








# Procedure file

| Basic information   |                                 |
|---|---------------------------------|
| COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation  | Awaiting Parliament 2nd reading |
| Service of judicial and extrajudicial documents in civil or commercial matters (service of documents)<br>Amending Regulation (EC) No 1393/2007 <a href="#">2005/0126(COD)</a> |                                 |
| Subject<br>7.40.02 Judicial cooperation in civil and commercial matters   |                                 |

| Key players                            |   |  |            |
|--|---|--|------------|
| European Parliament                    | Committee responsible   | Rapporteur   | Appointed  |
|  |  <a href="#">Legal Affairs</a> |  <a href="#">ROBERTI Franco</a>             | 24/07/2019 |
|  |   | Shadow rapporteur  |            |
|  |   |  <a href="#">SCHREINEMACHER Liesje</a>     |            |
|  |   |  <a href="#">LAGODINSKY Sergey</a>        |            |
|  |   |  <a href="#">BUXADÉ VILLALBA Jorge</a>    |            |
|  | Former committee responsible  |  |            |
|  |  Legal Affairs               |  <a href="#">COFFERATI Sergio Gaetano</a> | 24/09/2018 |
| Council of the European Union          |   |  |            |
| European Commission                    | Commission DG <a href="#">Justice and Consumers</a>   | Commissioner<br>JOUROVÁ Věra   |            |
| European Economic and Social Committee |   |  |            |
| European Committee of the Regions      |   |  |            |

| Key events |  |   |         |
|------------|--|---|---------|
| 31/05/2018 | Legislative proposal published   | <a href="#">COM(2018)0379</a>   | Summary |
| 10/09/2018 | Committee referral announced in Parliament, 1st reading/single reading |   |         |
| 10/12/2018 | Vote in committee, 1st reading/single reading                          |   |         |
| 08/01/2019 | Committee report tabled for plenary, 1st reading/single reading        | <a href="#">A8-0001/2019</a>  | Summary |
| 13/02/2019 | Results of vote in Parliament  |  |         |

|            |   |                              |         |
|------------|---|------------------------------|---------|
| 13/02/2019 | Decision by Parliament, 1st reading/single reading  | <a href="#">T8-0104/2019</a> | Summary |
| 09/01/2020 | Committee decision to open interinstitutional negotiations after 1st reading in Parliament      |                              |         |
| 13/01/2020 | Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72) |                              |         |
| 10/09/2020 | Approval in committee of the text agreed at early 2nd reading interinstitutional negotiations   |                              |         |
| 06/11/2020 | Council position published  | <a href="#">09890/2/2020</a> |         |
| 13/11/2020 | Committee referral announced in Parliament, 2nd reading   |                              |         |
| 16/11/2020 | Vote in committee, 2nd reading  |                              |         |
| 18/11/2020 | Committee recommendation tabled for plenary, 2nd reading  | <a href="#">A9-0222/2020</a> |         |

### Technical information

|  |   |
|--|---|
| Procedure reference                          | 2018/0204(COD)  |
| Procedure type                               | COD - Ordinary legislative procedure (ex-codecision procedure)  |
| Procedure subtype                            | Legislation   |
| Legislative instrument                       | Regulation  |
|  | Amending Regulation (EC) No 1393/2007 <a href="#">2005/0126(COD)</a>  |
| Legal basis                                  | Treaty on the Functioning of the EU TFEU 081-p2   |
| Other legal basis                            | Rules of Procedure EP 159   |
| Mandatory consultation of other institutions | <a href="#">European Economic and Social Committee</a><br><a href="#">European Committee of the Regions</a> |
| Stage reached in procedure                   | Awaiting Parliament 2nd reading   |
| Committee dossier                            | JURI/9/02017  |

### Documentation gateway

|   |                               |            |     |         |
|---|-------------------------------|------------|-----|---------|
| Legislative proposal  | <a href="#">COM(2018)0379</a> | 31/05/2018 | EC  | Summary |
| Document attached to the procedure                              | <a href="#">SWD(2018)0286</a> | 31/05/2018 | EC  |         |
| Document attached to the procedure                              | <a href="#">SWD(2018)0287</a> | 31/05/2018 | EC  |         |
| Committee draft report  | <a href="#">PE628.483</a>     | 01/10/2018 | EP  |         |
| Economic and Social Committee: opinion, report                  | <a href="#">CES3992/2018</a>  | 17/10/2018 | ESC |         |
| Amendments tabled in committee                                  | <a href="#">PE629.638</a>     | 30/10/2018 | EP  |         |
| Amendments tabled in committee                                  | <a href="#">PE629.639</a>     | 31/10/2018 | EP  |         |
| Committee report tabled for plenary, 1st reading/single reading | <a href="#">A8-0001/2019</a>  | 08/01/2019 | EP  | Summary |
| Text adopted by Parliament, 1st reading/single reading          | <a href="#">T8-0104/2019</a>  | 13/02/2019 | EP  | Summary |

