

Service in the Member States of Extrajudicial Documents Where No Proceedings Are Taking Place

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Regulation (EC) No. 1393/2007 is the latest legislative act, introducing the rules applicable to the service in the Member States of judicial and extrajudicial documents in civil or commercial matters and repealing the earlier Council Regulation (EC) No. 1348/2000.

Regulation No. 1393/2007 has been adopted pursuant to the provision of the Treaty on the Functioning of the European Union on the development of judicial cooperation in civil matters of cross-border significance. The reasons for its adoption relate to the proper functioning of the internal market and the need to improve and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters for service between the Member States.

The Regulation envisages identical approach to the service of both judicial and extrajudicial documents. It explicitly states that it does not extend to revenue, customs or administrative matters or to the liability of the State for actions or omissions in the exercise of state authority.

With regard to the application of the previous Regulation No. 1348/2000 on the service of extrajudicial documents where no proceedings are taking place, the pertinent question is whether its scope includes the transmission between private persons through the use of physical means and personnel of the EU jurisdictions of entirely extrajudicial documents, where no judicial proceedings have been opened.

The question is answered in the affirmative in the Judgment of 25 June 2006 handed down by the Court of Justice of the European Union under Case C-14/2008. The Court of Justice has ruled on the requisite form of the document subject to transmission outside judicial proceedings. In accordance with this Judgment, the document which is to be served pursuant to the provisions of the Regulation has to contain notarized certification.

The Regulation provides for the freedom of each Member State to designate the public officers, authorities or other persons competent for the transmission and the receipt of judicial or extrajudicial documents to be served. It requires that the document subject to transmission be accompanied by a standard form. The form is to be completed in the official

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language of the receiving Member State or one of the official languages of the place where service is to be effected. All transmitted documents and papers are exempted from legalization and no fees are charged for the service. Documents are served by the receiving agency of the Member State of the addressee in accordance with the rules and conditions laid down in its national legislation.

The adoption of Regulation (EC) No. 1393/2007 makes it possible to certify and prove officially the service of extrajudicial documents in civil and commercial matters with an international element.

The certification beyond any doubt of the transmission and the receipt of papers without any pending proceedings between persons residing in different Member States is of essential importance with a view to the possible need to prove the fact that the expression of the will of one party to a contractual relationship has become known to the addressee. It may be expressed in notices on the cancellation of a contract, an invitation to fulfill an outstanding obligation, a notice on the convention of the general meeting of a company, and others. The service of such papers under the Regulation would minimize the doubts as to the actual delivery to the addressee and reduce the possibilities for unjustified challenge of the receipt of the documents.

The service of extrajudicial documents under the Regulation would be very relevant in the case of possible inability of the parties to a contractual relationship to settle their relations on a voluntary basis also in the context of judicial proceedings. Typically, what turns out to be decisive for resolving the dispute is the proof that the will expressed by one of the parties has become known to the other party.

The existing Bulgarian laws do not specify any explicit procedure for the service of notices on the convention of the general meeting of a company. The partners decide, at their own discretion, on the way to convene the general meeting and lay it down in the Articles of Association. In most cases, the Articles of Association contain a general provision which stipulates only that the partner is to be notified in writing but the procedure for the service itself is not specified. As the case law reveals, the procedure for the service of documents under the Regulation is applicable also to the delivery of a notice on the convention of the

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general meeting of a company to a partner whose permanent address or principal office of business is located in another Member State, provided that the signature of the chief executive officer is notarized.

In comparison with the national legislation concerning the official proof of the transmission and the receipt of documents by the addressee where no proceedings are taking place, Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters comes to substitute the way in which the transmission and the receipt within the territory of Bulgarian is officially certified by the notary public where no proceedings are taking place.