

EUROPEAN Civil Justice

Newsletter from the Virtual Course "The European Judicial Space"

Nº 3



Escuela Judicial Española
Miembro de la REFJ



**Rules: The
European Civil
Justice Area is
in this situation**

The UE approve a new regulation on the service of documents

On 13 November 2008 the new 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 came into force (Official Journal L 324 of 10.12.2007, p. 79/120).

The new regulation repeals the former Regulation No. 1348/2000, which applied in this matter since 2001 and is applicable to all Member States of the European Union, including Denmark which, by letter dated 20 November 2007, notified the Commission of its decision to apply the content of the new Regulation being con-



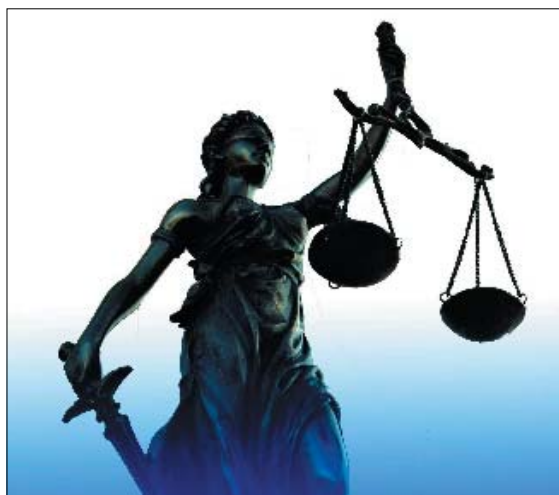
The European Parliament and the Council move for an improvement of the service of documents in the European Union.

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**The
Vademecum:
System of
information
on judicial
cooperation**

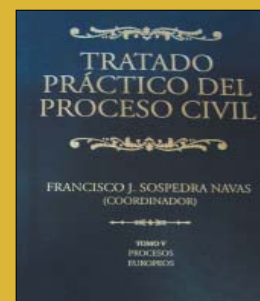
New Regulation on maintenance



The Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity.

Council Regulation (EC) no. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, has been published in the Official Journal of the European Union of 10 January 2009.

This Regulation shall apply to maintenance obligations arising from a family relationship, parentage, marriage or affinity. In general terms, it shall apply from 18 June 2011, subject to the 2007 Hague Protocol being applicable in the Community by that date. Failing that, the Regulation shall apply from the date of application of that Protocol in the Community.



**Practical Civil
Procedure:
European
Procedures**

... It comes from page 1st.

sistent with the former Agreement by which it was included in the application of Regulation 1348/2000.

The explanation for the replacement of the former Regulation appears in the Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No. 1348/2000 submitted in March 2005 which, in turn, provided as background information the First Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Regulation (EC) 1348/2000. In this Report the Commission analysed the application of the Regulation based on the information provided and the results from a study carried out by a contractor in the Member States.

Although Regulation No. 1348/2000 has made great progress in facilitating formalities and the effectiveness of service of judicial and extrajudicial documents in the EU, experience in the application thereof has led the EU lawmaker to consider that it was necessary to modify certain provisions the application of which was not fully satisfactory.

The new text maintains the general principles of the former text, which results have been very good in practical terms:

- Efficiency and quickness by direct transmission between the authorities chosen for sending and receiving requests for service of documents (whether centralised or decentralised authorities).

- Use of any appropriate means for transmission and standard forms.

- Possibility to reject the notice only in exceptional cases.

- Short time limits for compliance.

However, it introduces basic modifications as follows:

- a provision by which the receiving agency must effect the service of a document in any event within one month of receipt (Whereas 9, 13 and 14 and art. 7.2).



The new Regulation hopes to accelerate, simplify and avoid excessive costs in the service of documents within the European Union.

- a new form to inform the addressee that they may refuse to accept the document

- of documents directly by postal services by registered letter with acknowledgement

- of receipt or equivalent (Whereas 17 and art. 14).

These modifications intend to make it faster, to simplify and avoid excessive costs in the service of documents. For this purpose receiving agencies must comply with the maximum time limit for fulfilment and Member States in which this formality implies an

economic cost must provide clear and easily accessible information as to the cost and how to pay.

