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2018/0204 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council  
on the service in the Member States of judicial and extrajudicial documents in civil or  
commercial matters (service of documents)**

{SEC(2018) 272 final} - {SWD(2018) 286 final} - {SWD(2018) 287 final}

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Reasons for and objectives of the proposal**

Among the EU's tasks is that of developing a European area of justice in civil matters based on the principles of mutual trust and the mutual recognition of judgments. The area of justice requires judicial cooperation across borders. For this purpose, and to facilitate the proper functioning of the internal market, the EU has adopted legislation on the cross-border service of judicial documents<sup>1</sup> and on cooperation in the taking of evidence<sup>2</sup>. These instruments are crucial in the regulation of judicial assistance in civil and commercial matters between the Member States. Their common purpose is to provide an efficient framework for cross-border judicial cooperation. They have replaced the earlier international, more cumbersome system of the Hague Conventions<sup>3</sup> between the Member States<sup>4</sup>.

This legislation on judicial cooperation has a real impact on the everyday lives of EU citizens, be it as private individuals or business operators. It is applied in judicial proceedings with cross-border implications, where its proper functioning is indispensable to ensuring access to justice and fair trials (e.g. the failure to properly serve the document initiating proceedings is by far the most often used justification for refusing the recognition and enforcement of judgments<sup>5</sup>). The efficiency of the framework of international judicial assistance has a direct impact on how the citizens involved in such cross-border disputes perceive the functioning of the judiciary and the rule of law in the Member States.

Smooth cooperation between courts is also necessary for the proper functioning of the internal market. In 2018, approximately 3.4 million civil and commercial court proceedings in the EU have cross-border implications<sup>6</sup>. In most of these cases (namely in those where at least one

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<sup>1</sup> 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), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).

<sup>2</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

<sup>3</sup> Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in civil or commercial matters; Convention of 18 March 1970 on the taking of evidence abroad in civil or commercial matters.

<sup>4</sup> The Regulations apply to all EU countries except Denmark. On 19 October 2005, Denmark concluded a parallel agreement with the European Community on the service of judicial and extrajudicial documents in civil or commercial matters, which extends to Denmark the provisions of the Regulation on the service of documents and its implementing measures. The agreement entered into force on 1 July 2007. See OJ L 300 of 17.11.2005, p. 55 and OJ L 120 of 5.5.2006, p. 23. Needs to be aligned to the other footnotes

<sup>5</sup> An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (carried out by a consortium led by MPI Luxembourg), final report, June 2017, available at <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>, pp.60-61. Hereinafter referred to as the '2017 MPI Study'.

<sup>6</sup> This figure reflects estimates from Deloitte's economic study supporting the impact assessment. The estimates are based on data from Eurostat, the Council of Europe European Commission for the efficiency of justice (CEPEJ), and the European Commission, and information gathered in the course of

party resides in another Member State than the one where the proceedings takes place), courts often apply the Regulation on service of documents several times in the course of the proceedings. This is because additional documents often have to be served formally (such as the decisions closing the proceedings), in addition to the document instituting the proceedings. Furthermore, the application of the Regulation on service of documents is not restricted to proceedings before civil tribunals, because its scope covers also ‘extrajudicial’ documents, the service of which may arise in various out-of-court proceedings (e.g. in succession cases before a public notary, or in family law cases before a public authority), or even in the absence of any underlying judicial proceedings.

Regulation (EC) No 1393/2007 provides for fast-track channels and uniform procedures for transmitting documents from one Member State to another, for purposes of service in the latter. The Regulation includes certain minimum standards on the protection of the rights of defence (e.g. Articles 8 and 19), and sets uniform legal conditions for serving a document by post directly across borders.

The Commission adopted a report on the practical operation of the Regulation on service of documents in December 2013<sup>7</sup>. This report concluded that the Regulation has been applied satisfactorily by Member State authorities in general. However, it also concluded that the increasing judicial integration of Member States, where the abolition of *exequatur* (intermediate procedure) has become a general rule, has brought to light some of its limits. The report therefore sought to encourage a broad public debate on the role of the Regulation in the EU’s civil justice area and on how the service of documents may be further improved. In line with this, the implementation of the Regulation has undergone detailed assessments over the past few years in studies, reports by the Commission and discussions in the European Judicial Network<sup>8</sup>. In 2017, to support relevant, comprehensive and up-to-date analysis and conclusions on the practical operation of the Regulation (complementing findings from other evaluation exercises), the Commission undertook a regulatory fitness (REFIT) evaluation, in line with the better regulation guidelines, to assess the operation of the instrument in relation to the five key mandatory evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value.

The findings of the REFIT evaluation report were used as a basis for the problem definition in the impact assessment accompanying the present proposal. The main conclusions are set out below.

On the traditional channel of transmission of a document to another Member State for purposes of service there - transmission through the so-called transmitting and receiving agencies- the evaluation revealed that this workflow is underperforming in that it still works more slowly and less efficiently than expected. Although the new structures installed by the EU instrument in 2000 brought a visible improvement in the time needed for the completion

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the interviews. The study (hereinafter referred to as the ‘economic study’) was contracted to Deloitte under contract no. JUST/2017/JCOO/FW/CIVI/0087 (2017/07). The final report is not yet published.  
COM(2013) 858 final of 4.12.2013.

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See detailed list of these exercises on pp. 15 to 17 of the evaluation report in Annex 8 of the impact assessment attached to this proposal, SWD (2018) 287 final.

of the requests compared to the workflows in the preceding Hague conventions, the proposed deadlines in the Regulation are regularly not met. In particular, full advantage is not being taken of the potential of recent technological developments. Although the language of the Regulation was drafted in a ‘technology-neutral’ way, modern channels of communication are in practice not used. This is partly due to old habits, partly due to legal obstacles, and partly due to the lack of interoperability of the national IT systems. The impact assessment concluded that in this context substantial improvement could be achieved with little investment, by relying on the EU outputs and legal standards that already exist.

