



2018/0204(COD)

1.10.2018

*****I**

DRAFT REPORT

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) (COM(2018)0379 – C8-0243/2018 – 2018/0204(COD))

Committee on Legal Affairs

Rapporteur: Sergio Gaetano Cofferati

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT 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)
(COM(2018)0379 – C8-0243/2018 – 2018/0204(COD))**

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0379),
 - having regard to Article 294(2) and Article 81 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0243/2018);
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(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.

Amendment

(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, ***while ensuring a high level of***

security in the transmission, safeguarding the rights of the addressee and the protection of privacy and personal data.

Or. en

Amendment 2

Proposal for a regulation

Recital 4

Text proposed by the Commission

(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.

Amendment

(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 ***and that a high level of security in the transmission and the protection of privacy and personal data are ensured.*** 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.

Or. en

Amendment 3

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4 a) The decentralised IT system to be established pursuant to Regulation (EC) No 1393/2007 should be based on the e-CODEX system and should be managed by eu-LISA. Adequate resources should

be made available to eu-LISA for such a system to be introduced and kept operational, as well as to provide technical support to transmitting and receiving agencies and central bodies in the event of problems in the operation of the system. The Commission should 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 (e-CODEX).

Or. en

Amendment 4

Proposal for a regulation

Recital 4 b (new)

Text proposed by the Commission

Amendment

(4 b) 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 should offer to 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.

Or. en

Amendment 5

Proposal for a regulation

Recital 6

Text proposed by the Commission

(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.*

Amendment

(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 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, 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.

Or. en

Amendment 6

Proposal for a regulation
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) In order to facilitate access to justice, costs occasioned by recourse to a judicial officer or a person competent under the law of the Member State addressed or by the use of a particular method of service should correspond to a single fee laid down by that Member State in advance which respects the principles

of proportionality and non-discrimination and does not exceed thirty euros. The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of services as long as they respect those principles and that condition. Member States should communicate such fixed fees to the Commission.

Or. en

Amendment 7

Proposal for a regulation

Recital 7

Text proposed by the Commission

(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.

Amendment

(7) Efficiency and speed in cross-border judicial proceedings requires direct, expedited **and secure** channels for serving documents on persons in other Member States. 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 an addressee who is domiciled in another Member State. Such type of direct electronic service should, **however, be permitted** only if there are appropriate safeguards for the protection of the interests of the addressees, **including** high technical standards **and** an explicit consent given by the addressee.

Or. en

Amendment 8

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8 a) Where the defendant has not appeared and no certificate of service or delivery has been received, the judge should 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 should 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 person's telephone number, e-mail address or private social media account.

Or. en

Amendment 9

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9 a) It is important to ensure that this Regulation is applied in compliance with Union data protection law and respects the protection of privacy as enshrined in the Charter of Fundamental Rights of the European Union. It is also important to ensure that any processing of the personal data of natural persons under this Regulation is undertaken in accordance with Regulation (EU) 2016/679 and

Directive (EC) 2002/58. Personal data under this Regulation should be processed only for the specific purposes set out in this Regulation.

Or. en

Amendment 10

Proposal for a regulation

Recital 10 – introductory part

Text proposed by the Commission

(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.

Amendment

(10) ***In order to define the detailed arrangements for the functioning of the decentralised IT system for communication and exchange of documents between the agencies and bodies designated by the Member States, and in order to determine the detailed arrangements for the functioning of the qualified electronic registered delivery services which will be used for the purpose of service of documents through electronic means, 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. Such delegated acts should guarantee effective, reliable and smooth transmission of the relevant data, as well as a high level of security in the transmission, the protection of privacy and personal data and, with regard to electronic service of documents, equal access for person with disabilities. Furthermore, 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.