Regulation (EC) No. 1393/2007 may be read in all official languages of the European Union in:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R1393:EN:HTML>

The European Judicial Atlas in civil matters and the Web page of the European Judicial Network contain information on the new Regulation which, for the time being, is only available in English:

http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_es.htm

http://ec.europa.eu/civiljustice/serv_doc/serv_doc_ec_en.htm

- to be served within one week (Whereas 12 and art. 8, as well as the form in Annex II).

- a provision which establishes that costs occasioned by recourse to a judicial officer or a person competent under the law of the Member State addressed should correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination (Whereas 16 and art. 11).

- uniform conditions to effect service



Guillermo Nogales, Senior Judge and member of the Spanish Network of Experts in Judicial Cooperation

NORMATIVE

SUMMARY OF SITUATION OF THE EUROPEAN JUDICIAL SPACE IN CIVIL MATTERS



By Joaquín Delgado Martín
Co-Director of the Course
Senior Judge, Spanish General Council of the Judiciary

INFORMATION UPDATED TO 31 MARCH 2009

MUTUAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS	COOPERATION BETWEEN COURTS	LAW APPLICABLE	ACCESS TO JUSTICE
Brussels I: Regulation 44/2001 of 22 December 2000, on jurisdiction, recognition and enforcement of judgments in civil and commercial matters	Service of Documents: Regulation 1393/2007 of 13 November on the service in the Member States of judicial and extrajudicial documents and repealing Council Regulation 1348/2000	Rome II: Regulation 864/2007 of 11 July on the law applicable to non-contractual obligations	Legal Aid: Directive 2002/8 of 27 January 2003, to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
Brussels II: Regulation 2201/2003 concerning jurisdiction and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) no. 1347/2000. There is an amendment proposal to determine the law applicable in matrimonial matters.	Taking of Evidence: Regulation 1206/01 of 28 May on cooperation between the Courts of Member States in the taking of evidence in civil and commercial matters.	Rome I: Regulation 593/2008 of 17 June on the law applicable to contractual obligations	Compensation to crime victims. In cross-border cases: Directive 2004/80 of 29 April relating to compensation to crime victims. By author: Framework Decision 15-3-01 on the standing of victims in criminal proceedings Public: Green Paper and Directive proposal
Insolvency Proceedings: Regulation 1346/2000 of 29 May on insolvency proceedings	European Judicial Network in Civil and Commercial Matters: Council Decision of 28 May 2001 (the Commission has put forward a proposal to amend the Decision, dated 23 June 2008)	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations	Mediation: Directive 2008/52 of 21 May on certain aspects of mediation in civil and commercial matters.
European Enforcement Order: Regulation 805/2004 of 21 April creating a European enforcement order for uncontested claims			
European Order for Payment Procedure: Regulation 1896/2006 of 12 December.			
Small Claims Procedure: Regulation 861/2007 of 11 July establishing a European small claims procedure.			

TO VIEW THESE REGULATIONS PLEASE VISIT:
<http://eur-lex.europa.eu/es/legis/latest/chap1920.htm>

RECOMMENDED READING:
“A Virtual Tour of the European Judicial Area in Civil and Commercial Matters”



The “Justice Forum”: A step forward in strengthening the area of freedom and security



Ignacio Ubaldo González Vega,
Senior Judge attached to the Spanish
Judicial School

In the Communication on the creation of a Forum for discussing EU justice policies and practice (Brussels, 2 February 2008, COM (2008) 38 final), the European Commission established a cross-disciplinary forum, the Justice Forum (or simply “the Forum”), to provide a permanent mechanism for consulting practitioners and users of the justice system on the application of EU policies and practice in this field.

Its *raison d'être* lies in the need to determine whether the European justice area functions efficiently, and to what extent justice users and practitioners are

satisfied. This requires dialogue with all the interested parties, from the conception of EU justice policy until its implementation, in order to analyse approaches for improving judicial cooperation and promote the European justice area, decide which policies should be adopted, assess whether the instruments adopted are being correctly transposed and implemented and whether they are used appropriately to achieve their objectives.