As regards the alternative methods of transmission and service of documents providing direct channels to serve documents in the territory of other Member States, the evaluation concluded that although they provide smoother solutions to assist cross-border judicial proceedings, there are ways in which they could be improved : service by post (Article 14) under the Regulation is a popular, quick and relatively cheap way of delivering the document to the addressee, but it is not very reliable and has a high failure rate. The so-called direct service under Article 15 of the Regulation provides a reliable solution but access to it is limited. On this issue, the proposal makes a targeted contribution with an aim to improve the efficiency of the existing methods. In addition the Regulation complements the list of alternative methods of cross-border transmission and service of documents by the method of electronic service, which would introduce a virtual equivalent of the provision on service by post in the Regulation.

Improvement of the existing channels of transmission and service in the Regulation will be carried out in parallel with the strengthening of the protection of the rights of defence of the addressee. Targeted interventions will help to end uncertainty over the exercise of the right of refusal (in Article 8) or the provision on default judgments (Article 19).

- **Consistency with existing policy provisions in the policy area**

The current proposal is closely linked to the proposal amending the Regulation on taking of evidence. The two proposals are presented together by the Commission, and constitute a package for the modernisation of judicial cooperation in civil and commercial matters.

The proposal is consistent with existing EU instruments adopted in the policy area of civil judicial cooperation. In fact, the Regulation contributes to the effectiveness of these instruments in ensuring the smooth circulation of judgments within the EU: whereas these EU regulations consider due service of the document instituting the proceedings as a necessary precondition of the recognition and enforcement of judgments rendered in other Member States, the Regulation on service of documents establishes the framework, within which such due service shall be carried out.

- **Consistency with other EU policies**

The EU justice agenda for 2020 stresses that, in order to enhance mutual trust between Member States’ justice systems, the need to reinforce civil procedural rights should be

examined, for example as regards the service of documents<sup>9</sup>. The aim of improving the framework of judicial cooperation within the EU is also in line with the objectives set out by the Commission in the digital single market strategy<sup>10</sup>: in the context of e-government, the strategy expresses the need for more action to modernise public (including judicial) administration, achieve cross-border interoperability and facilitate easy interaction with citizens.

In line with this, the Commission has committed in its work programme for 2018 to prepare proposals revising the Regulation on taking of evidence and the Regulation on service of documents.<sup>11</sup>

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **Legal basis**

The legal basis is Article 81 of the Treaty on the Functioning of the European Union (judicial cooperation in civil matters having cross-border implications). Subparagraphs (b) and (d) of paragraph 2 of this Article grants the EU the power to adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the cross-border service of judicial and extrajudicial documents.

#### **• Subsidiarity**

The aim of the policy area on judicial cooperation in civil matters has always been to create a genuine area of justice, where judicial decisions circulate and legal situations acquired under one legal system are acknowledged within the EU across borders without unnecessary obstacles. This approach is based on the conviction that without a genuine judicial area the underlying freedoms of the single market cannot be fully taken advantage of.

The problems to be tackled by the initiative arise in cross-border judicial proceedings (which by definition are beyond the reach of national legal systems) and stem either from insufficient cooperation between the authorities and officers of the Member States or from insufficient interoperability and coherence between domestic systems and legal environments. Rules in the area of private international law are laid down in regulations, because that is the only way to ensure the desired uniformity. While in principle nothing prevents Member States from digitalising the way they communicate, past experience and projections of what will happen without EU action show that progress would be very slow and that, even where Member States take action, interoperability cannot be ensured without a framework under EU law. The objective of the proposal cannot be sufficiently achieved by the Member States themselves and can be achieved only at Union level.

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<sup>9</sup> The EU justice agenda for 2020: strengthening trust, mobility and growth within the Union (COM(2014) 144 final), p. 8.

<sup>10</sup> COM(2015) 192 final, 6.5.2015, p. 16.

<sup>11</sup> Commission Work Programme 2018 – An agenda for a more united, stronger and more democratic Europe, COM(2017) 650 final of 24.10.2017, Annex II points 10 and 11.

The EU added value lies in further improving the efficiency and speed of judicial procedures, by simplifying and accelerating cooperation mechanisms with regard to the service of documents and thus improving the administration of justice in cases with cross-border implications.

- **Proportionality**

The proposal complies with the principle of proportionality, because it is strictly limited to what is necessary to achieve its objectives. It does not interfere with the divergent national regimes for service of documents under different legal systems. Although called a Regulation ‘on service of documents’, in fact the main focus of its rules is to lay down uniform channels for transmission of documents from one Member State to another for purposes of serving those documents in that other Member State.

The accompanying impact assessment demonstrates that the benefits of the proposal outweigh the costs, and that the proposed measures are proportionate.

- **Choice of the instrument**

The Regulation lays down a common set of procedures for all Member States, which is essential to ensuring the successful service of documents in cross-border proceedings. The Regulation has thus contributed to ensuring the legal certainty of the procedure, because all Member States now follow the same steps, are subject to common deadlines, and use uniform forms. The Regulation has also made it possible to bring together all the information available in the Member States, and centralised this information in the e-justice portal. This has helped coordination amongst the Member States. Overall, the Regulation has considerably helped to speed up cross-border proceedings, creating significant gains in effectiveness and efficiency.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

The results of the *ex-post* evaluation of Regulation (EC) No 1393/2007, which accompanies the impact assessment, can be summarised as follows.

