

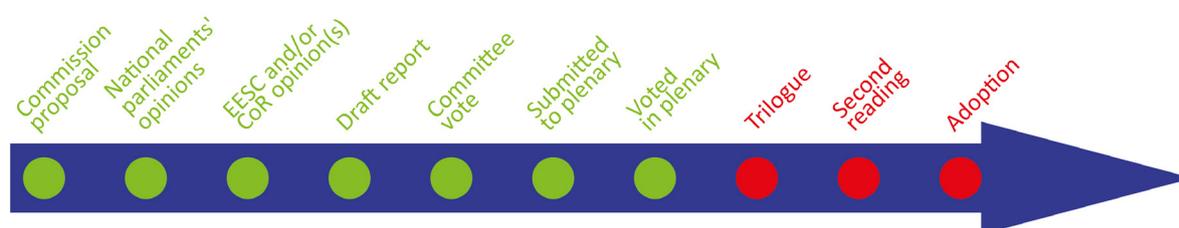
Reform of the Service of Documents Regulation

OVERVIEW

In May 2018, the Commission put forward a proposal for amending the existing Regulation on Cross-border Service of Documents in civil proceedings. The proposal aims, above all, to replace the existing mechanisms of paper transmission with an electronic system. National information technology (IT) systems would be connected into one network, and the use of paper transmission would become an exception, available only in the event of a failure of the electronic system. Within Parliament, a draft report was prepared by the Legal Affairs Committee in October 2018, and in February 2019, the institution adopted its first-reading position on the proposal.

Within Council, following an exchange of views between delegations and work at technical level, a policy debate is envisaged. Once Council reaches a general approach, trilogue negotiations will be able to start.

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)		
<i>Committee responsible:</i>	Legal Affairs (JURI)	COM(2018) 379 31.5.2018
<i>Rapporteur:</i>	Sergio Gaetano Cofferati (S&D, Italy)	2018/0204(COD)
<i>Shadow rapporteurs:</i>	Emil Radev (EPP, Bulgaria); Angel Dzhambazki (ECR, Bulgaria); Jean-Marie Cavada (ALDE, France); Kostas Chrysogonos (EUL/NGL, Greece)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Adoption of general approach by Council and opening of trilogue negotiations	



Introduction

In civil proceedings, courts decide cases concerning claims arising from private law (e.g. contracts, torts (delicts), property, succession, family law, company law or intellectual property law). The proper functioning of civil procedure is therefore of paramount importance for the everyday lives of citizens, as well as for businesses. The service of procedural documents – such as statements of claim (the documents through which claimants initiate proceedings), defendants' replies, court summons, or court decisions – is of crucial significance when it comes to the smooth initiation and operation of civil proceedings. Without the efficient and timely service of documents, litigants would not know about the procedure or its different stages, which could have serious adverse effects on their ability to defend their rights and protect their legally recognised interests.

According to estimates,¹ as many as 3.4 million civil and commercial court proceedings had cross-border implications in the EU in 2018. Such cases often entail the need to serve documents to parties in another Member State, for instance if the claimant and defendant live in different countries, or a foreign witness needs to be heard. However, as civil procedure remains the preserve of national law, its proper functioning in cross-border situations – including in the crucial area of service of documents – is hampered by differences between national laws and the mutual incompatibility of national procedures. The rules on how exactly documents should be sent, how their receipt should be confirmed, and what happens if they cannot be delivered differ from country to country. As a result, litigants suffer from additional costs and legal uncertainty, they can be prevented from defending their rights efficiently, and cases are often protracted.

However, acting in accordance with Article 81 of the Treaty on the Functioning of the European Union (TFEU), EU legislation can be used to help to reduce the costs and uncertainty, increase the protection of the fundamental right of access to justice and the right to defend one's interests in civil proceedings, and speed up civil proceedings. This can be achieved, at EU level, by promoting judicial cooperation in civil matters and ensuring the compatibility of national civil procedures, including in the area of the service of documents.

