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### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	31 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2018) 272 final
Subject:	Regulatory Scrutiny Board Opinion 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)

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Delegations will find attached document SEC(2018) 272 final.

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Encl.: SEC(2018) 272 final



EUROPEAN COMMISSION

Brussels, 31.05.2018  
SEC(2018) 272 final

**REGULATORY SCRUTINY BOARD OPINION**

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}  
{SWD(2018) 286 final}  
{SWD(2018) 287 final}



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2018)

### Opinion

**Title: Impact Assessment / Modernisation of judicial cooperation: Service of documents**

(version of 9 April 2018)\*

**Overall opinion: POSITIVE**

#### (A) Context

Each year, millions of EU civil and commercial court proceedings have cross-border implications. The EU has a legal framework for judicial cooperation across borders.

The EU Justice Agenda for 2020 calls for examining how to strengthen civil procedural rights, e.g. when sending documents between parties to disputes. The Commission included this issue in its 2018 Work Programme. More efficient judicial cooperation is also consistent with the Commission's Digital Single Market Strategy.

This impact assessment examines ways to improve cross-border cooperation in the EU when serving documents. It draws on an evaluation of the current legal framework.

#### (B) Main considerations

The Board notes the potential efficiency gains and consistency with EU digital strategy.

The Board gives a positive opinion, with a recommendation to further improve the report with respect to the following key aspects:

- (1) The report does not sufficiently demonstrate support for this initiative, both from the evaluation and from stakeholder feedback.
- (2) The presentation and the description of the options are incomplete. The report does not present objectives in ways that allow progress and success to be measured.

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**(C) Further considerations and recommendations for improvement**

(1) The report should incorporate more information from the evaluation. It should draw on lessons from experience to date, and explain how these have helped to define the scope of the initiative. It should also explain the limitations of the evidence from the evaluation and stakeholder consultations. It should note and explain any inconsistencies between the stakeholder consultation results and the logic of the choices in the impact assessment.

(2) The report should clarify the relationship between this initiative and related initiatives, including on taking of evidence and on e-CODEX.

(3) The report should better link objectives and indicators to define what success of the initiative would look like.

(4) Since the initiative concerns service of documents with sensitive and personal information, the report should carefully examine impacts on fundamental rights. The report should better explain when and why the initiative might involve social media and what the safeguards to ensure personal data protection are.

(5) The report could more closely follow the structure in the Better Regulation Guidelines when presenting the baseline and assessing options. The report should assess impacts of the options before it settles on a preferred course of action. The report should focus on the major options and explain these. For example, it should better explain what the envisaged codification of CJEU case law covers in practice, and justify any departure of the envisaged measures from the Court's rulings.

(6) The report should better explain the REFIT dimension of the initiative and its potential for reducing costs and streamlining administrative procedures. It could do more to quantify the costs and benefits of the policy options.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the recommendations of the Board are taken into account in the report prior to launching the interservice consultation.**

**The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.**

Full title	Initiative on the modernisation of judicial cooperation in civil and commercial matters in relation to service of judicial and extrajudicial documents (service of documents) governed by Regulation (EC) No 1393/2007
Reference number	2017/JUST/013
Date of RSB meeting	03/05/2018

**ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 9 April 2018**

*(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)*

**ANNEX 3. WHO IS AFFECTED BY THE INITIATIVE AND HOW?**

The preferred Option would affect the following stakeholders: citizens, national authorities (courts, administrative authorities, and ministries), legal professions (lawyers, bailiffs, huissiers de justice etc).

1. Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
<b>Direct benefits</b>		
Decrease the volume of cases in which the foreign defendant is actually not informed of the institution of the proceedings against him and a default judgment is issued	1) The preferred package of options will decrease the number of cases in which the documents instituting proceedings are served on the foreign defendant "domestically" in the Member State of origin, through an alternative or fictitious method of service in national law, instead of making an attempt to reach the defendant abroad and deliver him/her the document.  2) The preferred package will decrease cost by ensuring more transparency with regard to the access to information on the whereabouts of addressees to be	The measures of the Policy Package in 1) to 3) improve the chances that the defendant gets actually informed about a proceeding instituted against him/her in another Member State in due time to defend him/herself before the court. By this the number of default judgments (judgments taken in absence of the defendant) will decrease, which will avoid unnecessary additional litigations in the appeal or relief phase.  The direct benefit for the defendants (citizens) concerned would be the saving of the costs of these additional proceedings aiming at setting aside the default judgments. Assuming that such a relief would require 5.000