The implementation of the Regulation has helped to improve the effectiveness of the service of documents. Nevertheless, according to some of the evidence gathered, the Regulation still results in some problems, such as delays or confusion for the parties involved. Therefore, the Regulation has not fully achieved its general, specific and operational objectives.

- **Stakeholder consultations**

As referred to under point 1 of the Explanatory Memorandum, the Regulation has undergone detailed assessments over the past few years on its implementation in studies, in reports by the Commission and discussions in the European Judicial Network<sup>12</sup>.

In addition to these exercises, the Commission conducted extensive consultation of stakeholders. A single public consultation from 8 December 2017 to 2 March 2018 addressed both Regulation (EC) No 1393/2007 and Regulation (EC) No 1206/2001. A total of 131 contributions were received (particularly from Poland, followed by Germany, Hungary and Greece). Two dedicated meetings of the European Judicial Network addressed practical problems and possible improvements of both the Regulation on service of documents and the Regulation on taking of evidence. A dedicated meeting was held with Member State governmental experts on 4 May 2018. Finally, a workshop composed of selected stakeholders with particular interest in issues relating to cross-border legal proceedings was organised on 16 April 2018. The results of this evaluation were positive overall.

- **Collection and use of expertise**

The expert group on modernisation of judicial cooperation in civil and commercial matters has held six meetings between January and May 2018<sup>13</sup>. Two comprehensive comparative legal studies were carried out on the laws and practices of the Member States on service of documents to identify the problems that can arise in implementing the Regulation<sup>14</sup>.

- **Impact assessment**

This proposal is supported by the impact assessment in the accompanying staff working document SWD(2018) 287 .

The Regulatory Scrutiny Board reviewed the draft impact assessment at its meeting of 3 May 2018 and delivered a positive opinion with comments on 7 May 2018. DG Justice took into account the Board's recommendations and the report explains better the relationship between the two initiatives on judicial cooperation (the present one and the one amending Regulation (EC) No 1206/2001). The description of the major problems and that of the baseline scenario has been strengthened. The explanation of subsidiarity of the instrument and of the EU added value was enhanced. Moreover, the conclusions of the evaluation report regarding the

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<sup>12</sup> See detailed list of these exercises on pp. 15 to 17 of the evaluation report in Annex 8 of the impact assessment attached to this proposal, SWD (2018) 287 final.

<sup>13</sup> The detailed list of experts is available in the Register of Commission expert groups accessible on <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3561&news>

<sup>14</sup> A Commission study providing a comparative legal analysis of laws and practices of the Member States on service of documents was carried out by a consortium (University Firenze, University Uppsala and DMI), [http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf). An evaluation study of national procedural laws and practices and their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law was launched by the Commission (carried out by a consortium led by MPI Luxembourg), <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>.

effectiveness have been further developed and the part containing the assessment of the policy options concentrated on the main elements, whereas the analysis of the minor problems were shifted to the annexes.

The impact assessment evaluated several legislative and non-legislative options. Some options were discarded at an early stage. Under the policy package preferred by the impact assessment, the effectiveness of the Regulation would be improved, mainly by reducing costs and delays. It highlighted in particular two modifications that are expected to be helpful: mandatory electronic communication between the agencies and the facilitation of electronic and direct service. These improvements would increase the efficiency and speed of proceedings, and reduce the burden on people and businesses. The impact assessment concluded that benefits would result from using electronic communication for digitalisation of the judiciary, by simplifying and speeding up cross-border judicial procedures and judicial cooperation.

The preferred policy package would increase legal certainty by laying down at EU level the eligible alternative (substituting) ways to serve documents by post if the document cannot be handed over to the addressee in person. In such cases, there would be greater clarity over the types of methods of service accepted and also greater consistency of practice to rely on in all Member States.

The package also enhances access to justice and legal certainty by including measures to improve the available tools for locating an addressee. This will help ensure the efficient and speedy service of documents.

The policy package assessed against the baseline scenario involves the mandatory introduction of a specific uniform return slip (acknowledgement of receipt) to be used when serving documents by post under the Regulation. This measure is expected to improve the quality of the postal service, thus reducing the number of instances where service is deficient due to (i) incomplete acknowledgements of receipt or (ii) ambiguity over who actually received the documents.

The policy package also introduces a new measure to facilitate access to the direct service of documents, by extending the scope of application of Article 15 of the Regulation. Allowing direct service both for (i) transmitting agencies or (ii) the courts seised with the proceedings in the Member State of origin and in the territory of all Member States would lead to more direct and speedy transmission of documents compared to the baseline.

In the baseline, the Regulation does not fully achieve the objective of increasing access to justice and, thus, the protection of the rights of the parties. Under the policy package, by amending the provisions in the Regulation regarding the requirement to provide always the information on the right of refusal through the standard form contained in Annex II, the extension of the time limit for the exercise of the right of refusal and the clarification of the role of the court of origin in the assessment of the refusal, the predictability of the procedure could be expected to increase (Article 8 of the Regulation). In addition, also contributing to



reducing legal uncertainty is the option related to the due diligence that should be carried out by courts before issuing a default judgment according to Article 19 of the Regulation.

The impact assessment concluded that the implementation of the policy package is considered overall to be more efficient than the baseline scenario, and that the package would greatly improve legal certainty.