Existing situation

Adoption and entry into force of the current regulation

The existing [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) replaced, as from 13 November 2008, the earlier [Council Regulation \(EC\) No 1348/2000](#) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. Denmark initially opted out of the regulation, but on 19 October 2005, it 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.² The agreement entered into force on 1 July 2007. The United Kingdom and Ireland opted out.

Scope

The regulation applies whenever a judicial or extrajudicial document pertaining to civil proceedings, needs to be transmitted from one Member State to another in order to be delivered ('served') in that second Member State. The regulation applies to civil cases only, and administrative or criminal law cases are excluded from its scope. Likewise, cases concerning the liability of public bodies for the exercise of state authority – even if governed, in some Member States, by civil proceedings – are excluded from its scope. Furthermore, the regulation may be used only if the address of the person to be served with the document is known.

Nonetheless, in case [C-226/13 Fahnenbrock](#), the Court of Justice ruled that civil actions for compensation for disturbance of ownership and property rights, contractual performance and damages, brought by private persons who are holders of government bonds against the issuing State, fell within the scope of the regulation in so far as it did not appear that they were manifestly outside the concept of civil or commercial matters.

Transmitting and receiving agencies, central body

The regulation requires every Member State to designate its transmitting agencies and receiving agencies for the cross-border transmission of documents. These can be public officers, authorities or other persons, and it is up to the Member State to decide. Furthermore, Member States can decide to centralise those functions, for instance by designating one transmitting agency and only one receiving agency, or even opt for full centralisation by designating a single agency to perform both functions.

In addition to transmitting and receiving agencies, each Member State must also designate a central body responsible for:

- supplying the transmitting agencies with information;
- seeking solutions to any difficulties that arise during transmission of documents for service;
- forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

Transmission and service of judicial documents

Standard procedure – between agencies

The regulation states that judicial documents are to be transmitted directly and as soon as possible between the transmitting and receiving agencies. For this purpose, the agencies may use 'any appropriate means', provided that the content of the document received is 'true and faithful' to the original, and that all information is 'easily legible'. Documents transmitted on the basis of the regulation do not need to be subject to any formalities, in particular legalisation of documents. Concerning translation, the transmitting agency should warn the applicant if the document needs to be translated into a different language in order to be acceptable. In that case, it is the applicant who bears the costs up front, although a court may later decide about reimbursement.

Once the receiving agency receives the document, it sends a receipt to the transmitting agency within seven days. If the request is 'manifestly outside the scope' of the regulation or the formal requirements have not been complied with, the receiving agency returns the documents to the transmitting agency.

The final step is the service of the document to the addressee. This is the task of the receiving agency, which should follow either its own national legislation, or a particular method requested by the transmitting agency, unless that method is incompatible with the law of the Member State where the document is served. The deadline for serving the document is set at one month from its receipt by the receiving agency.

The addressee may refuse to accept a document if it is drawn up in a language he or she does not understand, or in a language that is not an official language of the Member State where he or she resides. The Court of Justice ruled in [Case C-14/07 Ingenieurbüro Michael Weiss](#) that the fact that the addressee of a document served has agreed, in a contract concluded with the applicant in the course of his business, that correspondence is to be conducted in the language of the Member State of transmission does not give rise to a presumption of knowledge of that language, but is evidence that the court may take into account in determining whether the addressee understands the language of the Member State of transmission. In [Case C-519/13 Alpha Bank Cyprus](#), the Court of Justice ruled that the receiving agency was required, in all circumstances and without any margin

of discretion, to inform the addressee of a document of his right to refuse to accept that document. However, if the agency fails to do so, the proceedings are not invalid, but need to be rectified (a translation needs to be provided).

Further clarifications on the addressee's right to refuse the document on linguistic grounds were provided by the Court in [Case C-384/14 *Alta Realitat*](#), in which it ruled that the court seized may not prevent the addressees from exercising their right to refuse to accept that document, even if the court is aware that the addressee knows the language of the document. It is only *after* the addressees have effectively exercised their right to refuse to accept the document that the court may verify whether that refusal was well founded. If that is the case, the court may in principle apply the consequences of unjustified refusal of service, as provided by national law.

