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**NOTE**

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From:	Presidency
To:	Council
No. prev. doc.:	13834/1/19
No. Cion doc.:	9622/18
Subject:	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) - General approach

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**I. INTRODUCTION**

1. The Commission adopted the abovementioned revision proposal<sup>1</sup> on 31 May 2018, and submitted it to the Council and Parliament. The legal basis is Article 81 (Judicial cooperation in civil matters) of the Treaty on the Functioning of the European Union, and the proposal is subject to the ordinary legislative procedure.

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<sup>1</sup> 9622/18.

2. Regulation (EC) No 1393/2007 on the Service of documents has put in place a fast, secure and standardised transmission procedure for documents in civil or commercial matters between courts and other parties located in different Member States. One major objective of the revision proposal is to adapt the cooperation mechanisms and transmission workflows in the existing Regulation to the technical developments provided by digitalisation and the use of IT technology. In that way, the efficiency of service of documents should be improved by promoting secure and faster electronic transmission and service of documents, while strengthening procedural safeguards. The Commission proposal calls for the establishment of a mandatory electronic decentralised IT system for that purpose.
3. The European Economic and Social Committee adopted its opinion<sup>2</sup> on this proposal and the proposal for a Regulation amending Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (proposal on the Taking of evidence) on 17 October 2018. The EESC found both proposals to be in line with the digital single market strategy in relation to e-government, especially as regards the need to take steps to modernise public administration and achieve cross-border interoperability.
4. On 13 February 2019, the European Parliament adopted its first-reading position on the Service of documents proposal, with 64 amendments to the Commission proposal, by 563 votes to 27, with 9 abstentions.
5. On 13 September 2019, the European Data Protection Supervisor submitted Opinion 5/2019 on this proposal and the proposal on the Taking of evidence<sup>3</sup>.

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<sup>2</sup> 14013/18.

<sup>3</sup> 12245/19.

6. At the JHA Council in June 2019, Ministers agreed that the judicial cooperation in the context of this Regulation and the Taking of evidence Regulation should be based on a secure decentralised IT system comprising interconnected national IT systems. Ministers could also, in principle, accept a mandatory IT system but on certain conditions such as a longer transition period, exceptions to the mandatory use and the reference implementation provided by the Commission.
7. The original Commission proposal did not contain any financial statement on the impact on the budget of the EU. During the examination of the proposal, delegations asked for assistance with the IT system to be put in place, such as a reference implementation software that Member States can use as their back-end system instead of a nationally-developed IT system. The Presidency text provides that the Commission will be responsible for the creation, maintenance and future development of the reference implementation software. This obligation will have an appreciable impact on the budget of the EU, including changes in the number of posts. In line with Article 35 (1) subparagraph 2 of the Financial Regulation of the EU<sup>4</sup> the Presidency has, in cooperation with the Commission, prepared an indicative financial statement<sup>5</sup> setting out the estimated financial impact of the amendments on the budget, including changes in the number of posts.
8. Pursuant to Article 3 of Protocol (No 21) to the Treaties on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, Ireland and the United Kingdom have decided to opt in to this proposal. In application of Protocol (No 22) to the Treaties on the Position of Denmark, Denmark does not take part in the adoption of the proposed measures.

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<sup>4</sup> OJ L 193, 30.7.2018, p.1.

<sup>5</sup> 14427/19.

## **II. PRESIDENCY COMPROMISE TEXT**

9. Under the Austrian, Romanian and Finnish Presidencies, the Working Party on Civil Law Matters (Service of documents/Taking of evidence) and the Justice and Home Affairs Counsellors have succeeded in converging positions on substantive parts of the proposal. The Presidency is therefore of the opinion that the time has come for the Council to adopt a general approach on the text of the Articles and the recitals of the proposed Regulation, without prejudice to the finalisation of certain issues of a technical or editorial nature in connection with the finalisation of the Annexes.
10. The elements of the compromise text are to be seen as an overall package that aims at creating a legal framework ensuring efficient and expedite transmission and service of judicial and extrajudicial documents for cross-border judicial cooperation. The compromise also provides for a delicate balance between different positions of Member States, while at the same time fostering mutual trust among them.

