



SUNICOP

SERVICE OF DOCUMENTS

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

**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)**

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The place of the regulation on service of documents in the international civil procedural law

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Before the regulation entered into force, due to the barriers arises from the sovereignty, the system of international legal assistance was based on bilateral and multilateral international treaties.

Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

This regulation is directly applicable in the Member States and it prevails over the provisions contained in bilateral or multilateral agreements or arrangements having the same scope concluded by the Member States.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

History of the regulation

Before the current regulation, several attempts were to regulate the international service of documents.

- Council, by an Act dated 26 May 1997, drew up a Convention on the service of documents → Convention has not entered into force
- on 29 May 2000 the Council adopted Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

The Regulation No 1393/2007 of the European Parliament and of the Council (hereinafter referred to as EuSoDR) replaced this previous regulation.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The scope of the regulation

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Subject matter - Article 1

This Regulation shall apply:

- in civil and commercial matters
- where a judicial or extrajudicial document
- has to be transmitted from one Member State to another for service there.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Concept of civil and commercial matters

Concept of civil and commercial matters was defined in
the case law of the ECJ
(concerning the Brussels I Regulation).

However the scope of the EuSoDR is wider than the Brussels I Regulation (e.g. proceedings concerning the status or legal capacity of natural persons, bankruptcy, etc.)

It shall **not extend** 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).

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Concept of judicial or extrajudicial documents

Kengyel defines

- **the judicial documents:**

documents issued in a judicial proceeding – since the beginning of it -, or documents which are used to begin the proceeding

- **extrajudicial documents:**

documents prepared by official persons, for example notarial deeds or summons, documents prepared by the authorities of the Member State, as well such kind of documents, which have to be served and disclosed to the recipient through official channels

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Regarding this concept the ECJ have a decision in the *Case C-14/08. Roda Golf & Beach Resort SL*

On 2 November 2007, Roda Golf, a company incorporated under Spanish law, requested the clerk of the referring court, pursuant to the Service of Documents Regulation, to send to the competent receiving agencies of Great Britain and of Ireland 16 letters addressed to recipients established in those two Member States. The purpose of the letters was unilaterally to terminate contracts for the sale of immovable property which had been concluded between that company and those recipients.

The content of those letters **did not reveal any connection with legal proceedings in progress.**

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Roda Golf & Beach Resort SL



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Roda Golf had executed, before a notary in San Javier, an instrument of notification and request, requesting the latter to serve that instrument through the intermediary of the court clerk.

Lack of actual connection with a legal proceeding:

The clerk of the referring court refused to transmit the instrument at issue in the main proceedings on the ground that its **service would not take place in the course of legal proceedings** and therefore did not fall within the scope of Service of Documents Regulation.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The ECJ decided

- concept of ‘extrajudicial document’ is a Community law concept (autonomous interpretation)
- actual connection with a legal proceeding is not necessary

The ECJ said that the judicial cooperation cannot be limited to legal proceedings alone. That cooperation may manifest itself both in the context of and in the absence of legal proceedings if that cooperation has cross-border implications and is necessary for the proper functioning of the internal market. So the ECJ decided so, that 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 this Regulation.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Cross-border service of documents

The cross-border nature of the delivery exists only if the document must be delivered **to another Member State**.

This Regulation **shall not apply** to service of a document:

- within the Member State, even if it will take place in a cross-border dispute
- on the party's authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The regulatory structure of the EuSoDR