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 1 – point 1

Regulation (EC) No 1393/2007

Article 1 – paragraph 3

Text proposed by the Commission

Amendment

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.

deleted

Or. en

Amendment 12

Proposal for a regulation

Article 1 – paragraph 1 – point 2

Regulation (EC) No 1393/2007

Article 2 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) the means of receipt of documents

(c) the means of receipt of documents

available to them for the cases set out in Article 3a(6); ;

available to them for the cases set out in Article 3a(4);

Or. en

Amendment 13

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EC) No 1393/2007

Article 3a – paragraph 1

Text proposed by the Commission

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.

Amendment

1. **The transmission of** documents, requests, **including the requests drawn up using the standard forms in Annex I**, 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 and reliable cross-border exchange of information between the national IT systems. **Such decentralised IT system shall be based on e-CODEX.**

Or. en

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EC) No 1393/2007

Article 3a – paragraph 2

Text proposed by the Commission

2. The general legal framework for the use of trust services set out in Council

Amendment

2. The general legal framework for the use of **qualified** trust services set out in

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.

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.

Or. en

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EC) No 1393/2007

Article 3a – paragraph 4 a (new)

Text proposed by the Commission

Amendment

The Commission is empowered to adopt delegated acts in accordance with Article 18 to establish the detailed arrangements for the functioning of the decentralised IT system. When exercising that power, the Commission shall ensure that the system guarantees an effective, reliable and smooth exchange of the relevant information, as well as a high level of security in the transmission and the protection of privacy and personal data in line with Regulation (EU) 2016/679 and Directive (EC) 2002/58.

Or. en

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EC) No 1393/2007

Article 3c – paragraph 1

Text proposed by the Commission

Amendment

1. Where the address of the person to be served with the judicial or extrajudicial

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:

document in another Member State is not known, Member States shall provide assistance *as soon as possible and in any event within 10 working days* by one or more of the following means:

Or. en

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EC) No 1393/2007

Article 3c – paragraph 2 – point a

Text proposed by the Commission

(a) the *method* of assistance which the Member State will provide in its territory pursuant to paragraph 1;

Amendment

(a) the *methods* of assistance which the Member State will provide in its territory pursuant to paragraph 1;

Or. en

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1393/2007

Article 6 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. On receipt of a document, an automatic receipt of delivery shall be sent *immediately* to the transmitting agency via the decentralised IT system referred to in Article 3a.

Or. en

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1393/2007

Article 6 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact ***as soon as possible and in any event within four working days*** the transmitting agency in order to secure the missing information or documents.

Or. en

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1393/2007

Article 6 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 ***as soon as possible and in any event within four working days***, together with the notice of return using the standard form set out in Annex I.

Or. en

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1393/2007

Article 6 – paragraph 4

Text proposed by the Commission

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." ;

Amendment

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, ***as soon as possible and in any event within four working days*** 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 ***at the same time*** 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 ***immediately*** to the transmitting agency, via the decentralised IT system referred to in Article 3a.

Or. en

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EC) No 1393/2007

Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4 a. Paragraphs 1 to 4 shall apply mutatis mutandis to situations referred to in paragraph 4 of Article 3a. However, in those cases, the deadlines defined in paragraphs 1 to 4 of this Article shall not apply, but the relevant operations shall be

carried out as soon as possible.

Or. en

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EC) No 1393/2007

Article 7a – title

Text proposed by the Commission

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

Amendment

Appointment of a representative for the purpose of service in the forum Member State

Or. en

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EC) No 1393/2007

Article 7a – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Where a document instituting the proceedings has ***already*** been served upon the defendant ***and the defendant has not refused to accept such document in accordance with Article 8***, the law of the forum Member State ***shall offer to*** parties who are domiciled in another Member State ***the option of*** appointing a representative for the purpose of service of documents on them in the forum Member State. ***If the party concerned has been duly informed about the consequences of choosing to avail of this option and has expressly chosen it, the service of documents shall be effected on the party's authorised representative in the forum Member State, in accordance with the***

laws and practices of that Member State.