## **III. STATE OF PLAY**

11. At its meeting on 27 November 2019, the Permanent Representatives Committee endorsed the text of the draft Regulation that was submitted by the Presidency in the Annex to 13834/1/19 REV 1. Against that background, the Presidency submits to the Council the same text, set out in Annex. In this text, changes to the Commission proposal are indicated in **bold** and deletions are marked with ~~strikethrough~~.

#### **IV. CONCLUSION**

12. The Presidency invites the Council :

- to endorse, as a general approach, the text of the Regulation on the Service of documents as it appears in the Annex as a compromise package, bearing in mind that the Annexes to the Regulation will be finalised at technical level as soon as possible after the Council.
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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions<sup>6</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>6</sup> OJ C , , p. .

Whereas:

- (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.
- (2) Regulation (EC) No 1393/2007 of the European Parliament and of the Council<sup>7</sup> lays down rules on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. **This Regulation should not apply to the service of judicial and extrajudicial documents in other matters such as revenue, customs or administrative matters.**
- (2a) **This Regulation should not apply to the service of document on the party's authorised representative in the forum Member State, but should apply to the service of any document to the party abroad if such service is required under the law of the forum Member State irrespective of the service on the party's representative.**

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<sup>7</sup> Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p.79).

- (2aa) Where the addressee has a known address for service only in another Member State, the document should be transmitted to that Member State for service under this Regulation and the situation should not be construed as being a domestic service within the forum Member State. In particular, the document should not be served on the addressee by a fictitious method of service, such as service by announcement on the court notice board or by depositing the document in the court file.**
- (2b) Extrajudicial documents for the purposes of this Regulation should include both documents drawn up or certified by a public authority or official and private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. They should not include documents issued by administrative authorities for the purpose of administrative proceedings.**
- (3) The increasing judicial integration of Member States, ~~where the abolition of exequatur (intermediate procedure) has become a general rule,~~ has brought to light the limits of the rules in Regulation (EC) No 1393/2007.

- (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. **Therefore, as a rule, all communication and exchanges of documents between the agencies and bodies designated by the Member States should be carried out through a secure decentralised IT system composed of national IT systems. For that purpose, such a decentralised IT system for data exchanges in accordance with this Regulation should be established. The decentralised nature of this system means that it will exclusively enable data exchanges from one Member State to another, without involvement of any of the Union institutions in those exchanges.**
- (4a) **The competent authority or authorities under the law of the Member State should be responsible as controllers for the processing of personal data that they carry out under this Regulation for the transmission of documents between Member States. The Commission, or any other Union institution, is not involved in any personal data processing carried out within the decentralised IT system established by this Regulation.**

- (4b) The Commission should be responsible for the creation, maintenance and future development of a reference implementation software, which Member States may choose to apply instead of a national IT system, in accordance with the principles of data protection by design and by default. The reference implementation software should be designed, developed and maintained in compliance with the data protection requirements and principles laid down in Regulation (EU) 2018/1725<sup>8</sup> and Regulation (EU) 2016/679<sup>9</sup>, in particular the principles of data protection by design and by default. It should also implement appropriate technical measures and enable the necessary organisational measures in order to ensure a level of security and interoperability, which is appropriate for the exchanges of information in the area of service of documents.**
- (4c) Transmission through the decentralised IT system could be impossible due to a disruption of the system. Other means of communication could be more appropriate also in exceptional circumstances, which could include a situation where converting voluminous documentation to electronic form would impose a disproportionate administrative burden on the transmitting agency or where the original document in paper format is needed to assess its authenticity. When the decentralised IT system would not be used, transmission should be carried out by the most appropriate means. This would mean, inter alia, that transmission should be performed as swiftly as possible and in a secure manner by other secure electronic means or by post.**

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<sup>8</sup> **Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).**