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	<p>served, whose address is not known or where the known address proves to be incorrect or obsolete.</p> <p>The tools to be provided by the Member States (based on their choice) include:</p> <ul style="list-style-type: none"> <li>a) providing judicial assistance upon request for foreign courts for clarifying the address of a person;</li> <li>b) ensuring that applications to national domicile registers in another Member State are accepted electronically, through the e-Justice Portal</li> <li>c) providing detailed guidance or information on the e-Justice Portal on available tools for locating a person in their country.</li> </ul> <p>3) The preferred package of options will contribute to greater protection of procedural rights, especially of the right of defence, by obliging courts to send alert messages to available electronic accounts of the defendants prior to the issuance of a default judgement against them.</p> <p>1) to 3) we may expect 480 million euro saving for citizens</p>	<p>euro on average, and assuming that the number of proceedings where default judgments are issued decreases by only 10% as a result of the proposed measures, the benefit would be</p> <p>For this estimates the following assumptions are used:</p> <ul style="list-style-type: none"> <li>• Number of all cases of serving documents: 3.2 million /year;</li> <li>• Number of instances where the cross-border proceedings end up in a default judgment: 30%<sup>1</sup>, 960 000;</li> <li>• Expected decrease of the volume of default judgments (by 10%) will mean: 96 000 less cases in which default judgment and follow-up litigation could be avoided;</li> <li>• This results in 480 000 000 euro saving for the citizens (and also for the justice systems)</li> </ul>
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<sup>1</sup> Some interviewees in Estonia and Belgium of the economic study estimated that the issuance of default judgments in cross-border cases occurs in approximately 70% of cases. But, not all types of cases with cross-border implications may end up in default judgments (see family law matters) we shall treat this assumption with caution. That is why we used an estimate of 30%

<p><b>Eliminate unnecessary costs for cross-border service of documents</b></p>	<p>(and justice administrations.)</p> <p>By ensuring better standard in informing the addressees about their right of refusal to accept a document on the basis of its inappropriate language, and by clarifying the roles and legal consequences of this right, we may assume that the instances in which a translation of the document to be served is unnecessarily required will decrease to a certain amount.</p> <p>Direct saving for citizens: 82 euro / page to be translated, and 2-4 weeks which is the time consumed by a translation of a judicial document.</p>	<p>The costs for translation of a document are generally based on the number of pages to be translated, thus it is not possible to give a general estimate for an average costs for a translation of a document to be served. However, the average cost for a translation per page is approximately EUR 82 based on the 2018 budget of the Translation Centre for the Bodies of the European Union (CdT).<sup>2</sup> For a 10 page document (which could be set as a rough estimate of the average length of a document to be served), translation could thus be upwards of EUR 800. In terms of timing for the translation however, this can have an even greater impact since translation could take approximately 2 – 4 weeks for completion. This adds additional delays onto the already quite burdensome process.</p>
<p><b>Eliminate unnecessary costs for cross-border service of documents</b></p>	<p>By making e-Codex mandatory for agencies and authorities designated under the Regulation as a default tool for communication and exchange of documents.</p> <p>Direct benefit is the time saved: 4 to 8 days of the tradition transmission of the documents by post will be reduced practically to zero (by submitting the document through the e-CODEX channel, it appears immediately on</p>	

<sup>2</sup> <http://ec.europa.eu/eeas/eeadocumentation/tpse-budget>

	<p>the receiver side).</p> <p>Direct cost saving by the avoidance of use of paper when the document is created and delivered in electronic form.</p> <p>By introducing and using the specific return slip (acknowledgment of receipt) by post under Article 14, the number of instances when service of documents is deficient, because the information returned to the sender is not satisfactory, will considerably decrease. By this we avoid unnecessary follow-up attempt of serving the same documents.</p> <p>We may estimate saving up around 2.200 000 euros by avoiding unnecessary postal service.</p>	<ul style="list-style-type: none"> <li>• .Number of all cases of serving documents: 3.2 million /year;</li> <li>• Number of instances where service is attempted by post (under Article 14): 55%, 1 760 000</li> <li>• Number of instances where service of document has to be repeated due to the deficiency of the service by post, assuming 25% of instances will end up in errors: 440 000</li> <li>• Assuming that the improvement will affect 50% of the deficient attempts: 220 000</li> </ul>
<p><i>Indirect benefits</i></p>		



Eliminate unnecessary costs for service of documents	By definition of extrajudicial documents, the number of cases where the documents cannot be served would decrease.	The definition of extra-judicial documents is currently unclear and affects the daily application of the Regulation.
	Through broader scope of application of Article 15.	Extending the scope of application of Article 15 is so that also transmitting agencies could make use of this method of service, will make the service of documents faster and will avoid that only persons "interested in" the legal proceedings may have recourse to this method of service.
	By making acknowledging (under certain) conditions the (direct) cross border electronic service as an accepted method of serving of documents	This will eliminate the legal obstacle in the way of cross-border electronic service of document.

II. Overview of Costs – Preferred Option

Objective/Policy option	Citizens		Courts/Authorities		Legal professions	
	One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Decrease the volume of cases in which the foreign defendant is actually not informed of the institution of the		480 million euro saving for citizens /year				

proceedings against him and a default judgment is issued									
Improving the quality of postal service of documents		around 2.200 000 euro by avoiding unnecessary postal service							
Eliminate unnecessary costs for taking	Direct costs	n/a	Implementation use of e-CODEX <sup>3</sup>	Maintenance of e-Codex	Training courses	n/a	Training courses		Training courses

<sup>3</sup> However, some Member States have already deployed the necessary infrastructure in the context of the previous e-CODEX pilot projects and may choose to reuse this infrastructure (national connector and gateway) for purposes of the communication system to be established under the Service Regulation.

evidence				15.000 EUR / national gateways and connectors to be installed	2.000 / systems	45 K €	n/a	30.000 €
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