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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Regulation (EC) No 1393/2007 of the European
Parliament and of the Council on the service in the Member States of
judicial and extrajudicial documents in civil or commercial matters (service
of documents)

Delegations will find attached document SWD(2018) 286 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

{COM(2018) 379 final} - {SEC(2018) 272 final} - {SWD(2018) 287 final}

Executive Summary

Impact assessment on a

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 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)

A. Need for action

Why? What is the problem being addressed?

The Regulation lays down the ways in which judicial and extrajudicial documents can be served, and clear rules for transmitting judicial and extrajudicial documents from one Member State to another in civil and commercial matters. It provides for minimum standards with regard to the protection of the rights of defence and sets uniform legal conditions for serving a document by post directly across borders.

Currently, there are approximately 3.4 million civil and commercial court proceedings with cross-border implications every year. Where at least one party resides in a Member State other than the one where litigation takes place, courts apply this Regulation, often several times in the course of proceedings. The proper functioning of the Regulation is indispensable in ensuring access to justice, a fair trial for the parties to the proceedings, and in avoiding delays and extra costs in proceedings. For instance, failing to properly serve the document initiating proceedings is by far the most often used ground for refusing to recognise and enforce judgments.

Today, contacts between the bodies transmitting and receiving documents for the purpose of service are still almost exclusively paper-based, which can make them costly and inefficient. There is also in practice no possibility for serving documents on the recipient electronically in cross-border cases, although some Member States have introduced or are introducing that possibility at the domestic level. This initiative addresses the need to modernise, and in particular to digitalise, the process of serving documents abroad. It also tackles a number of other gaps in the Regulation identified in the evaluation of its operation. These gaps lead to delays and costs for citizens and businesses as well as for Member States, shortcomings in the protection of procedural rights and legal complexity and uncertainty. The main problems identified are:

- circumstances leading to an insufficient quality of the documentation of service by post,
- the restriction or inaccessibility of direct service in a cross-border context in many Member States even where allowed domestically,
- shortcomings concerning the clarity of rules protecting the procedural rights of parties in relation to translation requirements as well as in situations of default judgments, and
- a preference for fictitious or alternative methods of domestic service instead of those laid down in the Regulation.

The stakeholders affected are citizens and businesses as parties to legal proceedings, businesses as service providers, e.g. in relation to postal services or IT consulting, Member States' public and judicial authorities, and legal professionals (in particular judges and lawyers).

This initiative is closely linked to the initiative concerning the cooperation between the courts of the Member States in taking evidence in civil or commercial matters governed by Regulation (EC) No 1206/2001. The two initiatives are closely intertwined with the overall Commission priority of digitalisation and e-Justice and follow the lead of parallel work in the field of criminal justice (e-Evidence) in order to create a level playing field in the areas of criminal and civil justice. They build on and benefit from existing EU legislation outputs and legal standards (e-CODEX and the eIDAS Regulation).

What is this initiative expected to achieve?

The initiative is expected to further improve the efficiency and speed of judicial procedures and ensure proper administration of justice in cases with cross-border implications. In this way it will help improve the functioning of the internal market and reduce unnecessary costs whilst at the same time protecting or improving the rights of the defence. The initiative will further accelerate and simplify the cooperation mechanism for cross-border judicial assistance, in particular by adapting the system to technical developments and exploiting the advantages offered by digitalisation and by creating greater transparency in locating an addressee. It will also further improve legal certainty and efficiency by facilitating the use of speedy service methods like postal service and direct service and by clarifying the scope of the Regulation and its role in protecting the procedural rights of the parties.

What is the value added of action at EU level?

The initiative has clear added value at EU level, since it will improve the efficiency and speed of judicial procedures by simplifying and accelerating the cooperation mechanisms for the service of documents. In this way the initiative will improve the administration of justice in cases with cross-border implications. By its very nature, cooperation between Member States in cases where documents are served cross-border cannot be efficiently regulated at the level of Member States individually.

B. Solutions**What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?**

A range of options from non-legislative measures to ambitious legislative action have been considered. These options range from providing information on the e-Justice Portal (e.g. tools and search functions), amending the Regulation to clarify certain provisions (e.g. on procedural safeguards such as right to refuse to serve documents) to creating legal obligation on the Member States (e.g. obliging them to facilitate address enquiries but proposing a set of alternative tools to achieve this).