Or. en

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EC) No 1393/2007

Article 7a – paragraph 2

Text proposed by the Commission

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.;*

Amendment

2. *The first paragraph is without prejudice to requirements under Union or national law imposing an obligation to appoint a representative in a Member State upon parties who are domiciled in another Member State for purposes other than the service of documents under this Regulation.*

Or. en

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EC) No 1393/2007

Article 8 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 *and the document in respect of which a translation is*

requested.

Or. en

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EC) No 1393/2007

Article 8 – paragraph 4

Text proposed by the Commission

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.

Amendment

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. ***If the court or authority rules that the refusal was not well founded, it shall proceed with the service on the addressee of a document communicating such decision, accompanied by the original document, without undue delay and in accordance with the provisions of this Regulation. The addressee may appeal against such decision, in accordance with the law of the forum Member State.***

Or. en

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)

Regulation (EC) No 1393/2007

Article 11 – paragraph 2 – subparagraph 2

Present text

Costs occasioned by recourse to a judicial

Amendment

(8 a) in Article 11, subparagraph 2 of paragraph 2 is replaced by the following:

Costs occasioned by recourse to a judicial

officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

officer or to a person competent under the law of the Member State addressed **or by the use of a particular method of service** shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination **and does not exceed thirty euros**. Member States shall communicate such fixed fees to the Commission."

Or. en

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EC) No 1393/2007

Article 15a – paragraph 1

Text proposed by the Commission

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:

Amendment

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 **both** of the following conditions **are** fulfilled:

Or. en

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EC) No 1393/2007

Article 15a – paragraph 1 – point a

Text proposed by the Commission

(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

Amendment

(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,

and

Or. en

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Regulation (EC) No 1393/2007

Article 15a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The Commission is empowered to adopt delegated acts in accordance with Article 18 in order to establish the detailed arrangements for the functioning of the qualified electronic registered delivery services which are to be used for the purpose of service of judicial documents by electronic means. When exercising that power, the Commission shall ensure that such services guarantee an effective, reliable and smooth transmission of the relevant documents, as well as a high level of security in the transmission, equal access for persons with disabilities and the protection of privacy and personal data in line with Regulation (EU) 2016/679 and Directive (EC) 2002/58.

Or. en

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EC) No 1393/2007

Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. The power to adopt delegated acts referred to in Article 17 shall be conferred on the Commission for ***an indeterminate***

2. The power to adopt delegated acts referred to in Article ***3a, in Article 15a and in Article*** 17 shall be conferred on the

period of time from [the date of entry into force of this Regulation].

Commission for a period of *five years* from [the date of entry into force of this Regulation].

Or. en

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 12

Regulation (EC) No 1393/2007

Article 18a and 18b

Text proposed by the Commission

Amendment

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

‘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.; ’

Or. en

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EC) No 1393/2007

Article 19 – paragraph 3

Text proposed by the Commission

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.

Amendment

3. Where the conditions set out in paragraph 2 are met, reasonable efforts shall be made to inform the defendant through **all** 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.

Or. en

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EC) No 1393/2007

Article 19 – paragraph 5 – subparagraph 3

Text proposed by the Commission

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

Amendment

Such application shall not be entertained if it is filed more than **thirty months** following the date of the judgment.

Or. en

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 13

Regulation (EC) No 1393/2007

Article 19 – paragraph 6

Text proposed by the Commission

6. After the expiry of the period of

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Amendment

6. After the expiry of the period of

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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.

thirty months 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.

Or. en

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 13 a (new)

Regulation (EC) No 1393/2007

Article 22 – paragraph -1 (new)

Text proposed by the Commission

Amendment

(13 a) in Article 22, the following paragraph is inserted before paragraph 1:

-1. Any processing of personal data carried out pursuant to this Regulation shall be done in accordance with Regulation (EU) 2016/679 and Directive (EC) 2002/58.