- **Regulatory fitness and simplification**

As this is a revision of an existing piece of legislation falling under the Commission's Regulatory Fitness and Performance Programme REFIT, the Commission has looked at opportunities to simplify and reduce burdens. The Union law covered by this proposal applies to all traders, including micro-enterprises hence no exemption is being made for micro-enterprises under this proposal

The proposal sets up a framework of judicial cooperation aligned with the digital single market strategy. It will help improve the speed and efficiency of cross-border proceedings by reducing the time spent on sending documents between agencies and by reducing reliance on paper-based communication. This would ensure the safe electronic communication and exchange of documents between the users of the decentralised IT system, and it would provide for automatic recording of all steps of the workflow. It would also have security features to ensure that only authorised participants with verified identities may use the system.

The proposal will reduce barriers to initiating cross-border litigation across the EU by including necessary tools to identify information on the current whereabouts of the addressee if the initiator of the service of the document either does not have any such information ('whereabouts unknown') or if the information at his/her disposal turns out to be incorrect.

Increasing the efficiency of the postal service through the introduction of a specific uniform return slip will improve the quality of the postal service and will reduce undue costs and delays. If only in half of the cases, where there are currently problems with the legal assessment of the returned acknowledgments of receipt, would postal service be successful in the future, 2.2 million EUR in each year could be saved, an amount currently wasted for letter post service not bringing any result.

By amending the provisions on the procedural rights of the parties (Article 8 and Article 19 of the Regulation), the proposal also addresses the issue of the insufficient protection of the defendant against the effects of default judgments. It can be expected that these amendments will reduce the number of instances in which default judgments are issued against defendants residing in a Member State, who did not learn of the proceedings initiated against them abroad. According to the estimates of the impact assessment, decreasing the volume of default judgments by 10% in the EU would result in saving up 480 000 000 EUR per year, as a consequence that citizens had to spend less on judicial reliefs.

- **Fundamental rights**

In line with the EU justice agenda for 2020<sup>15</sup>, the Commission has ensured that the proposal addresses the need to reinforce civil procedural rights, in order to enhance mutual trust between Member States' justice systems.

Firstly, the proposal promotes the electronic service of documents valid under the Regulation, thus contributing to the fundamental right to an effective judicial remedy (Article 47 of the Charter on the right to an effective remedy and to a fair trial). In this way, diversity of needs and efficient methods of service are acknowledged, as the parties would be free to consent to accepting correspondence electronically in cross-border proceedings. This additional method of service, together with the proposed 'digital by default' principle, is expected to boost access to justice and also help speed up proceedings. Furthermore, it will reduce the costs of service, as well as the possibility that documents may not be served at all if inefficient methods of service are used.

The clarification provided by the proposal on the definitions and concepts would also reduce legal uncertainty and speed up procedures under the Regulation. The proposal would bring more clarity and predictability to the procedure for the right of refusal of addressees, better protect their procedural rights, but it will also prevent abuse of the right of refusal, thus equally protecting the plaintiff's rights.

Second, the proposal would also have positive effects on non-discrimination (Article 18 TFEU). The proposal would contribute to an equal access to justice as Member States will have to provide effective access for foreign persons to tools available in their territory for purposes of address enquiry. This would guarantee that the addressee actually receives the document. In addition, the policy package would include standardized legal principles on the possibility to use fictitious and alternative methods of national laws instead of the Regulation, when the addressee is domiciled in another Member State. These principles aim at eliminating the current ambiguity and fragmentation under the baseline scenario concerning the rights of parties in the Member States. Lastly, the policy package would also lay down a uniform timeframe for setting aside a default judgment. These provisions would contribute to an equal protection of the procedural rights, regardless of the Member State.

Thirdly, the proposed change towards using electronic communication is expected to have an effect on the protection of personal data (Article 8 of the Charter). Technical implementation and operation of the electronic infrastructure would be determined and controlled by Member States themselves, even if the infrastructure is partially developed and financed at the EU level. The infrastructure should be based on a decentralised architecture. Data protection requirements would therefore apply exclusively at national level for the different procedures.

Important external factors with regard to the protection of personal data in the context of the proposed policy package are:

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<sup>15</sup> The EU justice agenda for 2020 strengthening trust, mobility and growth within the Union, (COM(2014) 144 final), p. 8.

- the General Data Protection Regulation (GDPR)<sup>16</sup>, applied as of May 2018, which should increase awareness and prompt action to ensure the security and integrity of databases, and swift reactions to breaches of privacy in the judiciary; and
- persistent threats to cybersecurity in the public sector. Attempted attacks on public IT infrastructure are expected to proliferate and to affect the judiciary in the Member States; their impact may be exacerbated by the growing interconnectedness of IT systems (nationally and at EU level).

#### **Implementation plans and monitoring, evaluation and reporting arrangements**

In line with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016<sup>17</sup>, where the three institutions confirmed that evaluations of existing legislation and policy should provide the basis for impact assessments of options for further action, the Regulation will be evaluated and the Commission will submit a report to the European Parliament, the Council and the European Economic and Social Committee at the latest five years after application date. The evaluation will assess the effects of the Regulation on the ground based on indicators and a detailed analysis of the degree to which the Regulation can be deemed relevant, effective, efficient, provides enough EU added value and is coherent with other EU policies. The evaluation will include lessons learnt to identify any lacks/problems or any potential to further improve the impact of the Regulation. Member States will provide the Commission with the information necessary for the preparation of the report.

#### **4. BUDGETARY IMPLICATIONS**

The proposal will have no negative impact on the EU budget. The proposal will not impose significant costs on national administrations, but rather lead to savings. National public authorities are expected to benefit from reduced costs in relation to postal services, timesaving due to more efficient legal proceedings, and reduced administrative burdens and labour costs.

The main costs for Member States will come from the implementation of electronic communication as mandatory for transmitting and receiving agencies. However, the impact assessment attached to this proposal shows that these costs are greatly outweighed by the direct benefits to be expected from the change from paper-based communication to digital communication.

