

Regulation (EC) No 1393/2007 and Council Regulation (EC) No 1206/2001

Service of documents and taking of evidence in other Member States of the European Union

Self assessment test

Questions

- 1.1 Do the Regulations apply to all types of proceedings in any court in any Member state?
- 1.2 Do both regulations apply to the same types of proceedings ?
- 1.3 Are there any exceptions and if so what ?
- 1.4 can one Member State opt out of taking evidence for another ?
- 1.5 can a member state opt out of serving documents for a court in another Member state ?
2. on what basis can a Member State refuse to serve documents for another Member State ?
3. the documents are in the language of the Transmitting State and not translated; in such circumstances can the Receiving Agency refuse to arrange service ?
 - 3.1 is the fact that the documents are not in an acceptable language an irredeemable fault?
 - 3.2 To prevent a person refusing to accept service of papers must they be in the languages (or one of the languages) of the Member State addressed ?
 - 3.3 If a French national who is known to speak French is to be served with papers in Malta in what language must the papers be?
4. Can a Court refuse to take evidence for another Member State on the ground that the claim as outlined would have no legal basis in the requested state or that the Member State addressed has exclusive jurisdiction over the subject matter ?
5. Can a Member State or a judge unconditionally refuse to take evidence on behalf of a court in another Member state ?
 - 5.1 if not, in what circumstances may there be a refusal?
6. Can Member States enter into bilateral arrangements to avoid the regulations?
7. Are requests for taking of evidence and for service made direct from any court in one Member State to a court in another Member State and if so how does a judge or court staff find the right court to which to address the request ?
8. Is service under the Service regulation mandatory ?
9. If a request for taking evidence is sent to the wrong court what must that court do ?
10. in what language must a request for taking evidence be ?

11. where can one find information about official languages or acceptable languages
12. under what circumstances can a court in one Member State take evidence direct from a person resident in another Member State ?
 - 12.1 can the court of either state use coercive measures in such circumstances
13. what fees can be charged for the taking of evidence or service of documents
14. can a judge or a receiving agency refuse to accept documents which are not fully authenticated

Answers

- 1.1 The regulations only apply to Civil and Commercial proceedings and not to Criminal proceedings
- 1.2 Whilst both apply to Civil and Commercial proceedings there are more exceptions in the Service Regulations than in the Evidence regulations
- 1.3 *Article 1* of the Service Regulation exempts:
 - revenue,
 - customs or
 - administrative matters or
 - matters relating to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

As such matters are not excluded from the Evidence regulation it is to be assumed that they are included therein; in any event the Evidence regulation is not as **restrictive** as the *Brussels I* Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).
- 1.4 the Evidence Regulation is binding on all Member States except the Kingdom of Denmark
- 1.5 the Service Regulation is binding on all Member States
2. *Article 6* : If
 - the request for service is manifestly outside the scope of the Regulation
 - or if non-compliance with the formal conditions required makes service impossible,

the Receiving Agency must return the request and the documents transmitted
3. No, but the person served must be informed of his right to refuse service (*Article 8*)
 - 3.1 No ; the problem can be remedied by a translated copy being served
 - 3.2 *Article 5* the addressee cannot refuse to accept the document if it is in:
 - a language which the addressee understands; or
 - the official language of MSB or,
 - the official language or one of the official languages of the place where service is to be effected,

3.3 applying Article 5 and looking at the Atlas the papers may be in French, English or Maltese

4. No, see *Article 14* a Member State may not refuse to execute a request solely on the ground that under its domestic law a court of that Member State has exclusive jurisdiction over the subject matter of the action or that the law of that Member State would not admit the right of action on it.
5. No,
 - 5.1 a refusal can only be on the grounds specified in *Article 14* Such as
 - a right under the law of either state to refuse to testify in the particular circumstances or the request does not fall within the scope of Article 1 of the Regulation as set out in *Article 1*; or
 - the execution of the request is not a judicial function or
 - there has been a failure to comply with an *Article 8* request for further information or failure to pay an *Article 18(3)* deposit or advance
6. No, any bilateral agreements must not conflict with or detract from the regulations Service regulation *Article 20* ; Evidence regulation *Article 21*
7. Requests for taking of evidence are generally made by an individual court to the designated court in the Member State addressed. The Atlas should be consulted to find the relevant designated court

A request to take evidence direct in another Member State is made by the requesting court to the Central Body or Competent Authority of the Member State addressed , Evidence regulation *Article 17*

Requests for service are dealt with by Transmission and Receiving Agencies in the respective Member States and **Not** from court to court

8. No, service may be effected in accordance with any method permitted by the law of the Member State where the proceedings are being heard , for example there may be service on an authorised representative within the originating Member State in which case the regulation does not apply Service regulation *preamble para 8* and see also *Article 14* (Service by postal services) and *Article 15* (Direct service)
9. It must send the form of request to the correct court within its Member State and notify the sending court that it has so done using *Form I – Article 7.2 of the Evidence Regulation* if however the request does not comply with *Article 5* the receiving court shall send it back to the transmitting court
10. It must be in the official language of the Member State whose court is addressed or in the case of a Member State with more than one official language, the official language for the place where the evidence is to be taken. In addition if the Member State addressed has stated it will accept documents in a language other than its own, that language may also be used
11. The *Atlas* contains comprehensive information about acceptable languages

12. *Article 17 of the Evidence Regulation* specifies the conditions under which this can be done – requests are made through the Central body of the Member State addressed

12.1 Coercive measures are specifically forbidden by *Article 17.2 of the Evidence Regulation* in the case of direct taking of evidence

13. Fees are strictly regulated by the Regulations:

13.1 *Article 18 of the Evidence Regulation*: permits the reimbursement, , of:

- the fees paid to experts and interpreters, and
- the costs occasioned by the application of Article 10(3) and (4) – special requests
- if an the expert opinion is required, the requested court may, before executing the request, ask for an adequate deposit or advance towards the requested costs

No other fees may be charged

13.2 *Article 11 of the Service Regulation*: permits a Member State to charge certain (fixed) fees for service of documents but they must be notified to the commission and are available in the **Atlas**

14. No, *Article 4.2 of the Evidence Regulation* ;

Article 4.2 of the Service Regulation provides that The transmission of documents, requests etc between transmitting and receiving agencies may be carried out by any appropriate means, 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