


# Procedure file

Basic information		
CNS - Consultation procedure Decision	<a href="#">2009/0031(CNS)</a>	Procedure completed
Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents		
Amending Decision 2006/326/EC <a href="#">2005/0056(CNS)</a>		
Subject 7.40.02 Judicial cooperation in civil and commercial matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs		02/09/2009
		S&D <a href="#">GERINGER DE OEDENBERG Lidia Joanna</a>	
		Shadow rapporteur PPE <a href="#">ZWIEFKA Tadeusz</a>	
	Former committee responsible		
	<b>JURI</b> Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2979</a>	30/11/2009
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>	BARROT Jacques	

Key events			
04/03/2009	Legislative proposal published	<a href="#">COM(2009)0100</a>	Summary
02/04/2009	Committee referral announced in Parliament		
19/10/2009	Committee referral announced in Parliament		
10/11/2009	Vote in committee		Summary
13/11/2009	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0058/2009</a>	
24/11/2009	Results of vote in Parliament		
24/11/2009	Decision by Parliament	<a href="#">T7-0077/2009</a>	Summary
30/11/2009	Act adopted by Council after consultation		Summary

	of Parliament		
30/11/2009	End of procedure in Parliament		
16/12/2009	Final act published in Official Journal		

### Technical information

Procedure reference	2009/0031(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Amending Decision 2006/326/EC <a href="#">2005/0056(CNS)</a>
Legal basis	Treaty on the Functioning of the EU TFEU 081-p2; Treaty on the Functioning of the EU TFEU 218-p6a
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/00266

### Documentation gateway

Legislative proposal	<a href="#">COM(2009)0100</a>	04/03/2009	EC	Summary
Committee draft report	<a href="#">PE428.217</a>	21/09/2009	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A7-0058/2009</a>	13/11/2009	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0077/2009</a>	24/11/2009	EP	Summary

### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

### Final act

[Decision 2009/943](#)  
[OJ L 331 16.12.2009, p. 0026](#) Summary

## Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents

**PURPOSE:** to amend Decision 2006/326/EC to provide for a procedure for the implementation of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

**PROPOSED ACT:** Council Decision.

**BACKGROUND:** pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in Title IV of the EC Treaty, and as a consequence Community instruments adopted in the field of judicial cooperation in civil matters are not binding upon or applicable in Denmark. However, the application of certain Community instruments has been extended to Denmark by way of the international agreements between the European Community and Denmark concluded on the basis of Article 300 of the EC Treaty.

The relevant international agreements, concluded by Council Decisions [2006/325/EC](#) and [2006/326/EC](#) respectively, are:

- the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement

- of judgments in civil and commercial matter;
- the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

Those parallel agreements provide for the European Community's agreement to be given in cases where Denmark intends to enter into international agreements which may affect or alter the scope of [Council Regulation \(EC\) No 44/2001](#) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation) or the European Parliament and [Council Regulation \(EC\) No 1393/2007](#) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Neither the aforementioned Council Decisions nor the parallel agreements themselves stipulate how the Community should take a decision on such agreement. The objective of the proposal(s) is to lay down the procedure for the implementation of both parallel agreements in order to ensure that decisions on the European Community's agreement can be taken swiftly.

IMPACT ASSESSMENT: the Commission evaluated different options for setting up the implementation procedure, although without carrying out a formal impact assessment. One of the options would have consisted of amending both parallel agreements in order to provide for a particular implementation procedure. This would have been a much heavier procedure and, since the issue urgently requires a solution, this option was not followed.

The option chosen by the Commission envisages a simple and relatively swift solution, i.e. amending the Council Decisions on the conclusion of the parallel agreements so as to insert the particular provisions on the procedure to be followed by the European Community for taking decisions regarding its agreement to the conclusion by Denmark of international agreement concerned.

CONTENT: the Commission proposes amending Council Decision 2006/325/EC and Council Decision 2006/326/EC in order to insert into those decisions provisions on the implementation of Article 5(2) of the parallel agreements.

The same procedure is provided for the implementation of both parallel agreements.

However, two situations are distinguished, and a different procedure for the European Community to give its agreement is laid down for each of those situations. The common denominator in both situations is that the Commission is empowered by the Council to give the agreement on behalf of the European Community.

