Service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)

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The Commission presents a report on the application of 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 report recalls that co-operation between the judicial authorities of the Member States of the European Union is a keystone for a European area of freedom, security and justice. Such cooperation is particularly necessary in order to ensure an efficient transmission of judicial and extrajudicial documents for purposes of service between the Member States.

Prior to any Union action on this matter, the cross-border service of documents between Member States was mainly governed by the 1965 Hague Convention on the service of documents.

On 29 May 2000, the European Union adopted Regulation (EC) No 1348/20002 laying down procedural rules to facilitate the cross-border transmission of documents.

On 1 October 2004, the European Commission adopted a report on the application of the 2000 Regulation which concluded that that the level of knowledge of those involved in the application of the Regulation, in particular local bodies, needed to be improved.

Thus, the Commission proposed an amendment in 2005 and as of 13 November 2008, the 2000 Regulation was replaced by Regulation (EC) No 1393/2007 of the European Parliament and the Council.

The 2007 Regulation stipulated that no later than 1 June 2011 and every five years thereafter the Commission should review the application of the Regulation and propose amendments if necessary. This Report presents the **Commission's first assessment of the application of the 2007 Regulation** for the period running from 2008 to 2012.

The application of the 2007 Regulation: in general, it may be concluded that the Regulation operates well and has reached its objective to increase legal certainty in cross-border service of documents as well as speed and efficiency in transmission between Member States. Nevertheless, some points merit attention in order to evaluate whether and how the system of service between Member States may be further improved. The report notes that the increasing judicial integration of Member States has brought to light the limits of the current text of the Regulation. In the light of the role of the Regulation in the entire framework of judicial cooperation in civil justice matters, particularly in the light of the abolition of exequatur, **a deeper integration within the Union, for instance by way of minimum standards on service, may be considered**. Furthermore, even if the delays for cross-border service have been progressively reduced, an efficient conduct of judicial proceedings in Europe requires **further progress to be made**.

The report focuses, in particular, on the following issues:

- Electronic service of documents: electronic service is an emerging method to serve documents within Member States. In most systems where such method of service exists, citizens (usually commercial or

financial institutions) register with the courts, thus permitting to be served directly by electronic means. Currently, the Regulation does not mention electronic service. The question has been raised in certain Member States whether foreign citizens could register into the national electronic service system and whether a service effected on such foreigners should be considered a cross-border service for purposes of the application of the Regulation. **The answer to this question has important consequences, such as whether the right to refuse a document which is not written in one of the languages foreseen** in Article 8 of the Regulation applies. It should be considered whether electronic service should be available at cross-border level and if and how the Regulation should apply in such a case.

- Abolition of exequatur: the gradual abolition of exequatur raises the question on the **need of a higher degree of harmonisation concerning national civil procedural rules, in general**, and concerning rules on service of documents, in particular. As a result of disparities between Member States, it is uncertain currently in which circumstances the protection ensured by the Regulation actually applies. In particular, it is not sure that foreign defendants will be protected, where appropriate, by the Regulation's rules on the right to refuse to accept a document, the date of service, and the rights of the defence in the event of default. The question arises to what extent such disparities between Member States' laws and the resulting lack of legal certainty for citizens are appropriate in the context of judicial cooperation in the European Union, particularly in the light of the abolition of exequatur where the protection of the rights of the defense is a crucial element to be safeguarded across borders.

Several questions have been raised with respect to the **scope of the Regulation**. A satisfactory operation of the Regulation may require clarification regarding the scope of the instrument at Union level. It may be appropriate now to consider the need to address this legal uncertainty, in particular by way of common minimum standards on which **documents should be served on foreign parties, on whom such service may take place, and at which moment in time service should take place**. In this way, a more uniform protection of defendants across the Union would be ensured and would without any doubt enhance legal certainty and the **protection of the rights of the defence**.

The report also highlights the following:

- the problems relating to the speed of transmission and service,
- the jurisdiction of the transmitting agencies,
- the issue of language and of the right to refuse the act if it is not drafted in an official language of the place where service is effected or in a language which the addressee understands,
- the costs of the service of documents,
- the transmission procedures (direct transmission).

Next steps: this report will serve to encourage a **broad public debate** on the role of the Service Regulation in the Union's civil justice area and how in particular the service of documents may be further improved.