The main EU funding opportunities under the current financial programmes are the Justice programme and the Connecting Europe Facility (CEF). The Justice programme (2018 budget: EUR 45.95 million) supports enforcement and remedy capacities in Member States in the field of civil justice and its future funding priorities focus on these elements, which are also relevant for the current initiative. The CEF has a much larger budget (EUR 130.33 million in 2018) and offers financial support for IT projects that facilitate cross-border interaction between public administrations, businesses and citizens. It is already used widely to fund digitalisation and e-justice work in the field of civil justice, including the European e-justice

<sup>16</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

<sup>17</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

portal and public documents integration in national e-government systems and the Business Registers Interconnection System (BRIS). The Multiannual Financial Framework (MFF) package for the digital transformation priority, as unveiled on 2 May 2018, includes EUR 3 billion for a digital strand of the CEF, to finance digital connectivity infrastructure.

## **5. OTHER ELEMENTS**

### **• Implementation plans and monitoring, evaluation and reporting arrangements**

A sound system for monitoring the application of the Regulation will be put in place, including a comprehensive set of qualitative and quantitative indicators, and a clear and structured reporting and monitoring process. This is important for ensuring that the amendments are implemented efficiently in the Member States and for verifying whether the Regulation is successful in achieving its objectives.

### **• Detailed explanation of the specific provisions of the proposal**

#### **Article 1**

This Article partially amends the structure of the current wording and introduces a distinction as to the formulation of the scope of application between the judicial and extrajudicial documents. The current language of the provision on extrajudicial documents remains. However, as regards judicial documents, the proposal clarifies that the Regulation applies in all situations where the domicile of the addressee is in another Member State. In doing this, the Regulation tries to put an end to the current bad practice in which defendants in another Member States are served in the territory of the Member State of origin through alternative or fictitious methods of service of documents, as permitted by the procedural law of the Member State of origin, irrespective of the information on the foreign address of the defendant at the disposal of the court or judicial authority seised with the proceedings. With the new scope wording, courts would not be able to carve such situations out of the scope of the Regulation by simply qualifying the service of the documents as ‘domestic’.

This higher standard, by which all instances of service of documents are obligatorily covered by the scope of the Regulation when the addressee is domiciled in another Member State, only applies to the service of the documents instituting the proceedings. The ‘service of process’, the delivery of the document to the addressee which informs him/her about the initiation of the foreign proceedings, has an outstanding relevance in the protection of the rights of the defence, and should therefore be strengthened with appropriate safeguards. As to the subsequent instances of service of judicial documents in the course of a judicial proceeding, the extra protection is less relevant. This is because the proposed new Article 7(a) may be applied for these documents. In addition, national laws may maintain provisions which oblige the addressee to appoint a representative to serve documents on him/her in the territory of the Member State of origin.

Paragraph 2 makes it clear that Article 3c of the Regulation applies also in situations where the address of the addressee is not known.

Paragraph 3 of the Article repeats the wording of recital Article 8 in the Regulation currently in force, thereby creating legal certainty around the legislative character of this provision.

### **Article 3a**

This Article lays down that communication and exchange of documents between sending and receiving authorities is carried electronically, through a decentralised IT system made up of national IT systems interconnected by a secure and reliable communication infrastructure.

Paragraph 6 ensures that alternative (traditional) means of communications are used in cases of unforeseen and exceptional disruption of the IT system.

The introduction of the new channel of communication and exchange of documents through the IT system also implies adaptations in Articles 4 and 6, as well.

### **Article 3c**

This Article lays down that Member States must provide assistance in locating the whereabouts of a recipient in another Member State. The proposal offers three alternative options, from which each Member State must provide at least one in its territory for persons asserting their rights from another Member States. Each Member State must notify the Commission which of the three options it will offer under the Regulation. The three options are: judicial assistance through authorities designated by the Member States; providing access to public domicile registers through the e-justice Portal; or providing detailed information via the e-justice Portal on available tools for locating persons in their territories.

### **Article 7a**

This new Article acknowledges existing laws and practice in several Member States, according to which foreign parties to a proceedings may be required to appoint a representative to serve documents in the proceedings on them in the Member State of the proceedings. This option would only be available after that party has been duly served with the document instituting the proceedings. To provide an appropriate alternative for foreign litigants to whom such an obligation (searching and paying for such a proxy in another Member State) would create insurmountable challenges, the Regulation provides an alternative by using Article 15a (b) on electronic service of documents.

### **Article 8**

The proposal improves the procedure on the right of the addressee to refuse to accept the document if it is not drawn up or translated into an appropriate language. The amendments are in line with the relevant case-law of the Court of Justice<sup>18</sup>.

### **Article 14**

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<sup>18</sup> Judgment of the Court of 16 September 2015 in Case C-519/13, *Alpha Bank Cyprus*, ECLI:EU:C:2015:603; order of the Court of 28 April 2016 in Case C-384/14, *Alta Realitat S.L.*, ECLI:EU:C:2016:316.

The proposal obliges the postal service providers to use a specific return slip (acknowledgement of receipt) when serving documents by post under the Regulation.

Paragraph 3 of the Regulation introduces a minimum standard concerning persons to be regarded as eligible ‘substituting recipients’ if the postal service provider cannot hand over the document on the addressee in person. The solution is based on Article 14 of Regulation (EC) No 805/2004<sup>19</sup> and Regulation (EC) No 1896/2006<sup>20</sup> and the judgment of the Court of Justice in Case C-354/15, *Henderson*<sup>21</sup>.