<sup>9</sup> **Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).**

- (4d) In order to enhance cross-border electronic transmissions the documents transmitted through the decentralised IT system should not be denied legal effect and admissibility as evidence in the proceedings solely on the grounds that they are in an electronic form. However, this principle should not otherwise affect the competence of the court seised with the proceedings to assess legal effects of such documents or their admissibility as evidence. It should also be without prejudice to requirements of national law on conversion of documents.**
- (4e) An acknowledgment of receipt in accordance with the standard form set out in Annex I should be sent to the transmitting agency, automatically via the decentralised IT system or otherwise, as soon as possible and in any event within seven days of receipt of a document.**
- (4f) Upon receipt of the certificate of non-service of documents, it is important for the transmitting agency to know whether the authorities of the Member State addressed have submitted requests to domicile registers or other databases, where such registers or databases exist, to search for a new address for the person to be served. Therefore, Member States should inform the Commission whether their authorities make such requests on their own initiative in cases where the address indicated in the request for service is not correct. However, the Regulation should not impose an obligation on the authorities of the Member States to make such requests.**

- (5) The receiving agency should, in all **cases where the document to be served is not in the official language or one of the official languages of the place of service**, ~~circumstances and with no margin of discretion in that regard~~, inform the addressee in writing **using the standard form** that he or she may refuse to accept the document to be served if it is not either in a language which he or she understands or in the official language or one of the official languages of the place of service. This rule should also apply to any subsequent service once the addressee has exercised his or her right of refusal. The right of refusal should also apply in respect of service by diplomatic or consular agents, service by postal services, **electronic service** and direct service. It should be possible to remedy the service of the refused document by serving a translation of the document on the addressee.
- (6) If the addressee has refused to accept the document **and**, the court or authority seised with the legal proceedings in course of which the service became necessary **decided upon verification that the refusal was not justified, it should consider an appropriate way to inform the addressee in accordance with national law.** ~~, 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.~~

- (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 to an addressee **with his or her known address for service** 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 **service is used for the purpose of service of documents only by electronic methods available under the law of the forum Member State for the domestic service of documents provided that**, 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.
- (7a) **The addressee could be served electronically using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014<sup>10</sup> provided that the addressee has given in advance express consent to use electronic means for purposes of serving documents in course of legal proceedings. The express consent could be given for specific proceedings or as a general consent to be served documents in course of legal proceedings by that method of service. The consent would be given in advance also when according to the law of the forum Member State procedural documents could be served through an electronic system and the addressee has consented to the use of that system in relation to the service of documents before serving documents to him or her through that system.**

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<sup>10</sup> **Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).**

- (7b) The addressee could be served electronically without using the qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 provided that the addressee has given in advance express consent to the court or authority seised with the proceedings or the party responsible for service in such proceedings to use e-mail to a specified e-mail address in the course of those proceedings and proof of receipt of the document by the addressee is received. The addressee should confirm receipt of the document by signing and returning an acknowledgement of receipt or by returning an e-mail from the e-mail address furnished by the addressee for service. The acknowledgement of receipt could also be signed electronically. A Member State could specify the conditions under which it will accept electronic service by e-mail, where its law sets stricter conditions for or does not accept such service by e-mail.**
- (8) ~~The already existing direct channels for transmission and service of documents should be improved so that they provide reliable and generally accessible alternatives to the traditional transmission via the receiving agencies. For this purpose, postal service providers should use a specific acknowledgement of receipt when performing service by post under Article 14 of Regulation (EC) No 1393/2007. Similarly, it should be possible for any person interested in a judicial proceeding and for courts or authorities seised with a legal proceeding to effect service of documents in the territory of all Member States directly through the judicial officers, officials or other competent persons of the Member State addressed.~~

- (8a) Where in accordance with the law of the Member State and on conditions provided for in this Regulation the judge could give judgment even if no certificate of service or delivery of the document instituting the proceedings or its equivalent has been received, every reasonable effort should be made to obtain it through the competent authorities or bodies of the Member State addressed. If compatible with national law, the defendant could be informed 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.**
- (9) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect of the rights of defence of the addressees, which derive from the right to a fair trial, enshrined in Article 47 of the Charter of Fundamental Rights.