Other procedures

Diplomatic and consular channels

In exceptional circumstances, Member States may forward documents to receiving agencies in other Member States by consular or diplomatic channels. Furthermore, Member States may serve judicial documents on residents of another Member State via diplomatic or consular channels, provided that this is done 'without application of any compulsion'. However, the host Member State may make a notification that it is opposed against this form of service in its territory. Such an exception may not, however, cover nationals of the Member State in which the documents originate.

Postal services

Member States are also free to serve judicial documents directly via postal services on persons residing in another Member State by registered letter with acknowledgement of receipt or equivalent. In [Case C-354/15 *Henderson v Novo Banco*](#), the Court of Justice provided an ample interpretation of the rules on postal delivery of documents instituting civil proceedings. Specifically, the Court ruled that the acknowledgment of receipt of the registered letter containing the document to be served on the addressee could be replaced by another document, provided that it was equivalent as regarded information provided and evidence as to delivery. Furthermore, the Court ruled that the document could be served on an adult person who was inside the habitual residence of the addressee and who was either a member of his or her family or an employee in his or her service. However, the addressee could attempt to prove, by all admissible forms of evidence before the court hearing the matter in the Member State of transmission, that he or she did not know about the proceedings in spite of this form of service (to a family member or employee).

Direct service through local officials

Finally, any person concerned by a judicial proceeding can serve judicial documents directly through the judicial officers, officials or other competent persons of the Member State addressed, where such direct service is permitted under the law of that Member State.

Transmission, not placing in court file with a fiction of service

In [Case C-325/11 *Adler*](#), the Court ruled that the regulation precluded Member States from stating in their national legislation that, rather than transmitting the documents to another Member State, the documents could be placed in the case file with a legal fiction that they were effectively served, if the addressee had failed to appoint a representative authorised to accept service and resident in the first Member State, in which the judicial proceedings were taking place.

Service of extrajudicial documents

When it comes to extrajudicial documents, the regulation succinctly provides that they may be transmitted for service in another Member State in accordance with the provisions of the regulation. The notion of an extrajudicial document is not defined in the regulation. In [Case C-14/08 *Roda Golf & Beach Resort SL*](#), the Court ruled that the notion of 'extrajudicial document' is a 'Community law concept' (i.e. now an EU law concept), and therefore its scope is determined by EU law, not by national law. Without specifying the exact scope of extrajudicial documents, the Court pointed out that 'the regulation cannot be limited to legal proceedings alone' and that the regulation clearly applies also to documents that are transmitted 'in the absence of legal proceedings if that cooperation has cross-border implications and is necessary for the proper functioning of the internal market'. In the case at hand, the Court found that a notarial deed fell within the scope of the regulation.

In [Case C-223/14 *Tecom Mican SL*](#), the Court further explained that the concept of extrajudicial document encompassed not only documents drawn up or certified by a public authority or official but also private documents of which the formal transmission to an addressee residing abroad was necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. The service of such an extrajudicial document could be effected even where the applicant had already effected an earlier service of that document through a means of transmission not provided for in the regulation, or through another of the means of transmission put in place by it. The court also inferred a presumption of the cross-border implications of the service, ruling that there was no need to ascertain such implications and necessity for the internal market on a case-by-case basis.

Defendant not appearing and default judgment

If writ of summons delivered

The regulation contains special rules if the document that was served was a 'writ of summons', i.e. a document requesting a party to appear in court for civil proceedings as defendant. If the defendant does not appear in court after being summoned (and the writ of summons was transmitted under the regulation), the court may – under certain circumstances – give a judgment in the absence of that defendant (known as a default judgment). This is possible only if:

- 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*
- the document was actually delivered to the defendant or to his residence by another method provided for by this regulation;

and providing, in either case, the service or the delivery was effected in sufficient time to enable the defendant to defend.

If writ of summons not delivered

Member States have an option to allow their courts to pass judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled:

- the document was transmitted by one of the methods provided for in the regulation;
- 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;
- 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.

Possibility to relieve defendant of effects of deadline expiry

The judge may relieve the defendant from the effects of the expiry of the time for appeal from the judgment if the following conditions are fulfilled:

- 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; and
- the defendant has disclosed a prima facie defence to the action on the merits.