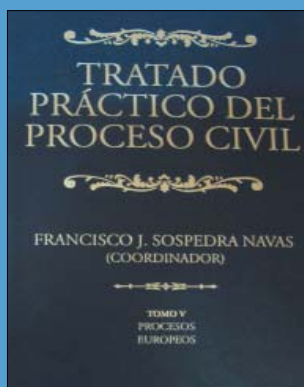
The Forum includes representatives of the Member States, judges and prosecutors, lawyers, other professionals working in the sphere of justice in the different Member States, academics, representatives of specialist non-governmental organisations and users of justice systems.

The two most prominent areas of activity of the Forum are: the provision of expert opinion on EU policies and legislation in the field of justice and the promotion of mutual trust between the different justice systems within the EU through improving mutual understanding.

Since its inception, the Commission has organised three thematic meetings:

the first focused on mutual recognition in criminal matters, the second on judicial training and the third on European e-justice, specifically on computer-based solutions for the European justice system.

In brief, the initiative involves a good deal of innovation. The Forum will provide the Commission with a unique tool to better understand the impact of existing EU instruments, the need for new instruments and more generally, for promoting mutual trust, as the Communication of the Commission puts it. By providing a place where different experiences and contrasting points of view can be compared on a regular basis, it will lead to greater mutual knowledge and understanding of other systems. The regularity of the meetings, the range of expertise and the input from all sectors of the justice system will no doubt assist in establishing “the systematic, objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary” announced in the Hague Programme for strengthening freedom, security and justice in the EU. OJ C 53 of 3 March 2005.



*“Tratado Práctico del Proceso Civil.
Tomo V: Procesos Europeos”*
Published in 2008

Authors: **Francisco de Paula Puig Blanes** (Senior Judge and Lawyer of the General Council of the Judiciary/Judicial School), **Juan Holgado Esteban** (Court Clerk) and **Carlos Sánchez Martín** (Court Clerk and Legal Secretary of the Supreme Court)

“Tratado Práctico del Proceso Civil. Tomo V: Procesos Europeos”

This Volume V contains a comprehensive analysis of the procedural rules of the European Union in civil and commercial matters, which have undergone considerable development in recent years. It is also part of a series of forms which assist in procedural practice. Finally, the Volume includes a case-law index containing the most relevant judgments in this field, mainly passed by the

European Court of Justice, which have been selected and systematised.

In short, it is a good book which will no doubt be very useful for legal practitioners who deal with problems in this field.

Joaquín Delgado Martín

Senior Judge. Co-Director of the Virtual Course on “The European Judicial Area in Civil and Commercial Matters” of the Spanish Judicial School.



The Vademecum is useful for finding the international instrument and forms to be used as well as for the contact with experts. Its design is new and thanks to that, the use and interactivity has been improved.

The vademecum, a good instrument of international judicial assistance

The Vademecum (“prontuario”) of International Judicial Assistance aims to offer Judges, Public Prosecutors, Judicial Secretaries and other members of the legal profession a tool, or basic and easy user’s guide to assist them when taking part in activities involving international judicial cooperation, both from an active perspective (issue of an application within the scope of a procedure processed by a Spanish judicial body) and from a passive standpoint (reception of an application from a foreign State).

The Vademecum “Prontuario” has been created with the joint efforts of the Ministry of Justice, the Public Prosecutor’s Office, and the General Council for the Judiciary of Spain. It aims to respond to the most common questions raised on the topic, and facilitates the identification of international agreements

or other applicable judicial regulations in this matter, providing information on the various institutions which may provide additional support (European, Spanish or Latin American judicial networks, Eurojust, etc.). Finally it has a directory of contacts.

The Vademecum (www.prontuario.org) is very user friendly, thanks to the interactive interface it has. In this, the aid provided by the Judicial Documentation Centre has been essential. It enables to know for every area in which judicial cooperation is needed to know and by country, which is the international instrument to apply, how to use it (with a clear explanation on the most usual problems and answers to them), the forms to use (both mandatory and voluntary), the contact with the networks of experts that can provide help in the problems arisen, ending

with a wide range of links to other websites of interest.

Thanks to the Vademecum (“Prontuario”) the institutions involved hope to contribute in the better use of international judicial cooperation instruments, thus providing a better service to those citizens involved in procedures with international connections.

The web version of the VADEMECUM, which may be found on the Ministry of Justice and the General Council of the Judiciary website, is reviewed and updated on a quarterly basis.