- a) the first situation includes cases where the Member States have already been authorised to conclude the international agreement concerned. This is the case, for example, of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention), where the Community has already authorised its Member States, in the interest of the Community, to sign, ratify or accede to it. This first situation will also cover cases where the Community has itself become a party to international agreements affecting the Brussels I Regulation or the Regulation on the service of documents. In the cases described, given the fact that the Community has already reviewed the possibility of those Community instruments being affected by the international agreement concerned and has provided, where necessary, for safeguards to ensure that those Community instruments are applied in the relevant cases, a simple procedure is established. In such situations, the Commission will be empowered to give the agreement to Denmark on behalf of the European Community;
- b) the second situation covers all cases that do not fall into the first category above. In such cases there is a need to discuss with the Member States the possibility of the Regulations concerned being affected by the international agreement which Denmark intends to conclude. The Member States will therefore be involved in the decision-making process through the comitology procedure. In such situations the Commission will be empowered to give the agreement to Denmark on behalf of the European Community through the comitology procedure.

Legal elements: for practical reasons the Commission is presenting at the same time two proposals for implementing both parallel agreements (see [CNS/2009/0034](#)), with relevant amending provisions for both.

BUDGETARY IMPLICATIONS: the proposal has no implications for the Community budget.

## Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents

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The Committee on Legal Affairs adopted unanimously the report drawn up by Lidia Joanna GERINGER de OEDENBERG (S&D, PL) approving unamended, under the consultation procedure, the proposal for a Council decision amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

## Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents

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The European Parliament adopted by 651 votes to 19 with 5 abstentions, a legislative resolution approving unamended, under the consultation procedure, the proposal for a Council decision amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

## Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents

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The Council adopted two decisions to establish procedures which aim at clarifying how the Community is to express its agreement to the participation by Denmark in international agreement concluded by the Community on two judicial matters:

- [on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters](#); and
- on the service of judicial and extrajudicial documents in civil or commercial matters.

Denmark can decide whether to take part in such international agreements concluded by the Community or not. But, so far, there have been no procedures to allow the Community to rapidly consent to such a Danish decision.

## Civil and commercial judicial cooperation: implementation of Article 5(2) of the EC/Denmark Agreement on the service of judicial and extrajudicial documents

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**PURPOSE:** to amend Decision 2006/326/EC to provide for a procedure for the implementation of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

**LEGISLATIVE ACT:** Council Decision 2009/943/EC amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

**CONTENT:** pursuant to the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not take part in Title IV of the EC Treaty, and as a consequence Community instruments adopted in the field of judicial cooperation in civil matters are not binding upon or applicable in Denmark. However, the application of certain Community instruments has been extended to Denmark by way of the international agreements between the European Community and Denmark concluded on the basis of Article 300 of the EC Treaty. The relevant international agreements, concluded by [Council Decisions 2006/325/EC](#) and [2006/326/EC](#) respectively, are:

- the Agreement between the European Community and Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matter;
- the Agreement between the European Community and Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.

Those parallel agreements provide for the European Community's agreement to be given in cases where Denmark intends to enter into international agreements which may affect or alter the scope of [Council Regulation \(EC\) No 44/2001](#) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation) or the European Parliament and [Council Regulation \(EC\) No 1393/2007](#) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Neither the aforementioned Council Decisions nor the parallel agreements themselves stipulate how the Community should take a decision on such agreement. Therefore there is a need to lay down the procedure for the implementation of both parallel agreements in order to ensure that decisions on the European Community's agreement can be taken swiftly.

This is the purpose of this decision.

**Implementation proceedings:** this procedure should ensure that decisions expressing the Community's agreement can be taken swiftly. When informed by Denmark of its intention to enter into an international agreement, the Commission should assess the coherence of that agreement with Regulation (EC) No 1393/2007, including Community legislation affecting that Regulation, and set out any arrangements which may be necessary.

As the objective is to arrive at a uniform application of the provisions of Regulation (EC) No 1393/2007 in all Member States and in Denmark, the Commission should ensure that Denmark does not enter into a specific international agreement if this could affect the conditions on which the Community would itself accede to the agreement in question, or, as the case may be, would authorise the Member States to accede to it in the interest of the Community.

If the Community is already party to the agreement in question or if the Community has authorised the Member States to become party thereto in the interest of the Community, the Commission should make an assessment of a more limited nature with the aim of verifying that Denmark proposes to accede to the international agreement on the same conditions as the Community or, as the case may be, the Member States as authorised by the Community.

The Commission shall take a reasoned decision within 90 days of being informed by Denmark of its intention to enter into the international agreement in question. If the international agreement in question meets the conditions set out, the decision by the Commission shall express the Community's agreement.

The Commission shall inform the Member States of the international agreements which Denmark has been authorised to conclude in accordance with this decision.

**Territorial provisions:** the United Kingdom and Ireland are taking part in the adoption and application of this Decision. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

**ENTRY INTO FORCE:** 30 November 2009.