SUNICOP

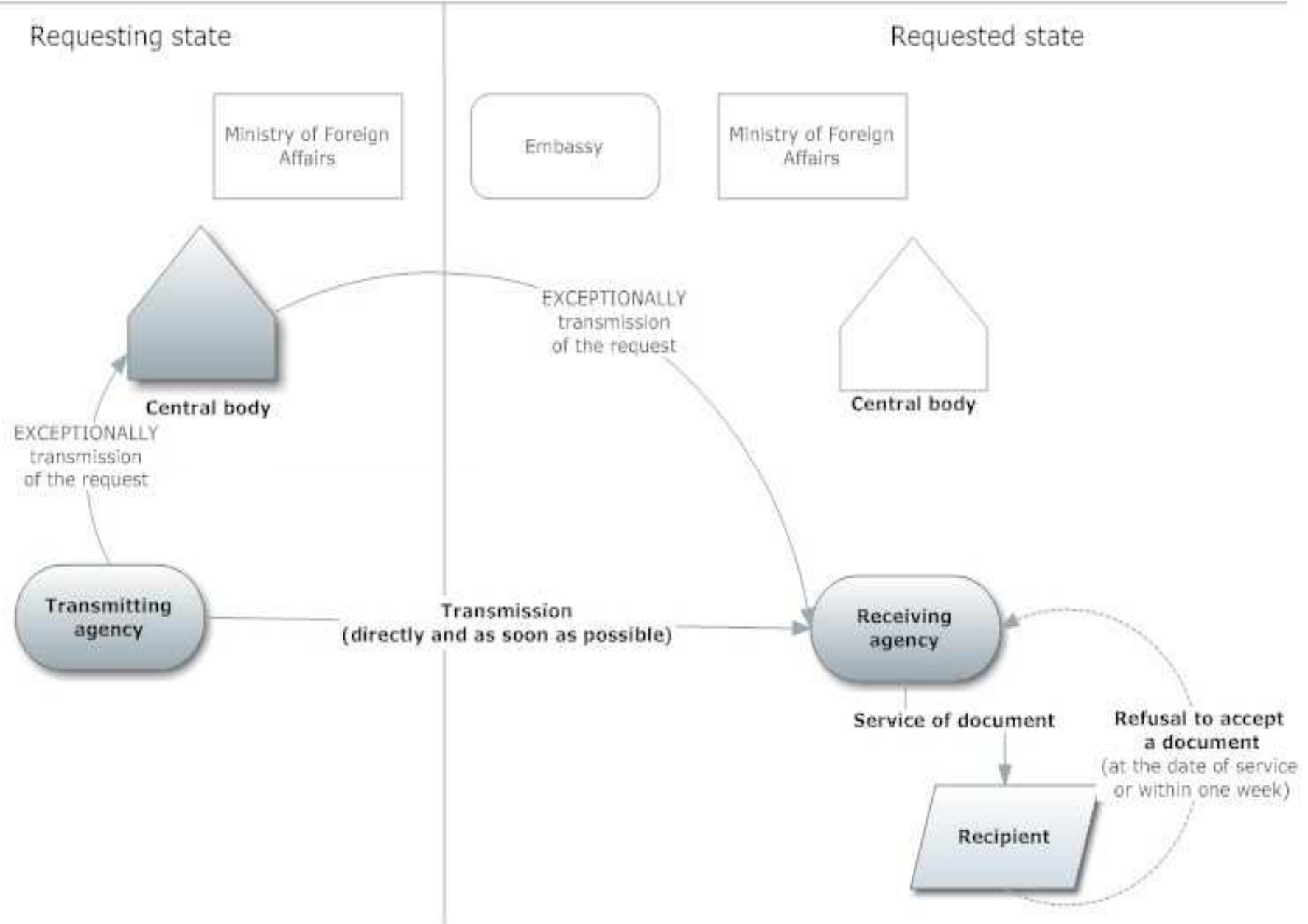


PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