Francisco de Paula Puig Blanes, Senior Judge
Head of External
Relations at the GCJ Judicial School



The European Judicial Network in Civil and Commercial Matters has foreseen the possibility of widening its scope

Almost 200 people representing the 27 member states met on the 4th and 5th of December at the Méri­dien Etoile hotel for the 7th plenary meeting of members of the Judicial Network for civil and commercial affairs, organised by the Justice Ministry and the European Commission.

Created by a decision of the Council of 28 May 2001, the European Judicial Network for civil and commercial affairs aims to encourage judicial cooperation between member states in cross border disputes in civil and commercial matters. It is a means of exchanging information between jurisdictions and helps ensure better knowledge of community instruments, meaning that magistrates can have access, within a short timeframe, to precise information on applicable rules and the procedure to be followed

Opened by Mr. Jacques Barrot, vice-president of the European Commission, and by Ms. Pascale Fombeur, the directors of civil affairs and the Seal at the Justice Ministry, the meeting of the network being particularly important this year as it was a chance to discuss its new legal framework. In fact the network has seen a review of its founding decision, negotiated after 30 June 2008, to expand its

role and scope and allow a measured opening up to representative professional orders on a national scale of the legal professions which are directly involved in the application of community instruments. Mr. Barrot called for a favourable vote by the European parliament at its plenary session on 18 December, the French presidency having reached an agreement on the proposal at the Justice and Internal Affairs Council held on 28 November of last year.

The first day of work was dedicated to a discussion of regulations relating to the law applicable to contractual and non contractual obligations, at a round table comprising Mr. Tell and Ms. Hahn from the European Commission, Ms. Meyer-Farbe, a Paris attorney, and Professor Horloch from the university of Freiburg, and judge in the Stuttgart court of appeal.

The second day was a chance to meet representatives from other judicial networks: the



European criminal justice judicial network, the network of presidents of EU supreme courts, the European network of legal counsel. The participants also had a chance to meet Mr. Victor Moreno from the Spanish and Latin American network for judicial cooperation IberRed.

This network, which comprises 22 countries including Portugal, Spain and the countries of Latin America, aims to create tools to help in civil and commercial matters.

Mr. Moreno stated that IberRed and the RJEMCC share similar interests and goals, with a common space and working mechanisms. Firstly, informal structures provide great flexibility to their operation. Also, they both supplement traditional tools for judicial cooperation, without nevertheless replacing them. Finally, networks have contact points within member countries.

In respect of these actions, IberRed is developing a website, as well as an information platform. Finally, the network has approved manuals of best practice in judicial matters for civil, commercial and also penal matters.

Finally, Victor Moreno described the challenges to come, that is to say the setting up of more flexible working tools, and above all easier communication between the South American and European continents. He called for a consolidation of cooperation mechanisms between IberRed and the RJEMCC.

A round table then gathered together European representatives from the legal professions to discuss the opening up of the network to the national orders representing these professions. The representatives of these professions were pleased, as were the members of the network, with this progress, and underlined

their share desire to contribute to the development and promotion of the network as an essential tool for judicial cooperation and access to justice.

Finally, after a presentation from the Commission on community knowledge in relation to mutual recognition by Ms. Salla Saastamoinen, the day finished off with a round table dedicated to the functioning of the network in 2008, and the outlook for 2009, during which the Hungarian, Romanian, Italian and Swedish representatives discussed cooperation work and practices.

In her closing remarks, Ms. Papamichalopoulou reminded those present, on behalf of the commission, that, six years after its founding, the network now needs to expand, and will soon have a renewed legal framework and financial support from the Commission in order to do so, within the framework of the “Civil Justice 2007/2013” program. She restated the need for everyone to combine efforts to nourish and develop this network, which is growing and strengthening, day by day, links between jurisdictions and legal professionals in the European Union, to ensure better civil judicial cooperation, benefiting its citizens.

On 16 December, the European parliament voted on the amending text which should be formally adopted at the beginning of 2009.

The text will strengthen the role and the resources of the network, which aims to facilitate the processing of requests for judicial cooperation between member states, and the application of community acts and public information. It will link to the network the national orders representing professions which are directly involved in the application of community instruments, and should come into force during 2010.



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EUROPEAN Civil Justice

“The link” between judicial authorities in the European Union



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