national experience with the application of the European legislative
instruments

Miroslav Slastan, Judicial Academy of the Slovak Republic

Cross-border service of documents

- 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
- shall enter into force on 30.12.2007
- BUT it shall apply from 13 November 2008 with the exception of Article 23 which shall apply from 13 August 2008.

Cross-border service of documents

- **SCOPE of the regulation No 1393/2007:**
 - in civil and commercial matters
 - not in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).
 - B Ia and B IIa ECJ case law is applicable
 - judicial or extrajudicial document has to be transmitted from one Member State to another for service there (see art. 16: ejd-transmission)
 - the term 'Member State' shall mean the Member States with the exception of Denmark (but...)

Cross-border service of documents

- **SCOPE of the regulation No 1393/2007:**
 - **Denmark:**
 - Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters **from 2005 but valid : 2007**
 - Personal scope not relevant
 - not in one – same Member State
 - regulation shall not apply where the address of the person to be served with the document is not known

Cross-border service of documents

- **SCOPE of the regulation No 1393/2007:**
 - **relationship with agreements or arrangements to which Member States are party**
 - This 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.
 - This Regulation shall not preclude individual Member States from maintaining or concluding agreements or arrangements to expedite further or simplify the transmission of documents, provided that they are compatible with this Regulation.

5

Cross-border service of documents

- **transmission and service of extra/judicial documents via agencies**
 - Transmitting and receiving agencies (art. 2)
 - Central body (art. 3)
 - Transmission of documents (art. 4)
 - Translation of documents (art. 5)
 - Receipt of documents by receiving agency (art. 6)
 - Service of documents (Art. 7)
 - Refusal to accept a document (Art. 8)
 - Date of service (Art. 9)
 - Certificate of service and copy of the document served (Art. 10)
 - Costs of service (Art. 11)

Cross-border service of documents

- Other means of transmission and service of extra/judicial documents:
 - 1) Transmission by consular or diplomatic channels
 - 2) Service by diplomatic or consular agents
 - 3) Service by postal services
 - 4) Direct service

- No hierarchy between transmission and service via agencies and other means (also simultaneously...than which method first...)

7

Cross-border service of documents via transmitting and receiving agencies

- each Member State shall designate the public officers, authorities or other persons - 'transmitting/receiving agencies', competent for the transmission/receiving of judicial or extrajudicial documents to be served in another Member State
- http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_transmitting_en.htm
- Central bodies (usually Ministry of justice.... forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency)
- Always use standart form in Annex I....to the Regulation!
- https://e-justice.europa.eu/content_serving_documents_forms-269-en.do

8

Cross-border service of documents via transmitting and receiving agencies

- 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 (e.g. CZ: mail, fax, email), 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.
- 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 in another language which that Member State has indicated it can accept (e.g. CZ: de, en, sk)
- 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.

Cross-border service of documents via transmitting and receiving agencies

- receiving agency shall, as soon as possible and in any event within **seven 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.
- 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 Member State if the request complies with the conditions laid down in Article 4(3) ...
- 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
- receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and **in any event within one month of receipt**

Cross-border service of documents via transmitting and receiving agencies

- **refusal to accept a document**
- 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:
 - language which the addressee understands
 - the official language of the Member State addressed
- 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
- **C-14/07 – not right to fair trial BUT who will pay the costs of translation**¹¹

Cross-border service of documents via transmitting and receiving agencies

- **certificate of service and copy of the document served**
 - 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.
- **Costs of service**
 - 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.
 - **BUT:** recourse to a judicial officer or to a person competent under the law of the Member State addressed... single fixed fee laid down by that Member State (SK: 6,64 EUR)

Cross-border service of documents

- Case C-14/08 Roda Golf & Beach Resort SL
 - The service of a notarial act, in the absence of legal proceedings, such as that at issue in the main proceedings, falls within the scope of Regulation No 1348/2000 (as extrajudicial document)
- Case C-473/04 Plumex v Young Sports NV
 - Regulation No 1348/2000 does not establish any hierarchy between the method of transmission and service under Articles 4 to 11 thereof and that under Article 14 thereof and, consequently, it is possible to serve a judicial document by one or other or both of those methods.
 - Regulation No 1348/2000 must be interpreted as meaning that, where transmission and service are effected by both the method under Articles 4 to 11 thereof and the method under Article 14 thereof, in order 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, reference must be **made to the date of the first service validly effected**.