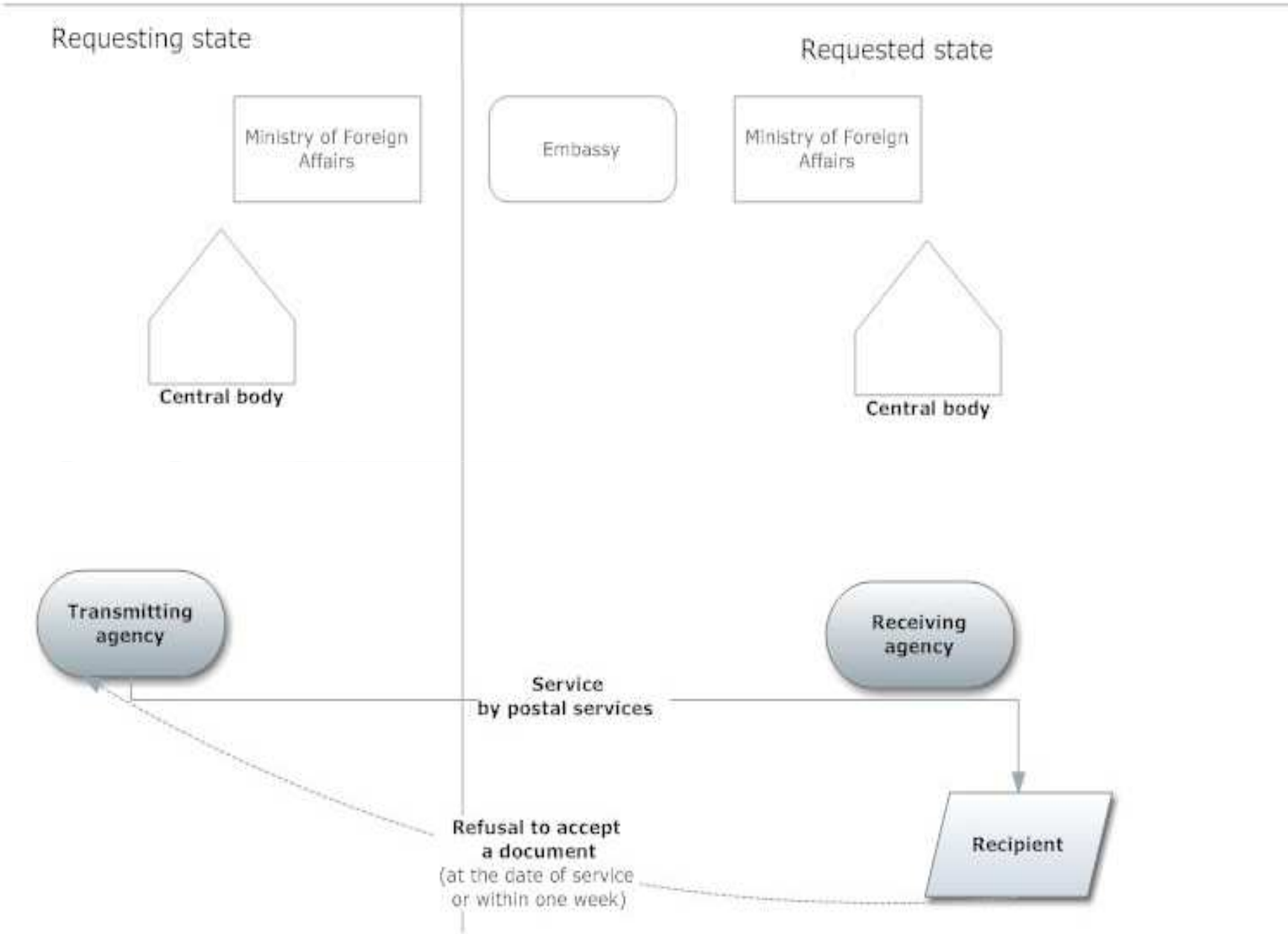
The EuSoDR regulates **five methods** of transmission and service of judicial and extrajudicial documents.