Each Member State may set a deadline after which such an application will not be accepted, but that deadline may not be shorter than one year following the date of the judgment.

According to the Court of Justice, if a Member State has set a deadline in line with these rules, it cannot apply its own rules of national law providing for a longer deadline ([Case C-70/15 Lebek v Domino](#)). In the case at hand France communicated a deadline of one year from the judgment, but French national provisions were more lenient to defendants allowing a deadline of two months from actually being served with the documents (which the defendant actually received more than one year from the judgment).

Parliament's starting position

In July 2017, the Parliament adopted an [own-initiative resolution](#) asking the European Commission to put forward a proposal for a directive on common minimum standards of civil procedure. The resolution contains, as an annex to it, a ready-to-use text of a draft directive on common minimum standards of civil procedure. The Parliament actually called upon the Commission to table that text as its legislative proposal on the basis of Article 81(2) TFEU. Concerning the service of documents, the Parliament pointed to differences between national laws and urged the Commission to lay down minimum standards that would:

- prioritise the prompt and safe receipt of documents, confirmed by proof of delivery;
- encourage use of modern communication technologies;
- place electronic service on an equal footing with postal service; and
- ensure that the content of the documents was true and faithful.

The draft proposal consists of 28 articles divided into three chapters – Chapter I: 'Subject matter, scope and definitions', Chapter II: 'Minimum standards for civil proceedings', and Chapter III: 'Final provisions'. A special article 17 would be devoted specifically to service of documents. Article 17(1) would require Member States to ensure that methods guaranteeing receipt of the served documents were used as a matter of principle. Article 17(2) would require Member States to ensure that the documents instituting the proceedings or equivalent documents and any summons to a court hearing be served in accordance with the national law by one of the following methods:

- personal service;
- postal service;
- service by electronic means, such as fax or email.

In all cases, service would have to be attested by an acknowledgment of receipt including the date of receipt, and be signed by the addressee.

According to article 17(3), if service by one of the above methods was impossible, and where the defendant's address was known with certainty, service would be effected by one of five alternative methods:

- in person at the defendant's personal address, on persons living in the same household as the defendant or employed there;
- in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises, on persons employed by the defendant;

- by way of deposit of the documents in the defendant's mailbox;
- by way of deposit of the documents at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit;
- postal service without proof;
- electronic means attested by an automatic advice of delivery, provided the defendant had expressly accepted this method of service in advance.

Preparation of the proposal

REFIT exercise

An evaluation of the regulation on taking of evidence was included in the Commission's 2018 work programme under the [REFIT](#) initiatives in the area of justice and fundamental rights.³ In the framework of the [REFIT Platform](#) (composed of representatives of national administrations and civil society),⁴ stakeholders recommended that the Commission explore possibilities for reducing time in taking of evidence in other EU Member States. It was also observed that a number of frequently used channels, such as taking of evidence through consular agents or diplomatic officers were not acknowledged by the regulation.

Expert group

The Commission appointed an [expert group](#) on modernisation of judicial cooperation in civil and commercial matters (E03561). It was composed of 20 members,⁵ drawn mainly from academia and the judiciary, as well as from among law practitioners. Between January and April 2018, the group held a total of six meetings *in camera*. The conclusions of the expert group were not made public (and are not contained in the [minutes](#)).

Impact assessment

The proposal was accompanied by an [impact assessment](#). As an annex, it contained a detailed evaluation of the functioning of the regulation in all the Member States, based on a study delivered by an external consulting firm. Concerning the existing legal framework, the Commission found that the regulation had resulted it in 'some clear improvements concerning the efficacy of the service of documents', but that there were still 'some issues such as delays or confusion for the parties involved', which led to the conclusion that the regulation had 'not fully achieved its general, specific and operational objectives'. Among detailed problems with the current regulation, the Commission identified the following in particular:

- lack of clear information on the channels available for assistance with locating an addressee (if their address is unknown),
- unclear definition of extra-judicial documents, potentially leading to legal uncertainty,
- unclear elements in the right of the addressee to refuse the acceptance of the document on linguistic grounds, a source of significant difficulties for the stakeholders,
- varying practices relating to costs of the serving documents,
- reliance on paper-based means of communication between transmitting and receiving agencies,
- restrictions on the use of direct service or its inaccessibility,
- use of fictitious or alternative methods of service based on national law instead of the regulation,
- insufficient protection of the defendant against the effects of default judgments,
- non-compliance of receiving agencies with the deadlines set out in the regulation.