- (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, **and 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<sup>11</sup>. 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.
- (11) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of the Regulation and the need for any further action. **For the purposes of this monitoring, Member States should provide the Commission with available data on the service of documents under this Regulation and, in particular, information on the numbers of transmitted and received requests, the number of cases in which transmission was performed by other means than through the decentralised IT system, the number of received certificates of non-service of documents and the number of refusals of documents for language reasons received by the transmitting agencies. The national back-end system or the reference implementation should, to the extent possible, facilitate the automated collection and reporting of data on the number of exchanges carried out through that system.**

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<sup>11</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1

- (12) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the creation of a legal framework ensuring the expedite and efficient transmission and service of judicial and extrajudicial documents across the Member States, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (13) In accordance with Article 3 and Article 4a(1) of protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the ~~[United Kingdom ]~~~~[and]~~~~[Ireland]~~ have/has notified their/its wish to take part in the adoption and application of the present Regulation] ~~[are/is not taking part in the adoption of this Regulation and is not bound by it or subject to its application]~~.
- (14) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (14a) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on 13 September 2019<sup>12</sup>.**
- (15) Regulation (EC) No 1393/2007 should therefore be amended accordingly,

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<sup>12</sup> OJ C 370, 31.10.2019, p. 24.

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1393/2007 is amended as follows:

(1) Article 1 is replaced by the following:

"Article 1

**Scope and definitions**

1. This Regulation shall apply in civil and commercial matters ~~where a to the service of:~~
  - (a) ~~judicial or documents on persons domiciled in a Member State other than the one where the judicial proceedings take place;~~
  - (b) ~~extrajudicial documents that have~~ **has** to be transmitted from one Member State to another **for service there.**

It shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

2. ~~With the exception of~~ **Without prejudice to** Article 3c, this Regulation shall not apply where the address of the person to be served with the document is not known.
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.
4. For the purposes of this Regulation, **the following definitions shall apply:**
  - (a) ~~'Member State' means the Member States with the exception of Denmark.~~

(a) 'the forum Member State' means the Member State where the judicial proceedings take place;

(b) **'decentralised IT system' means a network of national IT systems and interoperable communication infrastructure access points, operating under the individual responsibility and management of each Member State enabling the secure and reliable cross-border exchange of information between the national IT systems.**";

(2) in Article 2(4), point (c) is replaced by the following:

"(c) the means of receipt of documents available to them for the cases set out in Article 3a(4);";

(3) the following Articles 3a, 3aa and 3c are inserted:

"Article 3a

**Means of communication to be used by transmitting and receiving agencies,  
and central bodies**

1. Documents **to be served**, 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.~~

2. The general legal framework for the use of trust services set out in Council Regulation (EU) No 910/2014 shall apply to the documents **to be served**, requests, confirmations, receipts, certificates and any communication transmitted through the decentralised IT system ~~referred to in paragraph 1.~~
3. Where the documents **to be served**, requests, confirmations, receipts, certificates and other communication referred to in paragraph 1 require or feature a seal or handwritten signature, ‘qualified electronic seals’ ~~and or~~ ‘qualified electronic signatures’ as defined in Regulation (EU) No 910/2014 of the European Parliament and of the Council may be used instead.
4. ~~If~~ **Where** transmission in accordance with paragraph 1 is not possible due to an ~~unforeseen and exceptional~~ disruption of the decentralised IT system **or there are exceptional circumstances**, transmission shall be carried out by the **most appropriate** ~~swiftest possible alternative means.~~
5. **The competent authority or authorities under the law of the Member State shall be regarded as controllers with respect to personal data processing under this Regulation, in compliance with Regulation (EU) 2016/679.**