- the EuSoDR only regulates in detail the transmission of documents between transmitting and receiving agencies
- other transmitting methods are listed in Section 2 under the title “Other means of transmission and service of judicial documents”

Transmission of documents between transmitting and receiving agencies



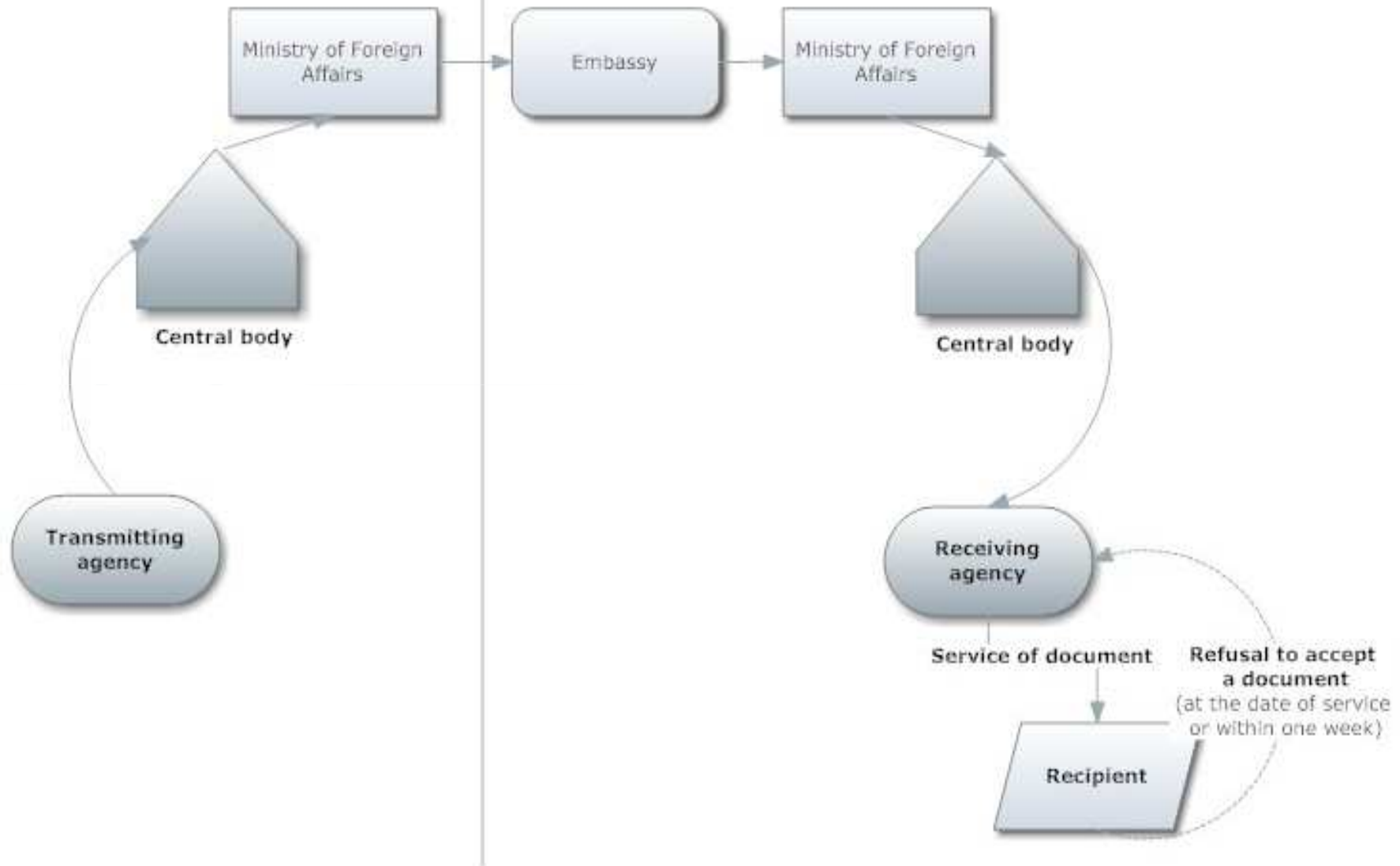
Service by postal services



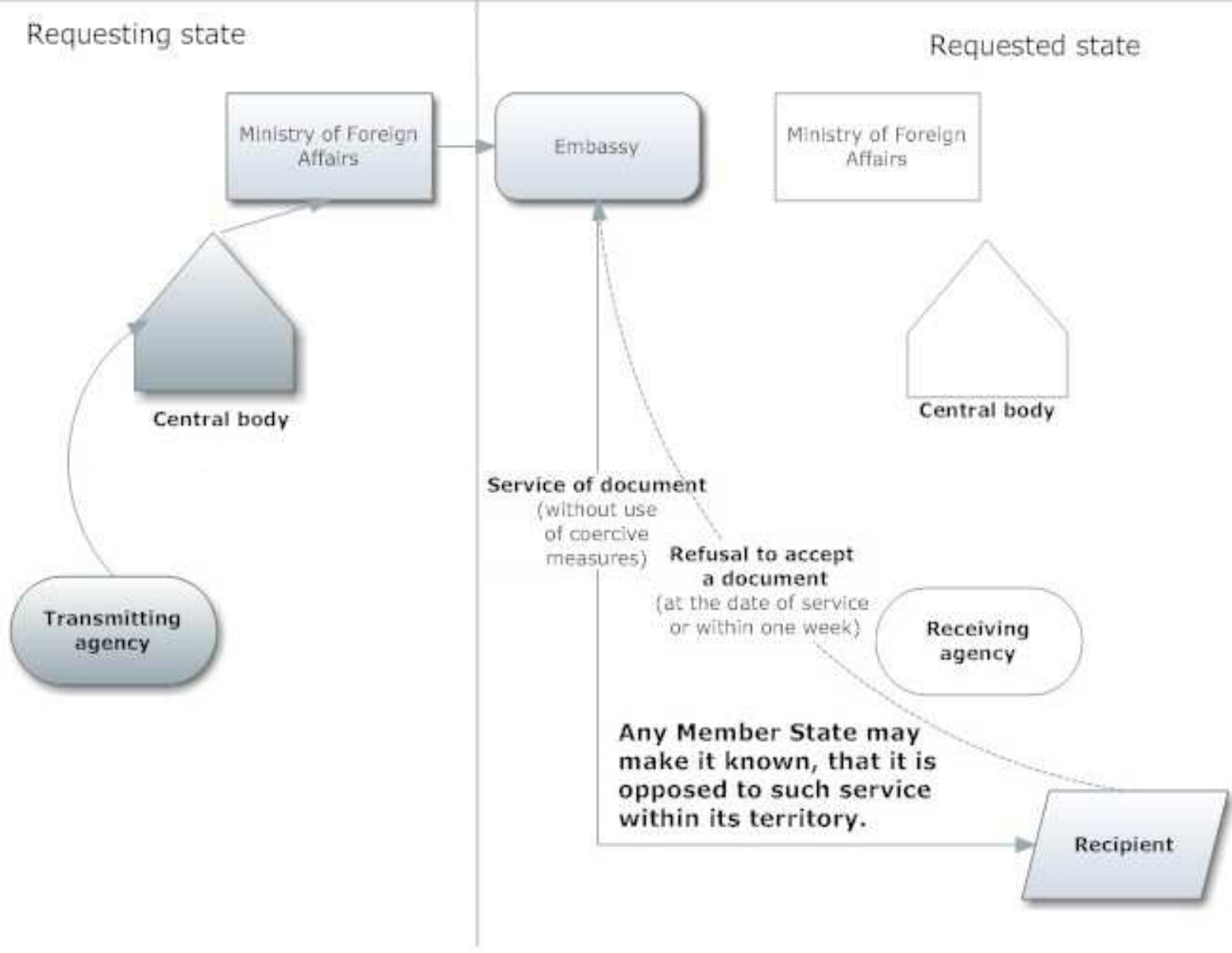
Transmission by consular or diplomatic channels

