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

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

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

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

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

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

In 2018, approximately **3.4 million civil and commercial court proceedings in the EU have cross-border implications**. In most of these cases (namely in those where at least one party resides in another Member State than the one where the proceedings takes place), courts often apply the Regulation on service of documents several times in the course of the proceedings. This is because additional documents often have to be served formally (such as the decisions closing the proceedings), in addition to the document instituting the proceedings.

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

On the **traditional channel of transmission** of a document to another Member State for purposes of service there - transmission through the so-called transmitting and receiving agencies - the evaluation revealed that this workflow is underperforming in that it still works more slowly and less efficiently than expected.

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

The evaluation also concluded that as regards the alternative methods of transmission and service of documents providing direct channels to serve documents in the territory of other Member States, the evaluation concluded that although they provide smoother solutions to assist cross-border judicial proceedings, there are ways in which they could be improved : service by post under the Regulation is a popular, quick and relatively cheap way of delivering the document to the addressee, but it is not very reliable and has a high failure rate. The so-called direct service provides a reliable solution but access to it is limited.

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

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

CONTENT: the proposal to amend Regulation (EC) No 1393/2007 sets up a framework of judicial cooperation aligned with the digital single market strategy. It will help improve the speed and efficiency of cross-border proceedings by reducing the time spent on sending documents between agencies and by reducing reliance on paper-based communication.

Specifically, the proposal:

- provides that the communication and exchange of documents between sending and receiving authorities is carried **electronically**, through a decentralised IT system made up of national IT systems interconnected by a secure and reliable communication infrastructure;
- ensures that **alternative (traditional) means of communication** are used in cases of unforeseen and exceptional disruption of the IT system;
- requires Member States to provide **assistance in locating the whereabouts of a recipient** in another Member State if the initiator of the service of the document either does not have any such information ('whereabouts unknown') or if the information at his/her disposal turns out to be incorrect;
- improves the procedure on the **right of the addressee to refuse** to accept the document if it is not drawn up or translated into an appropriate language;
- obliges the postal service providers to use a **specific return slip** (acknowledgement of receipt) when serving documents by post under the Regulation;
- introduces a minimum standard concerning persons to be regarded as eligible '**substituting recipients**' if the postal service provider cannot hand over the document on the addressee in person;
- introduces a new measure to **facilitate access to the direct service of documents**, by extending the scope of application of the Regulation. Allowing direct service both for (i) transmitting agencies or (ii) the courts seised with the proceedings in the Member State of origin and in the territory of all Member States would lead to more direct and speedy transmission of documents compared to the baseline;
- introduces the electronic service of documents as an additional alternative method of service under the Regulation;
- requires the court seised with the proceedings to send an alert message about the initiation of the proceedings or about the default judgment to the available user account of the defendant in absentia and sets the time period for the availability of the extraordinary review to **two years** as of the issuance of the default judgment.

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

The main EU funding opportunities under the current financial programmes are the Justice programme and the Connecting Europe Facility (CEF). The Multiannual Financial Framework (MFF) package for the digital transformation priority, as unveiled on 2 May 2018, includes **EUR 3 billion** for a digital strand of the CEF, to finance digital connectivity infrastructure.