The changes the proposal would bring

More precise scope

The scope of the regulation would be modified to cover the service of judicial documents on persons domiciled in a Member State other than that where the judicial proceedings are taking place and of extrajudicial documents that have to be transmitted from one Member State to another. This is designed to eliminate situations in which defendants in another Member State are served in the territory of the Member State of origin through alternative or fictitious methods of service of documents (where the documents are for instance left in the court case file), as permitted by the procedural law of the Member State of origin, irrespective of whether the information on their foreign address is available to the court or other judicial authority seized with the proceedings. The Commission argues that under the new wording, it would no longer be possible for such situations to be removed from the scope of the regulation as being a form of 'domestic' service of documents.

Electronic transmission of documents

Under the new rules, communication and exchange of documents between sending and receiving authorities would be carried out electronically, on an obligatory basis. A decentralised IT system made up of national IT systems interconnected by a secure and reliable communication infrastructure would be put in place. Traditional means of communication could be used only in cases of unforeseen and exceptional disruption of the IT system.

Assistance in locating whereabouts of addressee

A new rule would oblige Member States to provide assistance in locating the whereabouts of a recipient in another Member State. The proposal offers three alternative options, from which each Member State would have to provide at least one in its territory for persons asserting their rights from another Member State. The three options would be: judicial assistance through authorities designated by the Member States; provision of access to public domicile registers through the e-justice portal; or provision of detailed information via the e-justice portal on available tools for locating persons in their territories. Each Member State would have to inform the Commission of the option it would offer under the regulation.

Representative for receiving documents

A new article would be inserted whereby foreign parties to proceedings may be required to appoint a representative to serve documents in the proceedings on them in the Member State of the proceedings. However, this option would only be available after that party had been duly served with the document instituting the proceedings. As an alternative, parties could opt for electronic service of documents (see below).

Right of refusal for linguistic reasons

The current rules on the addressee's refusal to accept a document for linguistic reasons would be modified to take stock of European Court of Justice case law. The modified rule would provide that if the addressee has refused to accept the document, the court or authority seized with the legal proceedings would have to verify whether the refusal was well founded. If that was indeed the case, the document could be delivered to the addressee according to one of the methods provided in the regulation, accompanied by a translation into one of the appropriate languages (official language in the place of service or a language known to the addressee). In that case, the date of service of the document would be the date on which the document accompanied by the translation was served in accordance with the law of the Member State addressed.

Advisory committees

In October 2018, the European Economic and Social Committee (EESC) adopted its [opinion](#) on the proposal (rapporteur: Bernardo Hernández Bataller, Diversity Europe – Group III, Spain). The Committee generally supports the proposal and believes that by prioritising electronic communications it will help to cut backlogs in delivering documents in civil proceedings. Without making any specific proposal on how to improve the Commission's text, the EESC highlighted that it is 'important to safeguard and guarantee the integrity and purpose of the document, whether judicial or extrajudicial'.

National parliaments

None of the 15 parliamentary chambers from the 13 Member States that scrutinised the proposal issued a reasoned opinion by the deadline of 22 October 2018. The Portuguese [Assembleia de la Republica](#), the Romanian [Senat](#), and the German [Bundesrat](#) adopted positions on the proposal. The Portuguese members of parliament considered that, given the number of cross-border civil litigations, the aim of the regulation could be better achieved at EU level. Romanian senators agreed with the proposed legal basis and generally backed the proposal. German senators, in turn, considered that the deadline for implementing the IT systems – set at 24 months – was too short, noting that it could take several years before such an interconnected system would be actually put in place. Alternatively, Member States could be given more discretion concerning the transition from paper to electronic service of documents. Also, the exceptions allowing traditional forms of communication to be used should be broadened beyond the mere failure of IT systems.