Requesting state

Requested state



Service by diplomatic or consular agents



Direct service

Requesting state

Requested state

Ministry of Foreign Affairs

Embassy

Ministry of Foreign Affairs



Central body



Central body

Transmitting agency

Any person interested in a judicial proceeding

Direct service

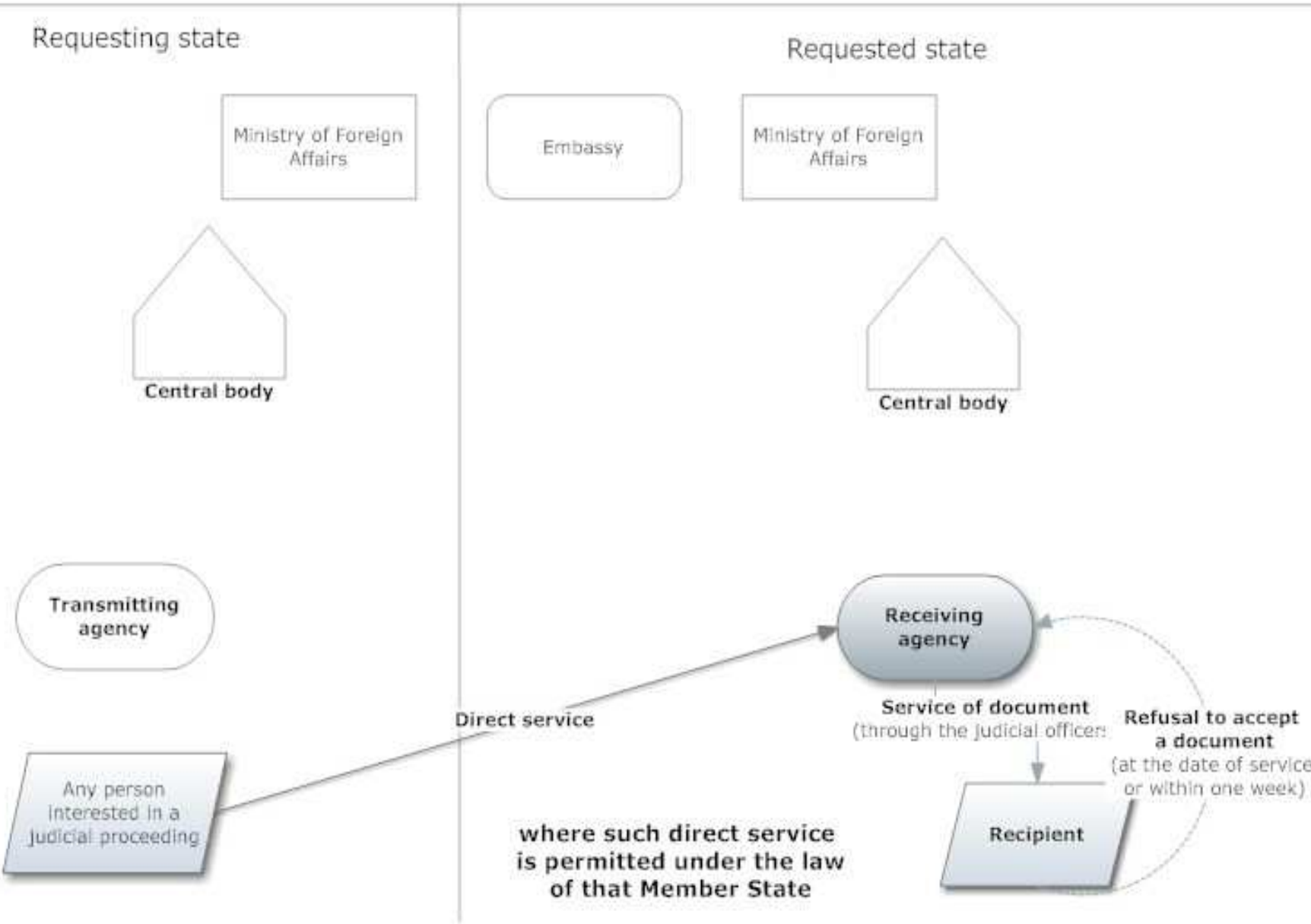
Receiving agency

Service of document (through the judicial officers)