### Article 3aa

#### Legal effects of ~~E~~electronic ~~form of~~ documents

The documents that are transmitted through the decentralised IT system ~~referred to in Article 3a~~ shall not be denied legal effect **and admissibility as evidence** in the proceedings solely on the grounds that they are in an electronic form. ~~If paper documents are transformed into electronic form for the purpose of transmission through the decentralised IT system, the electronic copies or their printouts shall have the same effect as the original documents.~~

Article 3c

**Assistance in address enquiries**

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 **at least one or more** of the following means:
  - (a) **the possibility for the transmitting agencies ~~judicial~~ to request assistance from the competent authorities of another Member State** to determine the address of the person to be served ~~by designated authorities upon the request of the court of the Member State seised with a proceeding;~~
  - (b) the possibility for persons from other Member States to submit requests for information on addresses directly to domicile registers or other publicly accessible databases including electronically, by means of a standard form **available on** ~~via~~ the European e-justice Portal;
  - (c) **detailed practical guidance information** on the mechanisms ~~means~~ available for the determination of the addresses of persons ~~within the framework of the European Judicial Network in civil and commercial matters and~~ with a view to making the information available to the public **via the European e-Justice Portal**.
2. Each Member State shall provide the Commission with the following information, **as well as any subsequent modification of that information, with a view to making it available to the public via the European e-Justice Portal:**
  - (a) the ~~methods~~ **means** of assistance which the Member State will provide in its territory pursuant to paragraph 1;

- (b) where applicable, the names and **contact details** addresses of the authorities referred to in paragraph (1) (a) and (b);
- (c) **whether the authorities of the Member State addressed will submit, on their own initiative, requests for information on the addresses to domicile registers or other databases in cases where the address indicated in the request for service is not correct.**

~~Member States shall notify the Commission of any subsequent modification of that information."~~

- (4) Article 4 is replaced by the following:

#### "Article 4

#### **Transmission of documents**

1. Judicial documents shall be transmitted directly and as soon as possible between the agencies designated pursuant to Article 2.
2. The document to be transmitted shall be accompanied by a request drawn up using the standard form set out in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State shall indicate the official language or languages of the Union other than its own which is or are acceptable to it for completion of the form.
3. **The documents that are transmitted shall be exempted from legalisation or any equivalent formality.**

4. **When the transmitting agency wishes a copy of the document sent in paper format in accordance with Article 3a(4) to be returned together with the certificate referred to in Article 10, it shall send the document in duplicate."**;

(5) Article 6 is replaced by the following:

"Article 6

**Receipt of documents by receiving agency**

1. On receipt of a document, ~~an automatic receipt-acknowledgement of receipt delivery~~ shall be sent **as soon as possible and in any event within seven days of receipt** to the transmitting agency **using the standard form set out in Annex I** ~~via the decentralised IT system referred to in Article 3a.~~
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 **using the standard form set out in Annex I.**
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.

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**, ~~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 **at the same time** 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-acknowledgement of receipt delivery~~ is sent **as soon as possible and in any event within seven days of receipt** to the transmitting agency **using the standard form set out in Annex I**, ~~via the decentralised IT system referred to in Article 3a.~~";

(6) ~~The following Article 7a is inserted:~~

~~"Article 7a~~

~~**Obligation to Appointment of a representative for the purpose of service  
in the forum Member State**~~

- ~~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.~~
- ~~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."~~

(7) Article 8 is replaced by the following:

"Article 8

**Refusal to accept a document**

1. ~~The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he or she may refuse to accept the document to be served if it is not written in, or accompanied by a translation into, either of the following languages:~~
  - (a) a language which the addressee understands;
  - or
  - (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.
- 1a. The receiving agency shall inform the addressee of the right provided for in paragraph 1 if the document is not written in, or accompanied by a translation into the language referred to in paragraph 1(b), by enclosing with the document to be served the standard form set out in Annex II in the following languages:**
  - (a) the official language or one of the official languages of the Member State of origin;**  
**and**
  - (b) the language referred to in paragraph 1(b).**