### **Article 15**

This provision extends the scope of the existing Article in two aspects: Firstly, it no longer requires the applicant to have an interest in the proceedings, thereby allowing transmitting agencies and courts seised with the proceedings to use this way of service. Secondly, direct service would be applicable in the future in the territory of all Member States.

### **Article 15a**

The proposal introduces the electronic service of documents as an additional alternative method of service under the Regulation. In fact, this provision treats this type of the service of documents as an equivalent of service by post. . The provision legitimises the electronic sending of a document from the user account of the sender directly to the user account of the recipient as a valid method of service of documents under the Regulation, provided one of the alternative conditions included in paragraphs (a) and (b) is met.

### **Article 19**

Amendments in this Article were proposed to reduce the existing fragmentation in national systems. There are two major changes in the proposal. Firstly, the court seised with the proceedings will be required to send an alert message about the initiation of the proceedings or about the default judgment to the available user account of the defendant *in absentia*. Secondly, the time period for the availability of the extraordinary review in paragraph 4 is uniformly set to two years as of the issuance of the default judgment.

### **Article 23a**

This provision sets out that the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

### **Article 24**

This provision sets out that the Commission shall carry out an evaluation of this Regulation in line with the Commission's better regulation Guidelines and pursuant to paragraph 22 and 23 of

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<sup>19</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, 30.4.2004, p. 15).

<sup>20</sup> Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).

<sup>21</sup> Judgment of 2 March 2017, ECLI:EU:C:2017:157.

the Interinstitutional Agreement of 13 April 2016, and present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In the interests of the proper functioning of the internal market, it is necessary to further improve and expedite the transmission and service between the Member States of judicial and extrajudicial documents in civil and commercial matters.
- (2) Regulation (EC) No 1393/2007 of the European Parliament and of the Council<sup>3</sup> lays down rules on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.
- (3) The increasing judicial integration of Member States, where the abolition of exequatur (intermediate procedure) has become a general rule, has brought to light the limits of the rules in Regulation (EC) No 1393/2007.
- (4) In order to ensure the speedy transmission of documents to other Member States for the purposes of service there, all appropriate means of modern communication technology should be used, provided that certain conditions as to the integrity and reliability of the document received are observed. For that purpose, all communication and exchanges of documents between the agencies and bodies designated by the Member States should be carried out through a decentralised IT system composed of national IT systems.
- (5) The receiving agency should, in all circumstances and with no margin of discretion in that regard, inform the addressee in writing using the standard form that he or she may

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> 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), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p.79).



refuse to accept the document to be served if it is not either in a language which he or she understands or in the official language or one of the official languages of the place of service. This rule should also apply to any subsequent service once the addressee has exercised his or her right of refusal. The right of refusal should also apply in respect of service by diplomatic or consular agents, service by postal services and direct service. It should be possible to remedy the service of the refused document by serving a translation of the document on the addressee.

- (6) If the addressee has refused to accept the document, the court or authority seised with the legal proceedings in course of which the service became necessary, should verify whether that refusal was justified. For that purpose, that court or authority should take into account all the relevant information on the file or at its disposal in order to determine the actual language skills of the addressee. When assessing the language skills of the addressee, the court could take into account factual elements such as documents written by the addressee in the language concerned, whether the addressee's profession involves such language skills (for example, teacher or interpreter), whether the addressee is a citizen of the Member State where the judicial proceedings take place, or whether the addressee previously resided in that Member State for some time. Such an assessment should not take place, if the document was drawn up or translated into the official language or one of the official languages of the place of service.
- (7) Efficiency and speed in cross-border judicial proceedings requires direct, expedited channels for serving documents on persons in other Member States. Consequently, it should be possible for a person interested in a judicial proceeding or a court or authority seised with a legal proceeding to effect service of documents directly through electronic means to the digital user account of an addressee who is domiciled in another Member State. The conditions for the use of such type of direct electronic service should ensure that electronic user accounts are used for the purpose of service of documents only if there are appropriate safeguards for the protection of the interests of the addressees, either by way of high technical standards or in form of an explicit consent given by the addressee.
- (8) The already existing direct channels for transmission and service of documents should be improved so that they provide reliable and generally accessible alternatives to the traditional transmission via the receiving agencies. For this purpose, postal service providers should use a specific acknowledgement of receipt when performing service by post under Article 14 of Regulation (EC) No 1393/2007. Similarly, it should be possible for any person interested in a judicial proceeding and for courts or authorities seised with a legal proceeding to effect service of documents in the territory of all Member States directly through the judicial officers, officials or other competent persons of the Member State addressed.
- (9) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect of the rights of defence of the addressees, which derive from the right to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights.
- (10) In order to enable a swift adaptation of the Annexes to Regulation (EC) No 1393/2007, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to Annexes I, II and IV to that Regulation. It is of particular

importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making\*. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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\*Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1.

- (11) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Regulation and the need for any further action.
- (12) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the creation of a legal framework ensuring the expedite and efficient transmission and service of judicial and extrajudicial documents across the Member States, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (13) In accordance with Article 3 and Article 4a(1) of protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the [United Kingdom] [and] [Ireland] [have/has notified their/its wish to take part in the adoption and application of the present Regulation] [are/is not taking part in the adoption of this Regulation and is not bound by it or subject to its application].
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (15) Regulation (EC) No 1393/2007 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 1393/2007 is amended as follows:

- (1) Article 1 is replaced by the following:

#### *"Article 1* **Scope and definitions**

1. This Regulation shall apply in civil and commercial matters to the service of:

- (a) judicial documents on persons domiciled in a Member State other than the one where the judicial proceedings take place ;
- (b) extrajudicial documents that have to be transmitted from one Member State to another.

