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European Union

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### DRAFT STATEMENT OF THE COUNCIL'S REASONS

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Subject: Position of the Council at first reading with a view to the adoption of 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 the service in the Member States of judicial and extrajudicial documents (service of documents) (recast)  
– Draft Statement of the Council's reasons

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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 (2) (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.
2. Council Regulation (EC) No 1393/2007 on the Service of Documents is an important instrument for the European judicial cooperation. It provides the framework for the transmission of documents in civil or commercial matters between Member States. The revision proposal aims to adapt the cooperation mechanisms and transmission workflows in the existing Regulation to the technical developments provided by digitalisation and the use of information technology (IT). In particular, the Commission proposal calls for the establishment of a decentralised IT system and its mandatory use for the exchange of requests and documents between the Member States' authorities. Another important objective which is based on IT development is to strengthen the mechanisms of direct cross-border service by allowing secure electronic service, while securing procedural safeguards for the parties.
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.

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<sup>1</sup> 9622/18.  
<sup>2</sup> 14013/18.

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>.
6. At the JHA Council in June 2019, Ministers agreed that the judicial cooperation between authorities 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.
7. The new proposed Regulation text provides that the Commission will be responsible for the creation, maintenance and future development of reference implementation software. Because the original Commission proposal did not contain any financial statement on the potential impact on the budget of the EU, the Presidency has, in cooperation with the Commission and in line with Article 35 (1) subparagraph 2 of the Financial Regulation of the EU<sup>4</sup>, prepared an indicative financial statement<sup>5</sup> setting out the estimated financial impact of the amendments on the budget.
8. On 2-3 December 2019, the Justice and Home Affairs Council reached a general approach on the normative part of the proposed Regulation and called for work on the remaining recitals and Annexes to be finalised at technical level as soon as possible<sup>6</sup>. On February 2020, the Council reached a supplementary general approach<sup>7</sup>.

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

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

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

<sup>6</sup> 14599/19 ADD1, ADD2.

<sup>7</sup> 5722/20.

9. 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 decided to opt-in to this proposal.<sup>8</sup> 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.
10. On the basis of the December 2019 and February 2020 general approach, the Presidency has been in contact with the European Parliament, with a view to reaching an early second reading agreement.
11. Two trilogues were held, on 29 January 2020 and 30 June 2020, during which the representatives of the Presidency for the Member States and of the European Parliament had the opportunity to set out the cardinal points of their positions and explore the possibilities for finding compromise. The discussions resulted in a considerable convergence of views between the European Parliament and the Council on a draft compromise package<sup>9</sup>.
12. During the second trilogue, it was also agreed, with the support of the Commission, that the proposed Service of Documents Regulation should be presented and adopted as a recast of the current Service of Documents Regulation.
13. On 22 July 2020, COREPER II confirmed the compromise text of a recast with view to agreement reached with the European Parliament<sup>10</sup>.

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<sup>8</sup> Ireland opted-in on 23 October 2018 in 13482/18. Pursuant to the same protocol, the UK also opted-in on 26 October 2018 in 13622/18.

<sup>9</sup> 9248/20.

<sup>10</sup> 9678/20 + ADD 1.

14. On 10 September 2020, the compromise package of a recast was endorsed by the European Parliament's Committee on Legal Affairs. On 30 September, the Chair of the JURI Committee addressed a letter to the Chair of COREPER II to inform him that, should the Council transmit formally to the European Parliament its position in the form presented in the Annex to that letter<sup>11</sup>, he would recommend to the Plenary that the Council's position be accepted without amendment, subject to legal-linguistic verification, at the European Parliament's second reading.

## **II. OBJECTIVE**

15. This Regulation (recast) seeks to improve the efficiency and speed of the cross-border service of judicial and extrajudicial documents in the Union by exploiting the advantages of digitalisation for simplifying and streamlining the procedures for transmission of requests and for direct service. It will provide greater legal certainty and should thereby help to avoid delays and undue costs for individuals, businesses and public administrations, and encourage individuals and businesses to engage even more in cross-border transactions.
16. The proposal aims to digitise the transmission of requests for service of documents between competent authorities in different Member States. For this purpose, this Regulation calls for the establishment of a decentralised IT system. The Commission should be responsible for the creation, maintenance and future development of the reference implementation software in accordance with the principles of data protection by design and by default, which Member States should be able to apply instead of a national IT system.

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<sup>11</sup> 11357/20

### **III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING**

#### **A. PROCEDURAL CONTEXT**

17. The European Parliament and the Council conducted negotiations with a view to concluding an agreement at the stage of the Council's position at first reading ("early second-reading agreement"). The text of the Council's position at first reading reflects the compromise package agreed between the two co-legislators, with the support of the Commission.

#### **B. SUMMARY OF THE MAIN ISSUES**

18. The main modifications are focusing on the following aspects:

- Member States shall provide assistance in determining the address of the person to be served.
- All communications and exchange of documents should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, based on e-CODEX. It also foresees that this communication and exchanges are to be carried out with due respect for fundamental rights and freedoms. The use of traditional means of communications should only take place in cases of disruption of the IT system or other exceptional circumstances.
- The mechanisms of direct cross-border service should be strengthened by allowing electronic service between Member States, while securing procedural safeguards for the parties.
- Amendments to the rule on refusal to accept a document because of its language.

#### IV. CONCLUSION

19. The Council's position at first reading reflects the compromise package agreed between the Council and the European Parliament, with the support of the Commission.
  20. As indicated in paragraph 14 above, this compromise package was confirmed by a letter from the Chair of the European Parliament's Committee on Legal Affairs addressed to the Chair of COREPER II, on 30 September<sup>12</sup>.
  21. The Council believes that its position at first reading represents a balanced package and that, once adopted, the new Regulation will significantly contribute to increasing the efficiency and speed of the cross-border service of documents by exploiting the advantages of digitalisation.
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<sup>12</sup> See doc. 11357/20