Stakeholders' views⁶

The Commission conducted a [public consultation](#) from 8 December 2017 to 2 March 2018, addressing Regulation (EC) No 1206/2001 on taking of evidence jointly with Regulation (EC) No 1393/2007 on service of documents. A total of 131 contributions were received (mainly from Poland, followed by Germany, Hungary and Greece).

The Council of Bars and Law Societies of Europe ([CCBE](#)), which represents the bars and law societies of 45 countries and through them more than 1 million European lawyers, highlighted its support for the move towards electronic transmission of documents to be served, as it would allow rapid management of judicial cooperation. The CCBE stressed that it would like to see the e-CODEX infrastructure being used only in cross-border e-justice initiatives based on interconnection of judicial systems as well as for serving of documents or exchanges of evidence.

The Council of Bars also mentioned that it is equally important that any mechanism enabling the electronic service of documents take into account progress in standardisation in related fields, e.g. [Regulation 910/2014](#) on electronic identification and trust services for electronic transactions in the internal market (eIDAS Regulation) and the [General Data Protection Regulation](#) (GDPR).

In addition, the CCBE noted that before moving towards an electronic system of service of documents, significant standardising had to be put in place so as to ensure that the various users were easily capable of receiving files submitted through the electronic delivery service used by the e-CODEX system. Consequently, the Council of Bars called for Union-wide minimum standards to ensure that national e-justice systems were able to guarantee rights to a fair trial.

The EU-wide lawyers' organisation also pointed out that the electronic system of service of documents must ensure protection of professional secrecy and legal professional privilege.

Another issue is the cross-border provision of legal services, such as the filing of a court case in a different Member State, which requires access to the electronic document service system of another Member State. The CCBE drew attention to the CJEU judgment in [Case C-99/16 Lahorgue](#), in which the Court ruled that refusing a lawyer from a different Member State access to the national IT network for filing court documents was a breach of the freedom to provide services.

Legislative process

European Parliament

Draft report

In Parliament, the file was assigned to the Committee on Legal Affairs (JURI), and Sergio Gaetano Cofferati (S&D, Italy) was appointed rapporteur in August 2018. He presented his draft report on 1 October 2018. The main changes he proposed included the following:

- the addressee would have to accept electronic service of documents explicitly and the technical means used for the exchange of documents would be effective and guarantee, inter alia, high security, accessibility, privacy and protection of personal data;
- parties domiciled in another Member State would be offered the possibility to appoint a representative in the Member State where the proceedings were taking place for the purpose of service of documents;
- a cap would be placed on the payments that Member States could impose on applicants for 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;
- specific deadlines for transmission of documents would be introduced.

The committee report was adopted in December 2018.

First-reading position

On 13 February 2019, Parliament adopted its first-reading position on the proposal. Its main points included the following elements.

- A decentralised IT system for the operation of the regulation should be based on the existing e-CODEX platform and should be supported by Union funding.
- A rule guaranteeing that the fundamental rights and freedoms of all persons involved, and in particular the right to the protection of personal data and privacy, should be fully observed and respected.
- If the address of the person to be served with the judicial or extrajudicial document in another Member State is not known, Member States must provide assistance, without undue delay and in all cases within 10 working days.
- The regulation should be without prejudice to any requirements under national law, relating to the accuracy, authenticity and due legal form of documents.
- Where the original documents featured a seal or handwritten signature, the issued document must also feature a seal or handwritten signature. The document issued by the receiving agency would then have the same effect as the original document.
- Short deadlines (four days) should be imposed upon the receiving agency to act when requested.
- The Commission should be empowered to adopt delegated acts to supplement the regulation by establishing the detailed arrangements for the functioning of the decentralised IT system and to establish the detailed arrangements for the functioning of the qualified electronic registered delivery services that are to be used for the purpose of service of judicial documents by electronic means.

Council

The UK and Ireland notified their willingness to opt in for the adoption of the legislation in question on 26 and 23 October 2018, respectively.