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*).

- 2. With the exception of Article 3c, this Regulation shall not apply where the address of the person to be served with the document is not known.
- 3. This Regulation shall not apply to service of a document 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.
- 4. For the purposes of this Regulation, the following definitions shall apply:
  - (a) 'Member State' means the Member States with the exception of Denmark.
  - (b) 'the forum Member State' means the Member State where the judicial proceedings take place.";
- (2) in Article 2 (4), point (c) is replaced by the following:
 

"(c) the means of receipt of documents available to them for the cases set out in Article 3a(6);";
- (3) the following Articles 3a, 3b and 3c are inserted:

*"Article 3a*

**Means of communication to be used by transmitting and receiving agencies, and central bodies**

- 1. Documents, requests, confirmations, receipts, certificates and any communication carried out on the basis of the standard forms in Annex I between the transmitting agencies and receiving agencies, between those agencies and the central bodies, or between the central bodies of the different Member States shall be transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure enabling the secure and reliable cross-border exchange of information between the national IT systems.
- 2. The general legal framework for the use of trust services set out in Council Regulation (EU) No 910/2014\* shall apply to the documents, requests, confirmations, receipts, certificates and any communication transmitted through the decentralised IT system referred to in paragraph 1.
- 3. Where the documents, requests, confirmations, receipts, certificates and other communication referred to in paragraph 1 require or feature a seal or handwritten signature, 'qualified electronic seals' and 'qualified electronic signatures' as defined in Regulation (EU) No 910/2014 of the European Parliament and of the Council may be used instead.
- 4. If transmission in accordance with paragraph 1 is not possible due to an unforeseen and exceptional disruption of the decentralised IT system, transmission shall be carried out by the swiftest possible alternative means.

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\* Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

*Article 3b*

**Costs of establishing the decentralised IT system**

1. Each Member State shall bear the costs of the installation, operation and maintenance of its communication infrastructure access points interconnecting the national IT systems in the context of the decentralised IT system referred to in Article 3a.
2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the communication infrastructure, as well as the costs of administering, operating and maintaining those systems.
3. Paragraphs 1 and 2 shall be without prejudice to the possibility to apply for grants to support activities referred to in those paragraphs under the Union's financial programmes.

*Article 3c*

**Assistance in address enquiries**

1. Where the address of the person to be served with the judicial or extrajudicial document in another Member State is not known, Member States shall provide assistance by one or more of the following means:
  - (a) judicial assistance to determine the address of the person to be served by designated authorities upon the request of the court of the Member State seised with a proceeding;
  - (b) the possibility for persons from other Member States to submit requests for information on addresses directly to domicile registers or other publicly accessible databases including electronically, by means of a standard form via the European e-justice Portal;
  - (c) detailed practical guidance on the mechanisms available for the determination of the addresses of persons within the framework of the European Judicial Network in civil and commercial matters and with a view to making the information available to the public.
2. Each Member State shall provide the Commission with the following information:
  - (a) the method of assistance which the Member State will provide in its territory pursuant to paragraph 1;
  - (b) where applicable, the names and addresses of the authorities referred to in paragraph (1) (a) and (b).

Member States shall notify the Commission of any subsequent modification of that information.";

- (4) Article 4 is replaced by the following:

*"Article 4*

**Transmission of documents**

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.
  2. The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the Union other than its own which is or are acceptable to it for completion of the form.
  3. The documents that are transmitted through the decentralised IT system referred to in Article 3a shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that they are in an electronic form. If paper documents are transformed into electronic form for the purpose of transmission through the decentralised IT system, the electronic copies or their printouts shall have the same effect as the original documents.";
- (5) Article 6 is replaced by the following:

*"Article 6*

**Receipt of documents by receiving agency**

1. On receipt of a document, an automatic receipt of delivery shall be sent to the transmitting agency via the decentralised IT system referred to in Article 3a.
  2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency in order to secure the missing information or documents.
  3. If the request for service is manifestly outside the scope of this Regulation or if non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned, on receipt, to the transmitting agency, together with the notice of return using the standard form set out in Annex I.
  4. A receiving agency receiving a document for service but not having territorial jurisdiction to serve it shall forward it, as well as the request, through the decentralised IT system referred to in Article 3a to the receiving agency having territorial jurisdiction in the same Member State if the request complies with the conditions laid down in Article 4(2) and shall inform the transmitting agency accordingly using the standard form set out in Annex I. Upon receipt of the document and the request by the receiving agency having territorial jurisdiction in the same Member State, an automatic receipt of delivery is sent to the transmitting agency, via the decentralised IT system referred to in Article 3a." ;
- (6) The following Article 7a is inserted:

*"Article 7a*

**Obligation to appoint a representative for the purpose of service in the forum Member State**

1. Where a document instituting the proceedings has been served upon the defendant, the law of the forum Member State may impose an obligation upon parties who are domiciled in another Member State to appoint a representative for the purpose of service of documents on them in the forum Member State.
  2. Where a party fails to comply with the obligation to appoint a representative in accordance with paragraph 1 and has not expressed his or her consent to use an electronic user account for service in accordance with point (b) of Article 15a, any method of service permitted under the law of the forum Member State may be used for service of documents during the proceedings, provided that the party concerned has been duly informed about this consequence.";
- (7) Article 8 is replaced by the following:

*"Article 8*

**Refusal to accept a document**

1. The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he or she may refuse to accept the document to be served if it is not written in, or accompanied by a translation into, either of the following languages:
  - (a) a language which the addressee understands;
  - or
  - (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.
2. The addressee may refuse to accept the document at the time of service or within two weeks by returning the standard form set out in Annex II to the receiving agency.
3. Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraphs 1 and 2, it shall immediately inform the transmitting agency by means of the certificate provided for in Article 10 and return the request.
4. If the addressee has refused to accept the document in accordance with paragraphs 1 and 2, the court or authority seised with the legal proceedings, in the course of which service was carried out, shall verify whether the refusal was well founded.
5. The service of the document may be remedied through the service on the addressee, in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, 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 the date of the service of the initial document determined pursuant to Article 9(2).
6. Paragraphs 1 to 5 shall apply to the other means of transmission and service of judicial documents provided for in Section 2.