|  |   |            |      |
|--|---|------------|------|
| Commission response to text adopted in plenary           | <a href="#">SP(2019)354</a>   | 16/04/2019 | EC   |
| Document attached to the procedure                       | <a href="#">N9-0021/2020</a><br><a href="#">OJ C 370 31.10.2019, p. 0024-0027</a> | 13/09/2019 | EDPS |
| Council statement on its position                        | <a href="#">04444/2020</a>  | 04/11/2020 | CSL  |
| Committee draft report                                   | <a href="#">PE660.172</a>   | 05/11/2020 | EP   |
| Commission communication on Council's position           | <a href="#">COM(2020)0695</a>   | 05/11/2020 | EC   |
| Council position   | <a href="#">09890/2020</a>  | 06/11/2020 | CSL  |
| Committee recommendation tabled for plenary, 2nd reading | <a href="#">A9-0222/2020</a>  | 18/11/2020 | EP   |
| Draft final act  | 00047/2020/LEX  | 25/11/2020 | CSL  |

## 2018/0204(COD) - 31/05/2018 Legislative proposal

**PURPOSE:** to improve and expedite the transmission and service between the Member States of judicial and extrajudicial documents in civil and commercial matters.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** since 2008, [Regulation \(EC\) No 1393/2007](#) on the service of documents provides for fast-track channels and uniform procedures for transmitting documents from one Member State to another. Together with [Council Regulation \(EC\) No 1206/2001](#) on cooperation in the taking of evidence, it is a crucial instrument in the regulation of judicial assistance in civil and commercial matters between the Member States.

In 2018, approximately 3.4 million civil and commercial court proceedings in the EU have cross-border implications. In most of these cases (namely in those where at least one 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.

In 2017, to support the analysis of the practical application of the Regulation, the Commission undertook a regulatory fitness (REFIT) evaluation,

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.

The deadlines proposed in the Regulation are regularly exceeded and modern channels of communication are in practice not used.

The evaluation also concluded that 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 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 provides a reliable solution but access to it is limited.

This proposal is closely linked to the [proposal](#) amending the Regulation on the 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.

**IMPACT ASSESSMENT:** as part of the preferred package, the effectiveness of the current regulation would be improved, mainly by reducing costs and delays. In particular, the impact assessment identified two changes that should be useful: mandatory electronic communication between the agencies and the facilitation of electronic and direct service.

**CONTENT:** the proposal to amend Regulation (EC) No 1393/2007 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.

Specifically, the proposal:

- provides that the 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;
- ensures that alternative (traditional) means of communication are used in cases of unforeseen and exceptional disruption of the IT system;
- requires Member States to provide assistance in locating the whereabouts of a recipient in another Member State 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;

- 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;
- obliges the postal service providers to use a specific return slip (acknowledgement of receipt) when serving documents by post under 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;
- introduces a new measure to facilitate access to the direct service of documents, by extending the scope of application 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;
- introduces the electronic service of documents as an additional alternative method of service under the Regulation;
- requires the court seised with the proceedings 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 and sets the time period for the availability of the extraordinary review to two years as of the issuance of the default judgment.

BUDGETARY IMPLICATIONS: the proposal will not impose significant costs on national administrations, but rather lead to savings. The main costs for Member States will come from the implementation of electronic communication as mandatory for transmitting and receiving agencies.

The main EU funding opportunities under the current financial programmes are the [Justice](#) programme and the Connecting Europe Facility (CEF). 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.

## 2018/0204(COD) - 08/01/2019 Committee report tabled for plenary, 1st reading/single reading

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The Committee on Legal Affairs adopted the report by Sergio Gaetano COFFERATI (S&D, IT) on the 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission's proposal as follows.

### Objective of the Regulation

Members specified that the Regulation shall improve the effectiveness and speed of judicial procedures by simplifying and streamlining procedures for the notification or communication of judicial and extrajudicial documents at Union level, while at the same time helping to reduce delays and costs for individuals and businesses and encourage individuals and businesses to engage in cross-border transactions.

### Exchange of documents by electronic means

Members considered that the Regulation shall improve and speed up the exchange and service of judicial and extrajudicial documents in civil and commercial matters between Member States, while ensuring a high level of security and protection of the transmission of such documents, preserving the procedural rights of the recipient and protecting privacy and personal data.

The decentralised IT system to be established pursuant to Regulation (EC) No 1393/2007 should be based on the eCODEX system and should be managed by eu-LISA. The Commission shall submit as soon as possible, and in any event before the end of 2019, a proposal for a Regulation on cross-border communication in judicial proceedings (eCODEX).

The operating procedures of the decentralised computer system shall be defined by means of delegated acts. Any processing of personal data of natural persons under the Regulation shall be undertaken in accordance with Regulation (EU) 2016/679 and Directive 2002/58/EC.