The preferred option is a policy package that would:

- oblige Member States to communicate and exchange documents between each other using a secure electronic channel (such as e-CODEX);
- introduce cross-border electronic service as an accepted method of service under the Regulation, subject to certain conditions;
- clarify the uniform standard character of the existing conditions to postal service;
- expand the use of direct service and introduce a 'digital-by-default' principle;
- oblige Member States to facilitate address enquiries through (at least) one of a range of alternative tools;
- codify relevant CJEU case law by specifying in the Regulation that it applies not only to documents which emanate from a public or judicial authority (for instance a public notary), but also to private documents if formal service is required in order to prove or protect rights of the claimant;
- amend the Regulation to clarify provisions on the right to refuse to serve a document;
- introduce new rules to better protect the defendant against the effects of default judgments;
- codify that the use of fictitious methods is allowed against foreign parties; and
- clarify the provision of information on the e-Justice portal.

Who supports which option?

Stakeholders were asked about their involvement in cross-border judicial proceedings and their preferences. 73 % of the stakeholders replied that they have been involved in cross-border judicial proceedings and more than 70 % had been involved in cases in which the Regulation had to be applied. Support was particularly strong for digitalisation: 61 % of the respondents agreed and 39 % of them tended to agree that the use of electronic means should become the default standard communication between the authorities/agencies involved in cross-border judicial cooperation in civil matters. The idea of judicial assistance for finding the whereabouts of a person in another Member State was also supported by a large majority of respondents, with 55 % strongly

agreeing and 33 % tending to agree. As regards direct service, 35 % of the respondents taking a position strongly agreed and 46 % tended to agree with the idea that competent persons, such as bailiffs or process servers in all Member States, could be directly requested from abroad to serve documents in their territory. 43 % of the stakeholders giving their opinion strongly agreed and 47 % tended to agree that it would be beneficial to ensure a uniform level of protection for defendants from another Member State who did not appear before court.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred policy package brings benefits in particular by reducing costs and delays (e.g. through introducing an electronic communication system and encouraging the e-service of documents). It would also reduce negative environmental impacts while ensuring coherence with other legal instruments.

Concretely, the effectiveness of the Regulation would be improved by the introduction of e-CODEX as a mandatory communication tool between the agencies. Facilitating electronic and direct service will also help improve the efficiency and speed of proceedings, and lower the burden on citizens and businesses. The preferred package would also help greatly in improving access to justice and legal certainty since it includes measures to clarify ambiguities and on locating an addressee. The package would improve both the internal and external coherence of the Regulation. Its provisions on the electronic service of documents and on electronic communications would be aligned with the required data protection standards. The package can also be expected to greatly reduce the environmental impact of the Regulation as it would replace paper-based communications between the designated authorities with the electronic service of documents and the use of electronic means of communication.

What are the costs of the preferred option (if any, otherwise main ones)?

The policy package is expected to generate some costs for Member States but significant benefits for citizens and businesses involved in cross-border proceedings. The greatest costs for Member States is associated with the implementation of e-CODEX as a mandatory tool for transmitting and receiving agencies. However, these costs are rather limited or one-off, whilst the benefits are lasting. Overall, on balance the benefits clearly outweigh the costs.

How will businesses, SMEs and micro-enterprises be affected?

The preferred policy package would bring benefits for businesses involved in cross-border proceedings. The policy package would save time for businesses as parties to legal proceedings because it introduces more efficient procedures for service. This would in turn decrease legal fees paid to lawyers, particularly in situations that could give rise to litigation, because the Regulation will provide clarifications. For businesses involved in the service of documents (e.g. process servers, bailiffs), the overall revenue generated by service requested under the Regulation is expected to increase somewhat as further integration of the internal market causes the number of cross-border proceedings to rise. As for businesses that provide service in different industries, the business revenue may shift between types of businesses: those to benefit are providers of IT consulting services, electronic registered delivery service (ERDS) providers, internet and telecommunication service providers, cloud storage service providers and digital archiving service providers. Those which could experience at least some neutral or negative economic impact are bailiffs/private process servers, and providers of paper and office supplies.

Will there be significant impacts on national budgets and administrations?

The proposed package will not impose significant costs on national administrations, nor will it create savings. National public authorities are expected to benefit from reduced costs in relation to postal services, time savings due to more efficient legal proceedings, and decreasing administrative burdens and labour costs. Introducing e-CODEX would incur some costs, but would reduce costs on postal services in the long term.

Will there be other significant impacts?

The proposed package would have a positive impact on judicial cooperation since it would improve communication between the Member States in an easy and secure way and, especially through e-Justice, provide knowledge about the relevant methods and costs in order to ensure fast and effective procedures in the cross-border service of documents. It would improve legal certainty and access to justice since it would improve the procedural rights of the parties to the proceedings. Moreover, it would help modernise public (including judicial) administration, achieve cross-border interoperability and make it easier to interact with citizens in line with the Digital Single Market Strategy and the e-Government Strategy.

D. Follow up**When will the policy be reviewed?**

The impact of the proposed initiative will be evaluated in a report drawn up by the Commission five years after the amended instrument enters into force.