**If there is an indication that the addressee understands an official language of another Member State, the standard form in this language may also be enclosed.**

2. The addressee may refuse to accept the document **either** at the time of service or **in writing** within two weeks **from the time of service. For this purpose, the addressee may by returning to the receiving agency** the standard form set out in Annex II **or any written declaration indicating that he or she refuses to accept the document because of its language to the receiving agency.**
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, where available, each document of which a translation is requested.**
- ~~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.~~
5. The service of the document may be remedied through the service on the addressee, in accordance with the provisions of this Regulation of the document accompanied by a translation into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).
6. Paragraphs 1 to 5 shall apply to the other means of transmission and service of judicial documents provided for in Section 2.

7. For the purposes of paragraph 1 **and 1a**, the diplomatic or consular agents, where service is effected in accordance with Article 13, or the authority or person, where service is effected in accordance with Article 14, **14a or 15** ~~or 15a~~, shall inform the addressee that he or she may refuse to accept the document and that **the written declaration of refusal** ~~any document refused~~ must be sent to those agents or to that authority or person respectively.";

(8) in Article 10, paragraph 1 is replaced by the following:

"1. When the formalities concerning the service of the document have been completed, a certificate of completion of those formalities shall be drawn up in the standard form set out in Annex I and addressed to the transmitting agency, **together with, where Article 4(4) applies, a copy of the document served.**";

(9) Articles 14 ~~and 15~~ **are** replaced by the following:

#### "Article 14

#### **Service by postal services**

1. Service of judicial documents may be effected directly by postal services on persons **present domiciled** in another Member State by registered letter with acknowledgement of receipt **or equivalent**.

~~2. For the purpose of this Article, service by post shall be carried out by using the specific acknowledgement of receipt set out in Annex IV.~~

~~3. Irrespective of the law of the Member State of origin, service by post shall be considered as validly effected also, if the document was delivered at the addressee's home address on adult persons who are living in the same household as the addressee or are employed there by the addressee, and who have the ability and are willing to accept the document."~~

**(9a) The following Article 14a is inserted:**

"Article 14a

**Electronic service**

1. Service of judicial documents may be effected directly on a persons ~~domiciled~~ **with his or her known address for service** in another Member State ~~through~~ **by electronic methods available under the law of the forum Member State** ~~means to user accounts accessible to the addressee, for the domestic service of documents,~~ provided that ~~one of the following conditions is fulfilled:~~
    - (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**
    - (b) ~~after the commencement of legal proceedings,~~ the addressee gave **in advance** express consent ~~to the court or authority seised with the proceedings to use that particular~~ **electronic means user account** for purposes of serving documents in course of ~~the legal proceedings;-"~~

**or**

    - (b) the addressee gave **in advance** express consent **to the court or authority seised with the proceedings or party responsible for service in such proceedings to use e-mail to a specified e-mail address for the purposes of serving documents in the course of those proceedings and confirms receipt of the document with an acknowledgement of receipt, including the date of receipt.**
  2. **Any Member State may specify, in accordance with Article 23(1), the conditions under which it will accept electronic service under paragraph 1(b).";**
- (9b) **In Article 15, a new paragraph 2 is inserted:**

Article 15

**Direct service**

~~1.— Service of judicial documents may be effected on persons domiciled in another Member State directly through the judicial officers, officials or other competent persons of the Member State addressed.~~

~~2.— A Member State that allows direct service~~ Each Member State shall provide the Commission with the information on **any** ~~the type of~~ professions or competent persons who are permitted to **effect** ~~carry out~~ service under this Article in their territory.";

~~(10) The following Article 15a is inserted:~~

"Article 15a

**Electronic service**

~~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:~~

~~(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~~

~~(b) after the commencement of legal proceedings, the addressee gave express consent to the court or authority seised with the proceedings to use that particular user account for purposes of serving documents in course of the legal proceedings."~~

~~(11) Articles 17 and 18 are replaced by the following:~~

## "Article 17

### **Amendment of the Annexes**

The Commission is empowered to adopt delegated acts in accordance with Article 18 to amend Annexes I, ~~and II and IV~~ to update the standard forms or to make technical changes to those forms.