Or. en

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 13 b (new)

Regulation (EC) No 1393/2007

Article 22 – paragraph 1

Text proposed by the Commission

Amendment

(13b) in Article 22, paragraph 1 is replaced by the following:

1. Information, including in particular personal data, transmitted under this Regulation shall be used by *the* receiving

1. Information, including in particular personal data, transmitted under this Regulation shall be used by *transmitting*

agency only for the *purpose for which it was transmitted*.

agencies, receiving agencies and central bodies only for the specific purposes set out in this Regulation. Personal data which are not relevant for the purposes of this Regulation shall be immediately deleted.

Or. en

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 13 c (new)

Regulation (EC) No 1393/2007

Article 22 – paragraph 2

Text proposed by the Commission

2. **Receiving** agencies shall ensure the confidentiality of such information, in accordance with **their** national law.

Amendment

(13c) in Article 22, paragraph 2 is replaced by the following:

2. **Transmitting agencies, receiving agencies and central bodies** shall ensure the confidentiality of such information, in accordance with **Union and** national law.

Or. en

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 13 d (new)

Regulation (EC) No 1393/2007

Article 22 – paragraph 3

Text proposed by the Commission

3. Paragraphs 1 and 2 shall not affect national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.

Amendment

(13d) in Article 22, paragraph 3 is replaced by the following:

3. Paragraphs -1, 1 and 2 shall not affect **Union and** national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 13 e (new)

Regulation (EC) No 1393/2007

Article 22 – paragraph 4

Text proposed by the Commission

4. *This* Regulation shall be *without prejudice to Directives 95/46/EC and 2002/58/EC*.

Amendment

(13e) in Article 22, paragraph 4 is replaced by the following:

4. *Any processing of information carried out by European institutions and bodies in the framework of this* Regulation shall be *undertaken in accordance with Regulation (EC) 2001/45*.

Or. en

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EC) No 1393/2007

Article 23a – paragraph 1

Text proposed by the Commission

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.

Amendment

1. By [*one year* after the date of *entry into force*] at the latest, the Commission shall establish a detailed programme for monitoring the outputs, results and impacts of this Regulation.

Or. en

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Text proposed by the Commission

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.

Amendment

1. No *later* than [**four** 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, ***accompanied, where appropriate, by a legislative proposal.***

Or. en

EXPLANATORY STATEMENT

Regulation (EC) 2007/1393 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) has been a successful part of the programme on civil justice cooperation of the EU. In 2017, 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. In this report, a number of issues were raised, primarily in relation to the possibility of modernising the rules given advances in communication technology. Consequently, the Commission presented its Proposal to amend the Regulation on 31 May 2018.

The proposal by the European Commission aims at clarifying certain elements of Regulation (EC) 2007/1393, at improving the efficiency and speed of judicial procedures with cross-border implications in commercial and civil matters, in particular through the electronic exchange of documents, and at ensuring proper administration of justice in those cases, including by strengthening certain safeguards for the defendant.

The main elements of the Commission's proposal are:

- **Scope.** It is clarified that the Regulation applies in all situations where the domicile of the addressee of a judicial document is in another Member State.
- **Digital exchange of documents.** It is proposed that all communication and exchanges of documents between transmitting agencies, receiving agencies and central bodies are carried out electronically, through a decentralised IT system made up of national IT systems interconnected by a communication infrastructure. Such decentralised IT system should be established through implementing acts. Alternative means should be used in cases of unforeseen and exceptional disruption of the decentralised IT system.
- **Unknown address of the person to be served.** Member States would be required to provide assistance in locating the whereabouts of a recipient, through at least one of three alternative options.
- **Obligation to appoint a representative in the forum Member State for the purpose of service of documents.** The proposal accepts existing laws and practice in several Member States, according to which foreign parties to proceedings may be required to appoint a representative to serve judicial documents on them in the forum Member State, after those parties have been served with the document instituting the proceedings.
- **Right to refuse a document.** The proposal clarifies the procedure whereby the addressee can refuse to accept a document if it is not drawn up or translated into an appropriate language she or he understands. The time limit to refuse a document is set to two weeks.
- **Alternative direct methods of service of documents.** Electronic service of documents is introduced as an alternative method of service under the Regulation. Alternative methods of service also include, inter alia, the service by post and the direct service through judicial officers, officials or other competent persons of the Member State addressed. With regard to the service by post, a specific return slip is

introduced and the concept of ‘substituting recipients’ is clarified. Concerning direct service, transmitting agencies and courts seised with the proceedings would be permitted to use this method, which would be applicable in the territory of all Member States.