Within Council, the proposal has been examined regularly at technical level by the Working Party on Civil Law Matters, jointly with the proposal on the taking of evidence in civil proceedings. During the negotiations in the working party, the issue of digitalisation was a key topics, in particular the following four aspects:

- mandatory versus non-mandatory use of an IT system,
- centralised versus decentralised IT system,
- use of an existing versus a new IT solution,
- costs associated with the establishment and use of an IT system.

With regard to mandatory versus non-mandatory availability and use of an IT system, the positions of the delegations were split. With regard to the use of a centralised or a decentralised IT system, the majority of the delegations opted for the decentralised approach. Concerning the issue of creating a new IT solution or using an existing one, delegations were split. It was pointed out that e-Codex has not yet been implemented and is not used by all the Member States. Concerning costs, some delegations pointed out that the estimates made by the Commission (between €20 000 and €50 000 per Member State annually) could be too optimistic.

On 24 May 2019, the Council published a document in which the presidency summarised the on-going discussion, noting that the issue of digitalisation was a central one, and that making it optional could be a way to reach a compromise. The presidency invited the Council to hold a policy debate on the proposal to address the following three key questions:

- whether the digitalisation of judicial cooperation should be based on a secure decentralised IT system comprising interconnected national IT systems;
- whether the introduction and the use of such an IT system should be mandatory for the Member States, and if so, could other means of communication be allowed;
- whether e-CODEX could be the software solution to be used for the decentralised IT system.

Further steps

With the new European Parliament elected in May 2019, the principle of political discontinuity provided for in Article 39 paragraph 2 of the [Framework Agreement on relations between the European Parliament and the European Commission](#)⁷ provides the possibility for the European Commission to withdraw legislative proposals made by the outgoing Commission. Given the advanced stage of the proceedings and the lack of political controversy, this is highly improbable. Therefore, it can be expected that legislative proceedings on the proposal will continue, with Parliament appointing a new rapporteur. For trilogue negotiations to commence, however, the Council still needs to reach a general agreement on the proposal.

EP SUPPORTING ANALYSIS

Anglmayer I., [Modernising judicial cooperation in civil and commercial matters: Implementation Appraisal](#), Implementation Appraisal Briefing, EPRS, European Parliament, May 2018.

Hess B., [Harmonized Rules and Minimum Standards in the European Law of Civil Procedure](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, June 2016.

Mańko R., [Europeanisation of civil procedure – Towards common minimum standards?](#), EPRS, European Parliament, June 2015.

Tulibacka M., Sanz M. and Blomeyer R., [Common minimum standards of civil procedure: European Added Value Assessment](#), EPRS, European Parliament, April 2016.

OTHER SOURCES

EP Legislative observatory, [Procedural file 2018/0204\(COD\) – Service of judicial and extrajudicial documents in civil or commercial matters \(service of documents\)](#).

Commission, [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) 379 final, 31 May 2018.

Commission Staff Working Document – [Impact Assessment](#) accompanying the document 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), SWD(2018)287 final.

ENDNOTES

- ¹ See European Commission's [proposal for a regulation](#), page 1, footnote 6.
- ² Council Decision [2005/794/EC](#) of 20 September 2005 on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters; Council Decision [2006/326/EC](#) of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters.
- ³ Commission staff working document – [Impact Assessment](#) accompanying the document proposal for a regulation amending 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, SWD(2018) 285 final, 31.5.2018, pp. 43-44.
- ⁴ The REFIT platform was set up by the May 2015 [Better Regulation communication](#) as an advisory body to the Commission in the area of regulation. It consists of a government group, with one seat per Member State, and a stakeholder group with 18 members and two representatives from the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR).
- ⁵ See [register of Commission expert groups](#).
- ⁶ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'EP supporting analysis'.
- ⁷ E.M. Poptcheva, [The European Commission's right to withdraw a legislative proposal](#), EPRS, European Parliament, April 2015, p. 2.

DISCLAIMER AND COPYRIGHT

This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.

© European Union, 2019.

eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

<http://epthinktank.eu> (blog)



First edition. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.