## Article 18

### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 17 shall be conferred on the Commission for an ~~indefinite~~ period of **five years** ~~time~~ from [*the date of entry into force of this Regulation*]. **The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**
3. The delegation of power referred to in Article 17 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
  6. A delegated act adopted pursuant to Article 17 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.";
- (12) the following Articles 18a, 18b **and 18c** are inserted:

**" Article 18a**

**Costs of the decentralised IT system**

- 1. Each Member State shall bear the costs of the installation, operation and maintenance of its communication infrastructure access points interconnecting the national IT systems in the context of the decentralised IT system.**
- 2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the communication infrastructure, as well as the costs of administering, operating and maintaining those systems.**
- 3. Paragraphs 1 and 2 shall be without prejudice to the possibility to apply for grants to support activities referred to in those paragraphs under the Union's financial programmes.**

4. **The Commission shall be responsible for the creation, maintenance and future development of a reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and future development of the reference implementation software shall be financed from the general budget of the Union.**
5. **The Commission shall provide, maintain and support a free of charge implementation of the software components underlying the communication infrastructure access points.**

#### Article 18ab

##### **Adoption of implementing acts by the Commission**

1. **The Commission shall adopt implementing acts establishing the decentralised IT system. By means of implementing acts, the Commission shall adopt the following:**
  - (a) **the technical specification defining the methods of communication by electronic means for the purpose of the decentralised IT system;**
  - (b) **the technical specification of the communication protocols;**
  - (c) **the information security objectives and relevant technical measures ensuring the minimum information security standards for the processing and communication of information within the decentralised IT system;**
  - (d) **the minimum availability objectives and possible technical requirements in this regard for the services provided by the decentralised IT system;**

- (e) **the relevant data protection responsibilities and the technical measures necessary for ensuring the IT system's compliance with Regulation (EU) 2016/679 and Regulation (EU) 2018/1725;**
- (f) **the establishment of a steering committee composed of representatives of the Member States to ensure the operation and maintenance of the decentralised IT system in order to meet the objective of this Regulation.**

2. **The implementing acts referred to in paragraph 1 shall be adopted by two years from the date of entry into force of this Regulation** in accordance with the examination procedure referred to in Article 18cb(2).

#### Article 18bc

#### **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.";
- (13) Article 19 is replaced by the following:

"Article 19

**Defendant not entering an appearance**

1. Where a document instituting the proceedings **or its equivalent** has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and the defendant has not appeared, judgment shall not be given until it is established that the service or the delivery was effected in sufficient time to enable the defendant to defend and that:
  - (a) 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
  - (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Regulation;
  
2. **Each Member State may make it known, in accordance with Article 23(1), that the judge, notwithstanding the provisions of paragraph 1, ~~the judge~~ may give judgment even if no certificate of service or delivery has been received, where all the following conditions are fulfilled:**
  - (a) the document was transmitted by one of the methods provided for in this Regulation;
  - (b) 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;
  - (c) 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.

- ~~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.~~
4. Notwithstanding paragraphs 1 and 2, the judge may, in case of urgency, order any provisional or protective measures.
5. Where a document instituting the proceedings **or its equivalent** has had to be transmitted to another Member State for the purpose of service under the provisions of this Regulation and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment where both of the following conditions are fulfilled:
- (a) 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;
  - (b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

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

**Each Member State may make it known, in accordance with Article 23(1), that such application will not be entertained if it is filed after the expiry of a time to be stated by it in that communication, but which shall in no case be less than one year following the date of the judgment.**

~~6. After the expiry of the period of 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.~~

7. Paragraphs ~~5 and 6~~ shall not apply to judgments concerning the status or capacity of persons.";

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

**"4. This Regulation shall be without prejudice to Regulation (EU) 2016/679 (General Data Protection Regulation) and Directive 2002/58/EC (Directive on privacy and electronic communications)."**

(14) ~~in~~ Article 23, paragraph 1 is replaced by **a new paragraph, and paragraph 1a is inserted:**

"1. Member States shall communicate to the Commission the information referred to in Articles 2, 3, 3c, 4, 10, 11, 13, ~~and 14a~~, 15 **and 19**. Member States shall communicate to the Commission if, according to their law, a document has to be served within a particular period as referred to in Articles 8(~~53~~) and 9(2)."