Cross-border service of documents

- Case C-443/03 Götz Leffler v Berlin Chemie AG
 - On a proper construction of Article 8(1), when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, it is possible for the sender to remedy that by sending the translation requested.
 - On a proper construction of Article 8, when the addressee of a document has refused it on the ground that it is not in an official language of the Member State addressed or in a language of the Member State of transmission which the addressee understands, that situation may be remedied by sending the translation of the document in accordance with the procedure laid down by Regulation No 1348/2000 and as soon as possible.
 - In order to resolve problems connected with the way in which the lack of translation should be remedied that are not envisaged by Regulation No 1348/2000, it is incumbent on the national court to apply national procedural law while taking care to ensure the full effectiveness of that regulation, in compliance with its objective.

Cross-border service of documents

- Case C-14/07 Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin
 - Article 8(1) 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 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 annex⁶ has not been translated.

Cross-border service of documents

- Case C-14/07 Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin
 - Article 8(1)(b) of Regulation 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
 - Article 8(1) of Regulation 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

Cross-border taking of evidence

- **Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters**
 - shall enter into force on 1 July 2001
 - shall apply from 1 January 2004, except for Articles 19, 21 and 22, which shall apply from 1 July 2001

17

Cross-border taking of evidence

- **SCOPE of the regulation No 1206/2001**
 - in civil or commercial matters
 - where the court of a Member State, in accordance with the provisions of the law of that State, requests:
 - (a) the competent court of another Member State to take evidence; or
 - (b) to take evidence directly in another Member State.
 - NOT to obtain evidence which is not intended for use in judicial proceedings, commenced or contemplated
 - „Member State“ shall mean Member States with the exception of Denmark.

18

Cross-border taking of evidence

- Direct transmission between the courts (Art. 2)

..... each Member State shall draw up a list of the courts competent for the performance of taking of evidence according to this Regulation. The list shall also indicate the territorial and, where appropriate, the special jurisdiction of those courts

- Central body (Art. 3)

- Transmission of the request

- Form and content of the request

- Language

- the request and communications pursuant to this Regulation shall 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 can accept. Each Member State shall indicate the official language or languages of the institutions of the European Community other than its own which is or are acceptable to it for completion of the forms

Cross-border taking of evidence

- Receipt of request

- Incomplete request

- Completion of the request

- Taking of evidence by the requested court (Art. 10-13)

- Refusal to execute (Art. 14)
- Notification of delay (Art. 15)
- Procedure after execution of the request (Art. 16)

- Direct taking of evidence by the requesting court (Art. 17)

Cross-border taking of evidence

■ Costs (Art. 18):

The execution of the request, in accordance with Article 10, shall not give rise to a claim for any reimbursement of taxes or costs

BUT: 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).

21

Cross-border taking of evidence

■ Case C-283/09 Artur Weryński

- Articles 14 and 18 of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters must be interpreted as meaning that a **requesting court is not obliged to pay an advance** to the requested court for the expenses of a witness or to reimburse the expenses paid to the witness examined.

22

Cross-border taking of evidence

■ Case C-170/11

The provisions of Regulation No 1206/2001, in particular Article 1(1) thereof, must be interpreted as meaning that the competent court of a Member State which wishes to hear as a witness a party residing in another Member State has the option, in order to perform such a hearing, to summon that party before it and hear him in accordance with the law of its Member State.

■ Case C-332/11

Articles 1(1)(b) and 17 of Regulationmust be interpreted as meaning that the court of one Member State, which wishes the task of taking of evidence entrusted to an expert to be carried out in another Member State, is not necessarily required to use the method of taking evidence laid down by those provisions to be able to order the taking of that evidence

23