### Protection of the defendant's interests

In order to preserve the defendant's rights, Members considered it necessary to ensure that the addressee explicitly accepts the method of service by electronic means. Where documents are served or transmitted electronically, the possibility should be available to provide an acknowledgement of receipt of such documents.

Where the defendant has not appeared and no certificate of service or delivery has been received, the judge shall still be able to give judgement, subject to certain limitations and provided that various requirements for the safeguard of the interests of the defendant have been complied with. In those cases, it is essential to ensure that all reasonable efforts are made to inform the defendant that court proceedings have been initiated against her or him. For that purpose, the court shall send alert messages through all available known channels of communication which are likely to be accessible in a manner that is exclusive to the addressee, including, for example, by means of that persons telephone number, e-mail address or private social media account.

### Parties domiciled in another Member State

Where a document instituting the proceedings has already been served upon the defendant and the defendant has not refused to accept such document, the law of the forum Member State shall offer parties who are domiciled in another Member State the possibility of appointing a representative for the purpose of service of documents on them in the forum Member State, provided that the party concerned has been duly informed about the consequences of that choice and has explicitly accepted such option.

### Time limits

Members proposed inserting certain deadlines to ensure that the transmission of documents and communications between transmitting agencies, receiving agencies and central agencies is carried out effectively. However, these deadlines shall not apply when the transmission is made by alternative means due to an unforeseen and exceptional disruption of the decentralised IT system.

## 2018/0204(COD) - 13/02/2019 Text adopted by Parliament, 1st reading/single reading

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The European Parliament adopted by 563 votes to 27, with 9 abstentions, a legislative resolution on the 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's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows.

#### Objective of the Regulation

Parliament specified that the Regulation shall improve the effectiveness and speed of judicial procedures by simplifying and streamlining procedures for the notification or communication of judicial and extrajudicial documents at Union level, while at the same time helping to reduce delays and costs for individuals and businesses and encourage individuals and businesses to engage in cross-border transactions.

The fundamental rights and freedoms of all persons concerned, in particular the right to the protection of personal data and privacy, shall be fully observed and respected.

#### Exchange of documents by electronic means

Members considered that the Regulation shall improve and speed up the exchange and service of judicial and extrajudicial documents in civil and commercial matters between Member States, while ensuring a high level of security and protection of the transmission of such documents, preserving the procedural rights of the recipient and protecting privacy and personal data.

The transmission of documents, requests, confirmations, receipts, certificates and any other communication 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 carried out through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure enabling the secure reliable and in real time cross-border exchange of information between the national IT systems.

The decentralised IT system to be established pursuant to Regulation (EC) No 1393/2007 should be based on the eCODEX system and should be managed by eu-LISA. The Commission shall submit as soon as possible, and in any event before the end of 2019, a proposal for a Regulation on cross-border communication in judicial proceedings (eCODEX).

The operating procedures of the decentralised computer system shall be defined by means of delegated acts. Any processing of personal data of natural persons under the Regulation shall be undertaken in accordance with the general Regulation on data protection (Regulation (EU) 2016/679 and Directive 2002/58/EC).

#### Electronic signatures

Where documents require a seal or handwritten signature, the amended text provides for the possibility of using instead the appropriate 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, provided that it is fully ensured that the person on whom the aforementioned documents are served has obtained knowledge of the documents in sufficient time and in a lawful manner.

#### Protection of the defendant's interests

In order to preserve the defendant's rights, Members considered it necessary to ensure that the addressee explicitly accepts the method of service by electronic means. Where documents are served or transmitted electronically, the possibility should be available to provide an acknowledgement of receipt of such documents.

Where the defendant has not appeared and no certificate of service or delivery has been received, the judge shall still be able to give judgement, subject to certain limitations and provided that various requirements for the safeguard of the interests of the defendant have been complied with. In those cases, it is essential to ensure that all reasonable efforts are made to inform the defendant that court proceedings have been initiated against her or him. For that purpose, the court shall send alert messages through all available known channels of communication which are likely to be accessible in a manner that is exclusive to the addressee, including, for example, by means of that persons telephone number, e-mail address or private social media account.

#### Parties domiciled in another Member State

Where a document instituting the proceedings has already been served upon the defendant and the defendant has not refused to accept such document, the law of the forum Member State shall offer parties who are domiciled in another Member State the possibility of appointing a representative for the purpose of service of documents on them in the forum Member State, provided that the party concerned has been duly informed about the consequences of that choice and has explicitly accepted such option.

#### Time limits

Members proposed inserting certain deadlines to ensure that the transmission of documents and communications between transmitting agencies, receiving agencies and central agencies is carried out effectively. However, these deadlines shall not apply when the transmission is made by alternative means due to an unforeseen and exceptional disruption of the decentralised IT system.