**1a. Member States may notify the Commission if they are in a position to operate the decentralised IT system earlier than required by this Regulation. The Commission shall make such information available electronically, in particular via the European e-Justice Portal.**

(15) The following Article 23a is inserted:

"Article 23a

**Monitoring**

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.
2. The monitoring programme shall ~~set out the means by which and the intervals at which the data and other necessary evidence are to be collected. It shall~~ specify the action to be taken by the Commission and by the Member States **to monitor the outputs, results and impacts of this Regulation in collecting and analysing the data and other evidence. It shall set out when, at the latest four years after the date of application of this Regulation, and at what further intervals the data referred to in paragraph 3 are to be collected.**
3. Member States shall provide the Commission, where available, with the following data and ~~other evidence~~ necessary for the **purposes of** monitoring:-
  - (a) **the number of requests for service of documents transmitted in accordance with Article 4;**
  - (b) **the number of requests for service of documents executed in accordance with Article 7;**
  - (c) **the number of cases in which the request for the service of documents was transmitted by other means than through the decentralised IT system in accordance with Article 3a(4);**
  - (d) **the number of received certificates of non-service of documents;**

- (e) **the number of refusals of documents for language reasons received by the transmitting agencies."**

(16) Article 24 is replaced by the following:

"Article 24

**Evaluation**

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.
2. Member States shall provide the Commission with the information necessary for the preparation of that report."

~~(17) A new Annex IV, as set out in the Annex to this Regulation is added.~~

*Article 2*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from .....[*18 months after the entry into force of the Regulation*].
3. However, point (14) of Article 1 shall apply from .....[***first day of the month corresponding to the month following the period of one year after the entry into force of this Regulation 12 months after its entry into force***]; and points (3) **regarding paragraphs 1–4 of the new Article 3a, (4), and (5) of ~~in~~ Article 1** shall apply from .....[***first day of the month corresponding to the month following the period of five years after the entry into force of the implementing acts referred to in Article 18b 24 months after its entry into force***].

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at ~~Brussels~~,

*For the European Parliament*

*For the Council*

*The President*

*The President*

## "ANNEX IV

## Acknowledgment of receipt to be used for service by post under Article 14

ACKNOWLEDGMENT OF RECEIPT for the service by post of judicial or extrajudicial documents <i>(Art. 14 of Regulation (EU) No 1393/2007)</i>		UNIQUE CONSIGNMENT REFERENCE:	
SENDER:  Name:	ADDRESSEE:  Name	Name of the recipient <i>(if different than the addressee)</i> :	
		Signature of the recipient:	
RECEIPT SHOULD BE RETURNED TO THE FOLLOWING ADDRESS:  Street:      Nr.	DELIVERY ADDRESS:  Street      Nr.	DATE OF DELIVERY/ RETURN OF THE DOCUMENT:  dd-mm-yyyy	
		DELIVERED to:	RETURNED due to:
		Addressee: <input type="checkbox"/>	Address not known: <input type="checkbox"/>
		Representative: <input type="checkbox"/>	Addressee unknown: <input type="checkbox"/>
City:	City	Adult person living on the same address: <input type="checkbox"/>	Unclaimed: <input type="checkbox"/>
ZIP Code:	ZIP Code		Acceptance refused <input type="checkbox"/>
State:	State:		Addressee moved: <input type="checkbox"/>
For the postal service provider:		Employee of the addressee: <input type="checkbox"/>	