Refusal to accept a document (at the date of service or within one week)

Recipient

where such direct service is permitted under the law of that Member State



SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Common rules

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Refusal to accept a document

The recipient **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:

- a language which the addressee understands; or
- the official language of the Member State addressed.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

If the addressee has refused to accept the document,
the service of the document **can be remedied**
through the service on the addressee in accordance
with the provisions of this Regulation of the
document accompanied by a translation into the
above mentioned language.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Which documents must be translated into the languages defined in the regulation?

Is it necessary to translate the annexes too, or is it enough to translate the document itself?

The ECJ answered these questions in the Case C-14/07. Weiss und Partner.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Case C-14/07. Weiss und Partner

IHK Berlin is pursuing an action for damages against Grimshaw (Weiss joined to the proceedings) for defective design on the basis of an architect's contract.

IHK Berlin's application, which forms part of the case-file submitted to the court, refers to the various items of evidence relied on in support of its submissions. That documentary evidence is annexed to the application in a file consisting of approximately 150 pages. The content of those documents was partially reproduced in the application.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

After Grimshaw had initially refused to accept the application on the ground that there was no English translation,

- an English translation of the application and
- the annexes in German

were delivered .

By written pleading Grimshaw complained that service was defective because the annexes had not been translated into English.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

By its first question, the Bundesgerichtshof asked whether the Regulation must be interpreted as meaning that the addressee of a document to be served does not have the right to refuse to accept service where **only the annexes to the document are not** in the language of the Member State addressed or in a language of the Member State of transmission which the addressee understands.

The Court distinguished in his decision between two scenarios:

- in the first the document instituting proceedings and its annexes contain together the information necessary for defense,
- in the second they not.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The ECJ decided concerning the first scenario, that the **document instituting the proceedings** means:

- document or documents, where they are intrinsically linked,
- enabling the defendant to understand the subject matter and grounds of the plaintiff's application and to be aware of the existence of legal proceedings in which he may assert his rights

Therefore, in this case the recipient **may refuse** the acceptance of the document, if the annexes are not translated.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The ECJ has decided concerning the second scenario:

- that documentary evidence which has a purely evidential function and
- is not intrinsically linked to the application in so far as it is not necessary for understanding the subject matter of the claim and the cause of action

does not form an integral part of that document.

Therefore, in this case the recipient **may not refuse** the acceptance of the document.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The Court finally decided so that the recipient may not refuse the acceptance of the document, if the annexes, which have a purely evidential function, are not translated to the languages regulated in the EuSoDR.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Judging criterias of language skills

Who and how can decide that the recipient understands a language or not?

Is it sufficient to judge the recipients language skills, that he contractually agreed on the use of that language to their correspondence?

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

The text of the regulation suggests that the recipient can decide which language he understands. This is supported by the fact that the recipient has to mark on the form the language he understands, when he refuse the acceptance of the service of document.

The ECJ refused to accept this interpretation and decided so that the national courts have to decide on this question.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

In this case the parties were contractually agreed on the use of the German language to their correspondence, which is sufficient according to the German case law, as proof to the language knowledge.

The ECJ refused to accept this reasoning.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM

ÁLLAM- ÉS JOGTUDOMÁNYI KAR

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.

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Date of service

The date of service is clear if the recipient does not refuse the acceptance of the document.

The date of service of a document

- shall be the date on which it is served in accordance with the law of the Member State addressed
- where according to the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State

SUNICOP



PÉCSI TUDOMÁNYEGYETEM
ÁLLAM- ÉS JOGTUDOMÁNYI KAR

Problem can occur in two cases:

- if the sender tried to serve the document parallel in different ways
 - Case C-473/04. Plumex v Young Sports NV - the date of the first service validly effected
- if the recipient refused the acceptance of the document
 - the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed