COUNCIL OF THE EUROPEAN UNION

Brussels, 6 December 2013

17509/13

JUSTCIV 303

COVER NOTE

from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	4 December 2013
to:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union
No Cion doc.:	COM(2013) 858 final
Subject:	Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee 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)

Delegations will find attached document COM(2013) 858 final.

Encl.: COM(2013) 858 final

EUROPEAN
COMMISSION

Brussels, 4.12.2013
COM(2013) 858 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

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)

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

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)

1. INTRODUCTION

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 as referred to in Article 3(2) of the Treaty on the European Union. 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. Service of documents is part of each and every judicial case. A speedy and secure transmission of documents is thus crucial for the good administration of justice and the protection of the rights of parties, in particular of defendants, in legal proceedings.

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[1].

On 29 May 2000, the European Union adopted Regulation (EC) No 1348/2000[2] laying down procedural rules to facilitate the cross-border transmission of documents ("the 2000 Regulation"). The Regulation applied to all Member States of the European Union except Denmark. However, its application was extended to Denmark by way of a parallel agreement concluded between the Union and Denmark[3].

On 1 October 2004, the European Commission adopted a report[4] on the application of the 2000 Regulation. The report concluded that the application of the Regulation had improved the transmission and service of documents between Member States since its entry into application in 2001. Nevertheless, the report also stated that the level of knowledge of those involved in the application of the Regulation, in particular local bodies, needed to be

---

1 Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=17

2 Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters OJ L 160, 30.6.2000, p. 37–52, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R1348:EN:NOT

3 Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, OJ L 300/55, 17.11.2005, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_300/l_30020051117en00550060.pdf . This agreement entered into force on 1 July 2007

4 Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Regulation (EC) 1348/2000 on the service in the Member States of Judicial and Extrajudicial documents in civil or commercial matters {SEC(2004)1145, COM/2004/0603 final, http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2004&nu_doc=603

improved and that an adaptation of certain provisions of the Regulation could further improve and facilitate the application of the Regulation. Thus, the Commission proposed an amendment in 2005[5].

As of 13 November 2008, the 2000 Regulation was replaced by Regulation (EC) No 1393/2007[6] of the European Parliament and the Council ("the 2007 Regulation" or "the Regulation"). This Regulation equally applies to Denmark under the parallel agreement between the EU and Denmark.

The most important modifications introduced by the 2007 Regulation are:

- a requirement for the receiving agency to take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt;
- the creation of a new standard form to inform the addressee about his right to refuse the document;
- the introduction of a single fixed fee for the costs of service, laid down by the Member States in advance; and
- uniform conditions for service by post.

Article 24 of the 2007 Regulation stipulates 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.

The Commission launched a study in 2011[7] in order to collect data and assess the application of the Regulation (hereafter referred to as the "study"). The study contains a legal analysis and an empirical part based on a survey conducted among various groups of stakeholders from all Member States[8].

The application of the 2007 Regulation was discussed at the meetings of the European Judicial Network in Civil and Commercial Matters on 14 January 2008, 18 September 2008, 30 April 2009, 23 June 2010 and 9-10 February 2012. Furthermore, the Commission has taken into account citizen letters, complaints, petitions and preliminary rulings by the European Court of Justice concerning the Regulation[9].

This Report presents the Commission's first assessment of the application of the 2007 Regulation for the period running from 2008 to 2012.

---

5 Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (COM(2005) 305 final - 2005/0126 (COD)).

6 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. 0079 – 0120, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007R1393:EN:HTML .

7 MainStrat, Study on the application on the application of Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters, final report July 2012.

8 In total 465 interviews were conducted across the EU and 38 European experts presented views and recommendations.

9 In particular Case C-14/08 Roda Golf & Beach Resort SL and Case C-325/11 Alder.

2. MAIN ELEMENTS OF THE REGULATION

The Regulation applies in civil and commercial matters where a judicial or extrajudicial document has to be transmitted from one Member State to another for service there. It provides for different methods of transmission between Member States, in particular through transmitting and receiving agencies, by post, or by consular or diplomatic channels, or also directly[10]. A special rule on determining the date of service protects the interests of both the applicant and the addressee of the service. The addressee is further protected by the rules on the use of languages of the documents to be served and by the rules which courts need to respect when the defendant does not enter an appearance. The service must not require the payment of costs or taxes in the Member State addressed, except if there has been a particular method of service or recourse to a judicial officer. In that case, the applicant bears the cost of a single fixed fee.

Member States have the obligation to provide the Commission with information necessary for the good functioning of the Regulation. Each Member State has a central body[11] for supplying information to the agencies, resolving any difficulties that may arise and forwarding requests for service by the transmitting agency to the relevant receiving agency.

3. APPLICATION OF THE 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.[12] Nevertheless, some points merit attention in order to evaluate whether and how the system of service between Member States may be further improved.

3.1. Scope of the Regulation

The Regulation covers judicial or extrajudicial documents that have to be transmitted from one Member State to another for service there in civil and commercial matters. Several questions have been raised with respect to the scope of the Regulation:

3.1.1. Which documents may be transmitted between Member States for purposes of service: the concept of judicial or extrajudicial documents

In Case C-14/08 (*Roda Golf*), the European Court of Justice ruled that it is not for the national law to determine which documents may be transmitted in accordance with the Regulation, between Member States for purposes of service. The question submitted to the Court concerned the service of a notarial act in the absence of legal proceedings. The Court clarified that the concept of 'extrajudicial document' within the meaning of Article 16 of the 2000 Regulation (which is the same as Article 16 of the 2007 Regulation) is a Union concept which should be interpreted autonomously. Taking into account the objectives of the Treaty and of

---

10 This means service through the competent persons of the Member State addressed when this is permitted under the law of that Member State.

11 A federal state, one with several legal systems or which has autonomous territorial units may name more than one such agency or central body.

12 78.5% of the interviewees of the evaluation study shared the general perception that the entry into force of the Regulation has improved and speeded up the service of documents among Member States. see reference in footnote 7, p. 22.

the Regulation, which aim at establishing a system for intra-Union service the purpose of which is the proper functioning of the internal market, judicial cooperation cannot be limited to legal proceedings alone but may also apply in the absence of legal proceedings. As a result, the Court held, the service of a notarial act in the absence of legal proceedings falls within the scope of the Regulation.

3.1.2. When do judicial or extrajudicial documents have to be transmitted from one Member State to another for purposes of service?

In Case C-325/11 (*Alder*), another important question regarding the scope of the Regulation was referred to the European Court of Justice. The question is whether it is for the national law to determine in which situations a document must be transmitted, in accordance with the Regulation, between Member States for purposes of service. In this case, two citizens residing in Germany brought proceedings against two citizens residing in Poland before the Polish courts. Polish procedural law requires foreign claimants to designate a representative in Poland authorised to accept service of documents; failure to do so results in the documents being placed in the case file, which is deemed to constitute service. The claimants failed to designate a representative and their claim was dismissed after the hearing, in which they did not appear. The Court found that where the addressee of the document resides in another Member State the service of a judicial document must necessarily be effected in conformity with the requirements of the Regulation[13]. As a result, a system that requires a representative in the forum Member State for purposes of serving judicial documents to parties residing in other Member States does not comply with the Regulation.

3.1.3. Electronic service

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. The introduction of electronic service as one of the methods foreseen in the Regulation may foster an effective use of technology and could reduce the expense and delays of long distance litigation. Several pilot projects are being carried out, such as the "E-justice service of documents" project which is being co-funded by the Commission. The aim of this project is to establish a dematerialized and secured exchange of documents through an electronic platform between Ministries of Justice, courts, judicial officers (bailiffs), and lawyers. The project is connected to the e-Codex project with aims more generally to improve cross-border exchanges of information in legal proceedings in a safe, accessible and sustainable way.

[13] Judgment in Case C- 325/11 (*Alder*) of 19 December 2012.

3.1.4. The service of documents and the 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. The discussions throughout the negotiations on the Commission's proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Recast)[14], the proposal for a Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters,[15] and the proposal for a Regulation on mutual recognition of protection measures in civil matters[16] showed that the rules of the Member States differ substantially on fundamental questions such as

- which documents are served on the parties in legal proceedings: while documents introducing proceedings are generally served in all Member States, there is wide variation on the service of judgments, convocations for hearings, etc. Judgments, for instance, are served in some Member States, sometimes even as a condition for enforceability of the judgment in the forum State, while in other Member States judgments are not generally served but are to be picked up from the court by the parties themselves;

- in which circumstances documents are served: for instance, in some Member States judgments are not served when the parties were present or represented in the proceedings, in some Member States the judgment is mandatorily served as the first step in the enforcement proceedings;

- by whom documents are served: in some Member States, service is generally the responsibility of the parties, while in other Member States the court takes care of the service of documents. In several Member States, the responsibilities vary depending on which type of document needs to be served (document introducing proceedings, convocation for hearings, judgment, etc.);

- on whom documents are served: for instance, in some Member States documents are served on the parties themselves while in other Member States documents or certain types of documents may or even must be served on their legal representative in the forum State;

- on the legal consequences attached to a service (e.g. starting the running of time limits, for instance for appeal, for calculation of interest) or a lack of service (e.g. opening the recourse to special remedies)

As a result of these disparities, 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 (Article 8), the date of service (Article 9), and the rights of the defence in the event of default.

---

14 COM(2010)0748.
15 COM(2011)445final.
16 COM(2011)276final.

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.

3.1.5. Conclusions on the scope

The previous points show that a satisfactory operation of the Regulation may require clarification regarding the scope of the instrument at Union level. In addition, the legal uncertainty resulting from the disparities in national procedural laws may need to be addressed. This is particularly important in the light of the Regulation's crucial role in the entire civil justice cooperation and the abolition of exequatur. Today there is more experience through the years of applying common rules on the transmission of documents in cross-border cases. 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.

3.2. Limitations to the scope of the Regulation

3.2.1. The non-application of the Regulation where the address of the person to be served is not known

The Regulation does not apply where the address of the person to be served with the document is not known. Problems have been reported in this context. Sometimes documents have been transmitted with the expectation that the central bodies established pursuant to Article 3 of the Regulation would assist in locating the addressee. Alternatively, use has been made of Regulation (EC) No 1206/2001[17] ("the Evidence Regulation") in order to find the address of the person to be served. However, this latter method has been criticised for being cumbersome since two different legal instruments have to be used for the sole purpose of service of documents. In addition, it has been questioned whether the Evidence Regulation is the appropriate instrument to find the address of a party, particularly in the light of the scope of that Regulation and the requirement, pursuant to Article 4(1)(b) of the Evidence Regulation, to indicate the names and addresses of the parties to the proceedings, which seems to pre-suppose that these addresses are known.

The question how and by which means to find the address of the defendant is important, particularly in the light of the application of several instruments of civil justice, such as Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (see Article 26 of that Regulation)[18] and Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (see Article 18 of that Regulation). These instruments impose a stay of proceedings so long as it is not shown that the defendant has been able to receive the document instituting proceedings or an

---

[17] Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L174/1, 27.06.2001.

[18] Regulation (EC) 44/2001 will be replaced by Regulation (EC) No 1215/2012 as of 10 January 2015.

equivalent document in sufficient time to enable him to arrange for his defence, or that *all necessary steps have been taken to this end*. The Court of Justice ruled, with respect to Article 26(2) of Regulation (EC) No 44/2001, that a court in such a situation may reasonably continue proceedings, only if it is satisfied that all investigations required by the principles of diligence and good faith have been undertaken to trace the defendant (see Case C-327/10 *Hypoteční banka v. Lindner*, paragraph 52 and C-292/10 *Cornelius de Visser*, paragraph 55). In this respect, it is important to know what may be expected as "necessary steps" to be undertaken by whom (by the court seized, by the parties, by the Central Body or receiving agency in the State addressed).

In the light of these difficulties, it may be appropriate to consider how to remedy the very basic and practical difficulty of finding the address of the person to be served and to clarify the respective obligations of the authorities involved in the service. It may be considered whether situations where the defendant's address is unknown could not be brought under the scope of the Regulation with certain obligations to carry out a search for the address of the defendant. At the very least it may be clarified to what extent receiving agencies should carry out a search for the address of the defendant if the address is known but does not appear to be correct.

3.2.2. Service of documents on States

The Regulation does 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*). In some Member States, questions have arisen regarding the service of documents on States. Article 1 excludes indeed the above-mentioned matters from the scope of the Regulation. *A contrario* and in accordance with the guidelines given by the European Court of Justice on the interpretation of the term "civil and commercial matters" in disputes between a public authority and a private person, such disputes may be covered by the Regulation to the extent that they concern civil claims and the State concerned acted as a private person (*acta iure gestionis*). It is to be noted that even if the addressee of a judicial or extrajudicial document in a civil or commercial matter is a State or a State entity, all methods of transmission provided for by the Regulation may be used for purposes of serving documents abroad.

3.3. Speed of transmission and service

When the service of documents is effected via transmitting and receiving agencies, the period of time for the execution of the request is one month[19]. However, no deadlines are set for the transmission of documents by post, direct service or through diplomatic channels.

It appears from the study that the 2007 Regulation has moderately speeded up the service of documents between Member States compared with the 2000 Regulation (see Annex 1). This result may be considered satisfactory, particularly when in parallel the number of requests for cross-border service has grown. For example, in Germany, the number increased from 14,463 cases in 2009 to 16,329 cases in 2010; in the UK, the number increased from 9,852 cases in 2009 to 10,395 cases in 2010. Nevertheless, the documents have been served faster than earlier. It may therefore be concluded that the 2007 Regulation has achieved its objective to further speed up the service between Member States.

[19] Article 7(2) of the Regulation.

Nevertheless, the empirical data show that it still requires relatively long delays to serve abroad. Particularly when documents are transmitted through the transmitting and receiving agencies, the time required for these agencies to act, calculated together, still amounts in most cases to several months. These delays may be explained by several factors. First of all, some time may be required to forward a wrongly addressed request to the competent receiving agency. More importantly, it appears that most delays result from the lack of linguistic skills of the agencies (the agencies are not mastering the languages which their Member States have indicated as acceptable for receiving the documents) and/or the lack of sufficient knowledge on their part of the applicable rules (see point 3.3 below). Some delays have equally been reported due to an insufficient equipment of central bodies (see point 3.4 below). However, the efficient conduct of legal proceedings in an integrated Union requires swift service of documents. It should therefore be explored how the time for service could be further reduced, in particular by exploring the use of electronic means of transmission and service.

3.4. Transmitting and receiving agencies

The main method of transmission of documents pursuant to the Regulation is through transmitting and receiving agencies.[20]

In general, the agencies are reported to operate satisfactorily under the Regulation except for the lack of linguistic skills and/or the lack of knowledge on their part of the rules of the Regulation[21]. For example, receiving agencies have been reported to refuse requests in other language(s) than the official language of the Member State concerned even though the latter has accepted other languages pursuant to Article 4(3) of the Regulation. Also, it seems that receiving agencies have occasionally refused to deliver the document to be served on the ground that it is not translated into their official language, which may be contrary to Article 8(1) of the Regulation.

3.5. Central bodies

Central bodies have a supportive, yet important, function as they are responsible for supplying information to the transmitting agencies, seeking solutions to any difficulties which may arise and forwarding, in exceptional cases, at the request of a transmitting agency, a request for service to the competent receiving agency.

In general, it appears that central bodies are operating satisfactorily under the Regulation: 49.6% of the interviewees of the study held the practical functioning of the central bodies as very effective or rather effective, while only 18% considered their work rather ineffective or not effective.[22] Nevertheless, some problems have been raised in the study.

First of all, it is reported that in some Member States, central bodies are not duly equipped from a technical point of view (e.g. no computerization). Such a situation may have negative consequences on the speed and certainty of the transmission.

---

20 The agencies are public officers, authorities or other persons competent for the transmission of judicial documents to be served that have been designated by the Member States.

21 29.9% of the interviewees of the evaluation study held the lack of familiarity of the transmitting and receiving agencies with the Regulation (which includes the phenomenon of using of incorrect languages) as a problem with regard to the decentralized model of cooperation between the local authorities. See reference in footnote 7, pp. 26 and 160.

22 See reference in footnote 7, p.165

Secondly, the study has noted the expectations of some transmitting agencies that central bodies provide assistance in locating addressees whose address is not known. It may not be entirely clear from the Regulation to what extent central bodies must lend their assistance in this respect. When dealing with the problem of finding the address of the person to be served, the role of central bodies should be considered and clarified so as to ensure uniform application and expectations under the Regulation.

Finally, it appears that the information on central bodies provided in the Judicial Atlas[23] by the Member States differs from one Member State to another. In some cases, the information is more detailed than in others. Article 23(1) in combination with Article 3 of the Regulation, does not provide clear guidance as to which information needs to be communicated by Member States. It may be appropriate to streamline the requirements concerning the information available so that it is most helpful for the users of the system.

3.6. Language of the request for service

All Member States except Luxembourg accept English as a language for the receipt of requests to serve documents (see Annex 2). There thus appears to be one language used between almost all Member States. In addition, it appears that all Member States, except Ireland, Luxembourg and Malta, accept requests in at least one other language in addition to their official language(s). More than half of the Member States accept requests in three, four or even five (France) languages.

3.7. Language of the documents to be served - right to refuse to accept a document

Article 8 of the Regulation aims to guarantee the procedural rights of the addressee, who is allowed to refuse the document if it is not drafted in an official language of the place where service is effected or in a language which the addressee understands. In connection with the application of this article several problems have been brought to the attention of the Commission[24].

In Case C-14/07 (*Weiss*) the European Court of Justice examined some practical aspects of the right of refusal. In the case at hand, the addressee refused to accept service on the basis that only the application was translated into the language prescribed in Article 8 of the Regulation, but not the annexes attached to it. The Court held that an addressee of a document instituting proceedings does not have the right to refuse to accept that document, if the non-translated annexes of that document consist of documentary evidence which has a purely evidential function and is not necessary for understanding the subject-matter of the claim and the cause of action. In the same case, the Court was asked to rule on the role of a contractual clause between the addressee and the applicant in which the addressee agreed that correspondence between the parties was to be carried out in the language of the Member State of transmission. The Court held that such a clause does not give rise to a presumption of knowledge of that language on the part of the addressee, but that it nevertheless constitutes evidence which the court may take into account in determining whether that addressee understands the language of the Member State of transmission.

---

[23] The European Judicial Atlas in Civil Matters is an information website kept by the European Commission. It is currently being migrated to the e-Justice Portal

[24] Only 35.7% of the interviewees of the study found no problem with the application of Article 8 of the Regulation, while 52.9% indicated a problem. See reference in footnote 7, p. 172

Furthermore, problems have been reported regarding the use of the standard forms in the context of the exercise of the right of refusal.

Firstly, the text of Article 8 is unclear as to the need for the provision of information in the standard form (Annex II to the Regulation) in cases where the document to be served is in the language of the Member State addressed and where, therefore, the addressee cannot validly refuse service (Article 8(1)(b)). In practical terms, attaching the standard form in such circumstances might mislead the addressees into thinking that they do have the right to refuse.

Secondly, the practical question has been raised whether Annex II to the Regulation should be delivered in full, containing the text in all official languages of the Union, to the defendant or whether it may be reduced containing only the text in the language of the Member State addressed. The latter solution may save financial and environmental costs.

Thirdly, the question has been raised as to what are the legal consequences when the receiving agency fails to provide information on the right to refuse (fails to attach Annex II). It is not clear according to which laws the assessment of the effects of such service (i.e. its validity) should be appreciated. From the point of legal certainty of the addressee, this situation is unsatisfactory as his protection may differ from one Member State to another. A uniform solution may be desirable.

Fourthly, problems have been reported in determining whether or not an addressee validly refused to accept the document served. Article 8 and Annex II to the Regulation prescribe that the addressee may refuse to accept the document to be served either at the time of service (directly with the person serving the document) *or* by returning the document to the receiving agency. At the same time, Annex II suggests that the form itself should be returned with the document to be served (cfr. the declaration of the addressee). There is thus a degree of ambiguity how to validly exercise the right of refusal. In some instances, addressees have not exercised their right of refusal at the time of service but have returned the Annex II properly filled out (declaring the refusal) *without* however returning the document to be served itself. The question was raised whether or not this could be considered a valid refusal. A literal reading of the text of Article 8 suggests that the refusal would not be valid. It is questionable whether this is a satisfactory interpretation: if simply returning the document constitutes a valid refusal, *a fortiori* an express declaration in the form, even without the document itself, should be valid. It may be appropriate to clarify this matter in the Regulation.

Finally, the Regulation prescribes the use of a refusal form but does not prescribe the way to send out this form. The refusal may thus be effected, for instance, by handing over the form to the bailiff at the time of attempted service or by way of a simple letter. The question arises whether it might be appropriate to impose some formal requirements to enhance legal certainty as to an effective refusal to accept the document to be served.

3.8. Date of Service

In general, it appears that the application of Article 9 (the determination of the date of service) has been satisfactory and that it has met the objective of protecting the legitimate expectations and rights of both the applicant and the addressee[25]. However, several issues have been raised: One question is the determination of the date of service according to the law of the

[25] The largest group (45.6%) of the interviewees of the evaluation study considered that the application of the Article had not caused any problem. See reference in footnote 7, p. 175

Member State addressed (Article 9(1)) in cases where service is requested by a particular method under Article 7(1) and such method is not known in the Member State addressed even if it is not incompatible with its law. Obviously, in such cases the law of the Member State addressed might not necessarily provide for the date of service. The question has arisen whether Article 9(1) would permit the conclusion, in such a situation, that the date of service is governed by the law of the requesting Member State where the particular method exists.

Furthermore, Recital 15 raises confusion about the application of Article 9: it suggests that Article 9 does not apply in all the Member States and it requires Member States to notify the Commission on the (non-)application of the rule in the national laws. It is obvious that according to the text of the Regulation, Article 9 does apply in all Member States and it should, in the interest of the parties involved, apply everywhere. It is not necessary for national law to have a "double date system" as recital 15 suggests. Article 9 applies directly and only determines which law applies to the determination of the date from the perspective of either the applicant or the defendant. It would seem appropriate to clarify recital 15 in this respect.

3.9. Cost of Service

As a general rule, service of documents coming from a Member State does not give rise to payment of any taxes or charges for services rendered by the Member State addressed. However, when the service is performed either by recourse to a judicial officer or to a person competent under the law of the Member State addressed or when the use of a particular method of service is requested, the applicant has to bear the costs thereof. In order to facilitate access to justice, such costs should correspond to a single fixed fee.

In principle, the setting of a single fixed fee which is published on the Judicial Atlas has substantially improved the transparency of the costs related to cross-border service. Nevertheless, the communications by some Member States are not sufficiently clear[26], others provide that no fee applies although this does not seem to be the case in practice[27].

Some practical problems have been reported in relation to the payment of costs. In particular, it has been suggested that it would be helpful to include details of the bank account numbers of the agencies, including IBAN and BIC codes as well as VAT numbers insofar as relevant in the information provided on the transmitting and receiving agencies on the Judicial Atlas.

Furthermore, it has been reported that serving authorities in some Member States charge various additional costs in addition to the fixed fees. This does not seem compatible with the Regulation and requesting authorities are uncertain as to whether only the fixed fee should be paid or whether any additional costs may be charged. It may be appropriate to clarify this in the Regulation.

3.10. Service by Post

Service of documents by post provided for in Article 14 of the Regulation is one of the various ways to serve documents. Each Member State may effect service of documents directly by post on persons living in another Member State. Such service by post takes place

[26] For instance, the Spanish notification provides that "the costs are as provided for by the applicable Spanish legislation, which does not currently specify any particular amount".

[27] A complaint was recently received regarding service in Ireland.

by way of a registered letter with acknowledgment of receipt or equivalent. The Commission has realized that at least one Member State, led by the literal interpretation of the wording of the Article, restricts the application of this method of service to those cases where the service of documents lies with the responsibility of the State, i.e. when the courts are entrusted by operation of law with the task of serving documents.[28] This narrow interpretation implies that when the parties are responsible for taking care of the service, they may not have recourse to this way of cross-border transmission of document, and may not ask the competent body or person under the law of the Member State of their residence to serve the document on the addressee abroad in accordance with Article 14 of the Regulation. In the Commission's assessment the language of the Article deserves some improvement so that this duplicity in interpretation may be eliminated and the use of postal service in cross-border cases is made accessible generally to everyone.

The evaluation study has shown that due to its low cost and expeditiousness this method of delivery is used frequently and is even preferred to the method of transmission through transmitting and receiving agencies.[29] Still, practical difficulties do exist which affect negatively the efficiency of this way of service.

One problem lies in the diverging solutions which national rules of civil procedure foresee when determining the *circle of persons* on whom a postal delivery may be effected. In certain Member States, certain civil procedures require delivery on the addressee *in personam*. In other Member States, there is room for so-called 'substituted service', where the document is not handed to the addressee personally, but to another person at the same address or the document is placed in the mailbox or is deposited at a specified place for a certain period of time for the purpose of collection by the addressee. Cases of 'substituted service' result in valid service of the document under the law of the requested Member State but they may not comply with the requirements imposed by the civil procedural law of the requesting Member State. Since the rules on postal service differ significantly in the Member States, this problem seriously hinders an efficient use of this method of service.

Another problem in connection with postal service is *the legal framework* postal operators are subject to when they perform registered delivery of a document to the addressee. Public or private postal services usually use their own "rules" (e.g. rules of Universal Postal Union or rules of companies offering specialised private postal services) to deliver registered letters with acknowledgment of receipt. In addition, in several Member States postal operators have to comply with additional statutory rules in cases where the document to be served constitutes a judicial or another official document. For instance, in such cases postal operators are obliged to use specific certificates of service or they have to perform several consecutive attempts of delivery. While the application of such rules does not pose problems when the documents to be served come from national courts or authorities with which postal operators are familiar, the rules may not be applied when the postal operator does not recognise the judicial nature of a foreign document. In some cases even the statutory rules only apply to documents delivered by national courts or authorities and not to documents delivered by foreign courts or authorities. As a result, the service may in the end be invalid under either the

[28] In France, this interpretation is confirmed by the *circulaire* of the Minister of Justice No. 11-08 D3 of 10 November 2008 (see Bulletin officiel du Ministère de la Justice of 28 February 2009).

[29] 48.6% of the interviewees of the study admitted a very frequent use of postal service, 19.4% of which declared a preference to the traditional method through transmitting and receiving agencies. See reference in footnote 7, p. 181.

law of the Member State of origin or under the law of the requested Member State or even, if the operator did not recognise the judicial nature of the document to be served, under both.

In addition, there seems to be more generally a problem in practice with *acknowledgments of receipt* which are filled in improperly or incompletely, because they are not able to provide appropriate evidence on the relevant facts of the performed or attempted service.[30] Courts in the requesting Member States often are unable to determine from the return receipt to whom the delivery was performed or when.

These practical difficulties show that even if, according to the case law of the Court of Justice (cfr. Case C-473/04 *Plumex*), all methods of transmission provided for in the Regulation are considered equal; this may not be the case in practice. In order to ensure legal certainty with respect to postal service, and thus to promote this means of service which is usually less costly than other means of service, it should be made possible to determine precisely to whom the document was delivered and in which circumstances service was performed. One possible solution in this respect might be the introduction of a standard international return receipt form to be used by the postal operators. In addition, it may be needed to ensure a higher degree of convergence between rules on 'substituted service' for cases of cross-border postal service within the Member States.

3.11. Direct Service

The Regulation establishes a possibility to use direct service of documents as a method of transmission (Article 15). If permitted under the law of the Member State where the service takes place, a party to proceedings may effect service directly through the authorised persons of that Member State.

There is no general acceptance of this mechanism of service of documents. The situation is currently as follows. Direct service

- is possible in Belgium, Denmark, Greece, France, Italy, Cyprus, Malta, the Netherlands, Portugal, Finland, Sweden (in principle), United Kingdom (Scotland and Gibraltar).

- is not possible in: Bulgaria, Czech Republic, Estonia, Spain, Ireland, Latvia, Lithuania, Hungary, Austria, Poland, Romania, Slovenia, Slovakia, United Kingdom (England, Wales, and Northern Ireland).

- In Germany, the acceptance of direct service depends on the nature of the documents to be served. Luxembourg allows for direct service on the basis of reciprocity.

This method of transmission of documents is successful particularly in Member States where bailiffs carry out the service of documents, e.g France, Cyprus, Greece or Belgium. There seems more hesitation to use this method in other Member States due to an uncertainty on who are the judicial officers, officials or other competent persons referred to in Article 15 of the Regulation and on the conditions under which service will take place in the Member State addressed. The contact details of persons authorized to perform direct service are not listed on

[30] In the evaluation study, the most common problems stated by the respondents indicate that the acknowledgement of receipt is not completely filled (41,1%) or not returned (40,6%) or the signature cannot be read (34%): see reference in footnote 7, p. 182

the Judicial Atlas and it is not sure to what extent these persons are different from the receiving agencies. In order to improve this method of service and make it acceptable to all Member States, it should be considered to increase transparency on who effects such direct service and whether any minimum standards should be set (as in the case of postal service).

3.12. Defendant not entering an appearance

The abolition of exequatur with the aim of achieving a genuine free circulation of judgments within the Union has deepened the European integration in the area of justice. It would be further beneficial to look for certain harmonization of the situations where courts will give judgment even if no certificate of service or delivery has been received (Article 19(2)) and of the time limits for application by defendants to be relieved from the effects of the expiry of the time for appeal (Article 19(4)). Article 19 currently allows Member States to make declarations in this respect, which does not ensure a uniform application of the Regulation on the crucial point of the protection of the rights of the defence.

Furthermore, in order to avoid any confusion on the identity of the documents referred to in Article 19, it may be appropriate to align the latter's wording with the wordings used in other instruments of civil justice. In particular, Article 19 refers to a "writ of summons or an equivalent document", whereas other instruments (e.g. Article 26 of Regulation (EC) no 44/2001)[31] refer to a "document instituting the proceedings or an equivalent document".

4. INTERNATIONAL FRAMEWORK ON SERVICE OF DOCUMENTS

4.1. Parallel Agreement with Denmark

During the reporting period, the Council adopted in 2009 a decision providing for a procedure to implement Article 5(2) 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[32]. This procedure prescribes how the coordination between Denmark and the Union should take place in case of negotiations on international agreements which may affect or alter the scope of the Regulation.

4.2. 1965 Hague Convention on the Service of Judicial and Extrajudicial Documents

The 1965 Hague Convention on the Service of Judicial and Extrajudicial Documents is a multilateral treaty which allows service of judicial documents from one signatory State to another without the use of consular and diplomatic channels. All Member States, except Austria and Malta, are parties to this convention. The Hague Convention falls within the exclusive external competence of the Union following the adoption of the 2000 and 2007 Regulations.

Given that it would be in the interest of the Union that all Member States apply the Hague Convention, it is necessary to authorise Austria and Malta to accede to the Convention in the interest of the Union. The Union cannot accede to the Convention itself since the Convention only foresees the accession by States, not by regional economic integration organisations such

---

[31] Regulation (EC) 44/2001 will be replaced by Regulation (EC) No 1215/2012 as of 10 January 2015.

[32] Council Decision of 30 November 2009 (2009/943/EC) amending Decision 2006/326/EC to provide for a procedure for the implementation of Article 5(2) 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.

as the EU. The accession of Austria and Malta would enable uniform rules on service to apply in disputes involving third State defendants before the courts of the Member States. Such accession would implement the Union's political commitment, made at the time of accession of the Union to the Hague Conference on Private International Law in 2007, to promote the Hague instruments. The Commission proposed to authorize Malta and Austria to accede to the Convention on 6 June 2013[33].

4.3. Relations with Norway, Switzerland and Iceland (Lugano States)

As regards the States which are contracting parties to the 2007 Lugano Convention, namely Norway, Switzerland and Iceland, the Commission has recommended, in 2012, to the Council to authorise negotiations for the conclusion of an agreement with these States, among others, on the service of documents. The agreement would strengthen the existing level of judicial cooperation by speeding and simplifying the service of documents between the EU Member States and these States. In addition, it would support the effective functioning of the 2007 Lugano Convention where service of documents is an important element in protecting the rights of the defendant in the event of default and in the recognition and enforcement of judgments.

5. CONCLUSION

The Regulation has been applied in general satisfactorily by the Member States' authorities. Nevertheless, 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.

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.

[33] COM(2013) 338final.

Annex 1

Average time frame of completion of requests by transmitting and receiving agencies comparing the situation under Regulation 1348/2000 and Regulation 1393/2007[34]

Member State	Agencies	Regulation 1348/2000	Regulation 1393/2007	Time of completion requests
AUSTRIA	Receiving	1-3 months	1-2 months	+
	Transmitting	-1 month	-1 month	=
BELGIUM	Receiving	1-3 months	1-2 months	+
	Transmitting	---	---	
FINLAND	Receiving	1-3 months	1 month	+
	Transmitting	2-6 months	1 month	+
FRANCE	Receiving	1-2 months	2-4 months	-
	Transmitting	---	1 month	
GERMANY	Receiving	1-3 months	1-2 months	+
	Transmitting	1-2 months	1-2 months	=
GREECE	Receiving	2-6 months	3-4 months	+
	Transmitting	-1 month	-1 month	=
IRELAND	Receiving	2-3 months	2-3 months	=
	Transmitting	-1 month	-1 month	=
ITALY	Receiving	2-3 months	3-6 months	-
	Transmitting	2-3 months	2-3 months	=
LUXEMBOURG	Receiving	1-2 months	1-2 months	=
	Transmitting	---	1-2 months	
PORTUGAL	Receiving	1-6 months	2-3 months	+
	Transmitting	---	9 months	-
SPAIN	Receiving	2-6 months	3-5 months	=
	Transmitting	1-2 months	1-4 months	-
SWEDEN	Receiving	1-2 months	---	=
	Transmitting	-1 month	---	=

[34] Based on the information provided by the agencies for the study on the application of Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters, final report May 2012.

Annex 2

	LANGUAGE NOTIFIED FOR RECEPTION OF REQUESTS																		
	EN	**DE**	**FR**	**ES**	**IT**	**DU**	**BG**	**SK**	**CZ**	**FI**	**LT**	**LV**	**PL**	**PT**	**RO**	**SE**	**SL**	**DA**	**GR**
AT	x	x																	
BE	x	x	x			x													
BG	x		x				x												
CY	x																		x
CZ	x	x						x	x										
DK	x		x															x	
ES	x		x	x										x					
FI	x									x						x			
FR	x	x	x	x	x														
DE	x	x																	
EL	x		x																x
HU	x	x	x																
IE[35]	x																		
IT	x		x		x														
LV	x											x							
LT	x		x								x								
LU		x	x																
MT	x																		
NL	x	x																	
PL	x	x											x						
PT	x			x										x					
RO	x		x												x				
SK	x								x										
SI	x																x		
SE	x															x			
UK	x		x																

[35] Ireland also accepts the receipt of documents in Gaelic.