7. For the purposes of paragraph 1, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14 or 15a, shall inform the addressee that he or she may refuse to accept the document and that any document refused must be sent to those agents or to that authority or person respectively.";
- (8) in Article 10, paragraph 1 is replaced by the following:
  - "1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency.";
- (9) Articles 14 and 15 are replaced by the following:

*"Article 14*

**Service by postal services**

1. Service of judicial documents may be effected directly by postal services on persons domiciled in another Member State by registered letter with acknowledgement of receipt.
2. For the purpose of this Article, service by post shall be carried out by using the specific acknowledgement of receipt set out in Annex IV.
3. Irrespective of the law of the Member State of origin, service by post shall be considered as validly effected also, if the document was delivered at the addressee's home address on adult persons who are living in the same household as the addressee or are employed there by the addressee, and who have the ability and are willing to accept the document.

*Article 15*

**Direct service**

1. Service of judicial documents may be effected on persons domiciled in another Member State directly through the judicial officers, officials or other competent persons of the Member State addressed.
  2. Each Member State shall provide the Commission with the information on the type of professions or competent persons who are permitted to carry out service under this Article in their territory.";
- (10) The following Article 15a is inserted:

*"Article 15a*

**Electronic service**

Service of judicial documents may be effected directly on persons domiciled in another Member State through electronic means to user accounts accessible to the addressee, provided that one of the following conditions is fulfilled:

- (a) the documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 of the European Parliament and of the Council
- (b) after the commencement of legal proceedings, the addressee gave express consent to the court or authority seised with the proceedings to use that

particular user account for purposes of serving documents in course of the legal proceedings.";

- (11) Articles 17 and 18 are replaced by the following:

*"Article 17*

**Amendment of the Annexes**

The Commission is empowered to adopt delegated acts in accordance with Article 18 to amend Annexes I, II and IV to update the standard forms or to make technical changes to those forms.

*Article 18*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 17 shall be conferred on the Commission for an indeterminate period of time from [*the date of entry into force of this Regulation*].
3. The delegation of power referred to in Article 17 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making\*.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 17 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.";

- (12) the following Articles 18a and 18b are inserted:

*"Article 18a*

**Establishment of the decentralised IT system**

The Commission shall adopt implementing acts establishing the decentralised IT system as referred to in Article 3a. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18b (2).



*Article 18b*

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
  2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.";
- (13) Article 19 is replaced by the following:

*"Article 19*

**Defendant not entering an appearance**

1. Where a document instituting the proceedings has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that the service or the delivery was effected in sufficient time to enable the defendant to defend and that:
  - (a) the document was served by a method prescribed by the internal law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
  - (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;
2. Notwithstanding the provisions of paragraph 1, the judge may give judgment even if no certificate of service or delivery has been received, where all the following conditions are fulfilled:
  - (a) the document was transmitted by one of the methods provided for in this Regulation;
  - (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document;
  - (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities or bodies of the Member State addressed.
3. Where the conditions set out in paragraph 2 are met, reasonable efforts shall be made to inform the defendant through any available channels of communication, including means of modern communication technology, for which an address or an account is known to the court seised, that court proceedings have been instituted against him or her.
4. Notwithstanding paragraphs 1 and 2, the judge may, in case of urgency, order any provisional or protective measures.
5. Where a document instituting the proceedings has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment where both of the following conditions are fulfilled:

- (a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal;
- (b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Such application shall not be entertained if it is filed more than two years following the date of the judgment.

- 6. After the expiry of the period of two years following the date of the judgment referred to in paragraph 2, the provisions of national law allowing for an extraordinary relief from the effects of the expiry of the time for appeal may not be applied in the context of challenging the recognition and enforcement of that judgment in another Member State.
- 7. Paragraphs 5 and 6 shall not apply to judgments concerning the status or capacity of persons.";
- (14) in Article 23, paragraph 1 is replaced by the following:
  - "1. Member States shall communicate to the Commission the information referred to in Articles 2, 3, 3c, 4, 10, 11, 13, and 15. Member States shall communicate to the Commission if, according to their law, a document has to be served within a particular period as referred to in Articles 8(3) and 9(2)."
- (15) The following Article 23a is inserted:

*"Article 23a*

**Monitoring**

- 1. By [*two years after the date of application*] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.
  - 2. The monitoring programme shall set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall specify the action to be taken by the Commission and by the Member States in collecting and analysing the data and other evidence.
  - 3. Member States shall provide the Commission with the data and other evidence necessary for the monitoring."
- (16) Article 24 is replaced by the following:

*"Article 24*

**Evaluation**

- 1. No sooner than [*five years after the date of application of this Regulation*], the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.
- 2. Member States shall provide the Commission with the information necessary for the preparation of that report."

(17) A new Annex IV, as set out in the Annex to this Regulation is added.

*Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from .....[18 months after the entry into force of the Regulation].

However:

- (a) point (14) of Article 1 shall apply from .....[12 months after its entry into force] and

points (3), (4) and (5) in Article 1 shall apply from .....[24 months after its entry into force]. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*