



University of Maribor, Law faculty Webinar 18 February 2021

**Regulation (EU) 2020/1784 of the
European Parliament and of the Council of
25 November 2020 on the service in the
Member States of judicial and extrajudicial
documents in civil or commercial matters
(service of documents) (recast)**



Why there was a proposal to legislate?

- Improve the smooth functioning of the area of freedom, security and justice, by increasing the efficiency and speed of the cross-border service of documents;
- Need for technical developments, for exploiting the advantages of electronic service, of digitalization;
- need to increase the efficiency of existing methods of service.
- Need to avoid delays and undue costs for citizens, businesses and public administrations and addresses shortcomings in the protection of parties' procedural rights.



Main shortcomings of the existing Regulation

- The traditional channel via **transmitting and receiving agencies** is **underperforming** (modern technology)
- **Service by post** is a popular, quick and relatively cheap way of delivering the document to the addressee, but it is **not very reliable and has a high failure rate**
- **Direct service** provides a reliable solution but **access to it is limited** (not available in all Member States)



Recast Regulation

- Adopted on 25 November 2020;
- Published in the Official Journal on 2 December 2020;
- Entered into force on 22 December 2020
- 2 dates of application (Art.37):
 - 2 July 2022 (except Art.5, 8 and 10)
 - 3 years after entry into force of the Implementing act establishing the decentralised IT system for electronic transmission
 - Adoption of the Implementing act – by 23 March 2022 (Art.25)



Scope of application

- Applies to cross-border service of judicial and extrajudicial documents in civil or commercial matters.
- What is a cross-border service?
 - Recital 5 - service from one Member State to another Member State.
 - Recital 7 - addressee has no known address for service in the forum Member State, but has one or more known addresses for service in one or more other Member States (excludes fictitious service)



Scope of application

What is an extrajudicial document?

Document that has been drawn up or certified by a public authority or official, and other documents of which the formal transmission to an addressee residing in another Member State is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law (see *Tecom* case C-223/14).

What is not an extrajudicial document?

Does not include documents issued by administrative authorities for the purposes of administrative proceedings.



Scope of application - exceptions

- Does not apply:
 - to service of documents on a party's authorised representative in the forum Member State (Recital 6) **BUT** should apply to the service of any document on a party in another Member State if such service is required under the law of the forum Member State, irrespective of whether the document has been served on the party's representative.
 - to revenue, customs or administrative matters or to the liability of a Member State for actions or omissions in the exercise of state authority.
 - where the address of the person to be served with a document is not known (with the exception of Art.7).



Transmission of documents: Art.5

- Communication and exchange of documents between transmitting and receiving authorities is carried out electronically, through a decentralised IT system composed of national IT systems interconnected by a secure and reliable interoperable solution (e-CODEX);
- Decentralised IT system will be set up by an Implementing act, adopted by the European Commission.
- Alternative **traditional** means of communications **can still be used** only as an exception in cases of unforeseen and exceptional disruption of the IT system, voluminous documents, need of original document etc. (Recital 15)



What is e-CODEX

e-CODEX (e-Justice Communication via On-line Data Exchange) facilitates secure communication in civil and criminal proceedings via a tailor-made solution for the cross-border exchange of electronic messages in the area of judicial cooperation.

It consists of a package of software products which can be used to set up an access point for secure communication. Access points using e-CODEX can communicate with other access points over the internet via a set of common protocols, with no central system involved.



Legal effects of electronic documents

Art.6

Documents that are transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.

That principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents (Recital 16).



Assistance in address enquiries

Art.7

- Three alternative options – the choice is left to each MS, which communicates it to the Commission and it is published on the e-Justice portal:
 - designated authorities to which transmitting agencies may address requests on the determination of the address of the person to be served;
 - allowing persons from other Member States to submit requests, including electronically, for information about addresses of persons to be served directly to domicile registries or other publicly accessible databases;
 - detailed information, through the European e-Justice Portal, on how to find the addresses of persons to be served.
- Information on whether the MS performs ex-officio search of the address.



Right to refuse to accept documents: Art. 12

Under the same conditions as before - the documents is not written or translated in:

- a language which the addressee understands; or
- the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.



Right to refuse to accept documents: Art. 12

New rule on the language of the form, which informs the addressee for the right to refuse to accept the document:

- the official language or one of the official languages of the Member State of origin; and
- the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.
- In case of indication that the addressee understands an official language of another Member State – in that language.



Right to refuse to accept documents: Art. 12

The right to refuse is exercised either at the time of the service or within 2 week, by returning the designated form or by sending a written declaration to the receiving agency.

The service of the refused document could be remedied by serving the document with a translation. The correctness of such translation is not to be examined at the time of the service or the refusal and the addressee may challenge the translation in the course of the proceedings (Recital 25).

If the addressee has refused to accept the document and the court or authority seised of the legal proceedings decides upon verification that the refusal was not justified, that court or authority should consider an appropriate way of informing the addressee of that decision in accordance with national law (Recital 26).



Postal service

Art.18

- Wider scope – removes ambiguity as to who may use it – service may be effected directly by post (before – “Each member State”)
- Recital 30 mentions *Henderson* judgment (C-354/15): substitute service - validly effected, even if the document was not delivered to the addressee in person, if it was served at the addressee’s home address on an adult person who is living in the same household or who is employed there by the addressee and who has the ability and is willing to accept the document (exception - unless the law of the forum Member State only allows the service of that document on the addressee in person).



Direct electronic service

Art.19

Means of direct electronic service:

- the documents are sent and received using the qualified electronic registered delivery service within the meaning of eIDAS regulation (Regulation 910/2014) subject to a general consent of the addressee (see Recital 32);
- the documents are sent to the addressee's e-mail subject to an expressed prior consent given by the addressee to the court or the authority seized with the proceedings. The addressee should confirm receipt of the document by signing and returning an acknowledgement of receipt or by returning an email from the email address where service was effected (see Recital 33)



Direct electronic service

Art.19

The electronic service of documents directly to the recipient via electronic means is an additional alternative method of service provided that certain conditions are met:

- for persons with known address for service in another MS;
- electronic means for service available under the law of MS for domestic service;
- conditions may apply for service via e-mail:
 - such conditions may only relate to the security of the transmission;
 - may be specified only if the national law sets stricter conditions or does not allow electronic service.



Data collection

Art.34

MS will have to collect and send to the Commission the data which is available for the purposes of evaluation.

The data collected via the Reference Implementation or via the national IT system if the latter has such feature should always be sent to the COM.

The Regulations contains the list of data to be collected.



General remarks

- No change in the rules regarding the default judgment (Art.22) – see *Lebek* case (C-70/15).
- General rules concerning the respect of fundamental rights (Art.32) and protection of personal data (Art.31).
- What is Reference implementation software (Art.27).



Thank you!



Q&A

Link to the public consultation on digitalisation of cross-border judicial cooperation:

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12685-Digitalisation-of-cross-border-judicial-cooperation>