- **Defendant not entering an appearance.** The court seised with the proceedings is required to send alert messages about the initiation of the proceedings or about the default judgment to the defendant *in absentia* through available channels of communications. The period of time for the availability of the extraordinary review is harmonised and set to two years from the issuance of the default judgment.

Rapporteur’s approach and main changes proposed

The rapporteur supports the aim of the proposal to improve the effectiveness and the speed of the exchange and service of judicial and extrajudicial documents cross-border. Electronic procedures should play an important role in this regard. At the same time, it is necessary to ensure the protection of the rights of the parties and that any new procedure introduced guarantees smooth and reliable exchanges of documents, as well as high security standards, accessibility and protection of privacy and of personal data.

The clarifications to Regulation (EC) 2007/1393 proposed by the Commission are generally welcome since they will limit legal uncertainty and fragmentation in the application of the provisions of the Regulation.

The rapporteur supports the proposal to introduce electronic exchange of documents between transmitting agencies, receiving agencies and central bodies, through the establishment of a decentralised IT system made up of national IT systems interconnected by a secure and reliable communication infrastructure. Such system should be based on e-CODEX and its modalities of functioning should be defined through delegated acts. The decentralised IT system should ensure high security and the protection of privacy and personal data, in line with Regulation (EU) 2016/679 and Directive (EC) 2002/58.

The rapporteur also supports the introduction of the electronic service as alternative method of service. However, in order to safeguard defendant’s rights, it is necessary to ensure that the addressee explicitly accepts this method of service and that the technical means used for the exchange of documents are effective and guarantee, inter alia, high security, accessibility, privacy and protection of personal data.

The rapporteur considers that parties who are domiciled in another Member State should be offered the possibility to appoint a representative in the Member State where the proceedings are taking place for the purpose of service of documents on them. This should however not be an obligation for the parties, because of the additional costs it would impose on them and because reliable and smooth alternative methods of service are available. The measures of this Regulation should in any case be without prejudice to Union and national requirements imposing an obligation to appoint a representative in the forum Member State upon parties who are domiciled in another Member State for other purposes than the service of documents under this Regulation.

In order to ensure access to justice, Regulation (EC) 2007/1393 establishes limitations to the payments that Member States may impose on applicants for the recourse to a judicial officer or to a person competent for the service of documents or for the use of a particular method of

service. However, costs vary significantly from Member State to Member State and can reach more than 100 euros for direct service in certain cases. The rapporteur believes that the costs should not be excessive and too burdensome for applicants, since this might limit the use of these alternative methods of service and negatively affect access to justice. For these reasons, it is necessary to establish a cap to the payments that Member States may impose on applicants for the recourse to a judicial officer or to a person competent for the service of documents or for the use of a particular method of service.

It is useful to update the provisions of Regulation (EC) 2007/1393 on the protection of privacy and of personal data, considering the recent developments in Union law in this area and, in particular, the approval of Regulation (EU) 2016/679.

The rapporteur proposes to insert certain specific deadlines in Article 6 in order to ensure that transmission of documents and communications between transmitting agencies, receiving agencies and central bodies is smooth and effective. Those deadlines depend on the electronic transmission of documents and communications, it is therefore appropriate to foresee that they would not apply where transmission is carried out through alternative means because of an unforeseen and exceptional disruption of the decentralised IT system.

Clarifications and minor changes are inserted in Article 8, regarding the procedure on the right of the addressee to refuse to accept a document if it is not drawn up or translated into an appropriate language, and in Article 19, with regard to the conditions for default judgements and the safeguards for the defendants in those cases.