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**COMMISSION STAFF WORKING DOCUMENT**

**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)**

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## 1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

The EU has the task to develop the European area of justice in civil matters based on principle of mutual trust and mutual recognition of judgements. The area of justice requires judicial cooperation over the borders. For this purpose, and for the proper functioning of the internal market, the EU has adopted legislation on cross-border service of judicial documents<sup>1</sup> and on cooperation in taking of evidence<sup>2</sup>. These are crucial instruments to regulate judicial assistance in civil and commercial matters between the Member States. Their common purpose is to provide an efficient framework for cross-border judicial cooperation. They have replaced the earlier international, more cumbersome system of Hague conventions<sup>3</sup> between the Member States<sup>4</sup>.

This legislation on judicial cooperation has a substantial impact on the everyday lives of EU citizens in their private capacity or business activity. It is applied in judicial proceeding having cross-border implications; its proper functioning in these concrete cases is indispensable for ensuring access to justice and a fair trial for the parties to the proceedings (e.g. the lack of proper service of the document initiating proceedings is by far the most often used ground for refusing the recognition and enforcement of judgments<sup>5</sup>). The efficiency of the framework of international judicial assistance has, therefore, a direct impact on the perception of the citizens involved in such cross-border disputes on the function of the judiciary and the state of the rule of law in the Member States.

Smooth cooperation between courts is also a necessary ingredient for the proper functioning of the internal market. In 2018, there are in the European Union

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<sup>1</sup> 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, pp. 79-120.

<sup>2</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, OJ L 174, 27.06.2001, pp. 1-24.

<sup>3</sup> The Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

<sup>4</sup> The Regulations apply to all EU countries except Denmark. Denmark has concluded a parallel agreement on 19 October 2005 with the European Community on the service of judicial and extrajudicial documents in civil or commercial matters, which extends the provisions of the Regulation on service of documents and its implementing measures to Denmark. The agreement entered into force on 1 July 2007.

<sup>5</sup> An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (carried out by a consortium led by MPI Luxembourg), final report, June 2017, available at <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>, pp.60-61. Hereinafter referred to as the "2017 MPI Study".

approximately 3.4 million civil and commercial court proceedings with cross-border implications<sup>6</sup>. In most of these cases, namely in those where at least one party resides in another Member State than the one where the proceedings takes place, courts apply the Regulation on service of documents, often even several times in course of the proceedings (since often further documents have to be served formally, in addition to the document instituting the proceedings, such as the decisions closing the proceedings). Furthermore, the application of the Regulation on service of documents is not restricted to proceedings before the civil tribunals, because its scope covers also "extra-judicial" documents, the service of which may arise in various out-of-court proceedings (e.g. in succession cases before a notary public, or in family law cases before a public authority), or even in the absence of any underlying judicial proceedings<sup>7</sup>.

The EU Justice Agenda for 2020 stressed that, in order to enhance mutual trust between the justice systems of the Member States of the EU, the need to reinforce civil procedural rights should be examined, for example as regards the taking of evidence.<sup>8</sup> The aim of improving the framework of judicial cooperation within the EU is also in line with the objectives of the Commission set by the Digital Single Market Strategy<sup>9</sup>: in the context of e-Government, the Strategy expresses the need for more actions to modernise public (including judicial) administration, achieve cross-border interoperability and facilitate easy interaction with citizens. In line with this, the Commission has committed in its work programme for 2018 to prepare proposals revising the Regulation on taking of evidence and the Regulation on service of documents.<sup>10</sup>

Regulation (EC) No 1393/2007 on 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 and commercial matters (service of documents) and repealing Council Regulation (EC) No 1348/2000 provides for expeditious channels and clear rules for transmitting documents from one Member State to another, for purposes of service in the latter. The Regulation includes certain minimum standards with regard to the protection of the rights of defence (e.g. Articles 8 and 19), and sets uniform legal conditions for serving a document by post directly across borders. The Regulation represented a big step forward to The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"). This latter establishes methods for provision of testimony and documents between a signatory state when evidence is sought and another signatory state where evidence is located, for use in

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<sup>6</sup> These figures reflect the estimates which Deloitte presented in the economic study supporting this Impact Assessment. Estimates are based on Eurostat, CEPEJ, European Commission, and information gathered as part of the interviews. The Study (hereinafter referred to as the "economic study") was contracted to Deloitte, under the contract nr. JUST/2017/JCOO/FW/CIVI/0087 (2017/07), Final Report of the study is not published yet. hereinafter referred to as the "economic study".

<sup>7</sup> See detailed figures in subchapter 2.5.

<sup>8</sup> The EU Justice Agenda for 2020 Strengthening Trust, Mobility and Growth within the Union, COM(2014) 144 final, p. 8.

<sup>9</sup> COM(2015) 192 final of 6.5.2015, p. 16.

<sup>10</sup> Commission Work Programme 2018 – An agenda for a more united, stronger and more democratic Europe, COM(2017) 650 final of 24.10.2017, Annex II points 10 and 11.



judicial proceedings in the requesting state. The Convention provides for the taking of evidence by means of letters of request or diplomatic or consular agents and commissioners. Evidence is obtained by issuing a letter of Request to the designated central Authority of the signatory state where the evidence is located. By contrast with the Hague Convention, Regulation (EC) No 1393/2007 governs judicial cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters and it allows the taking of evidence from one member state to another, without recourse to consular and diplomatic channels. This Regulation enables thus a simplified route by allowing direct contact between the courts in the member states.

This Impact Assessment was developed on the basis of the findings of the retrospective evaluation of Regulation (EC) No 1393/2007, which has been conducted in parallel (back to back) and which concluded that although the Regulation has achieved its main objectives to a satisfactory level and continues to be relevant, there are a number of areas in which significant improvements can be made. The options for such improvements assessed in this document are based on the findings of the evaluation

It should be noted that this Impact Assessment is closely linked to the Impact Assessment concerning Council Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. The two initiatives are closely intertwined to the overall Commission priority of digitalization and e-Justice and follows the suit of parallel work in the field of criminal justice in order to create a level playing field in the areas of criminal and civil justice alike. It builds upon and benefits of already existing EU outputs and legal standards (e-CODEX, eIDAS Reg etc.). The Commission has recently adopted a proposal providing for a legislative framework on e-evidence, based on the Council's request in its June 2016 conclusions, for the Commission to develop a platform with a secure communication channel for digital exchanges of requests for electronic evidence under the Directive on the European Investigation Order. This initiative is closely interlinked with e-CODEX, since Member State experts participating in the development of the platform reached the conclusion, after considering different options, that the e-CODEX system would be the most suitable system to be used for such an exchange of electronic evidence.

## **2. PROBLEM DEFINITION**

### **2.1. The problem tree**

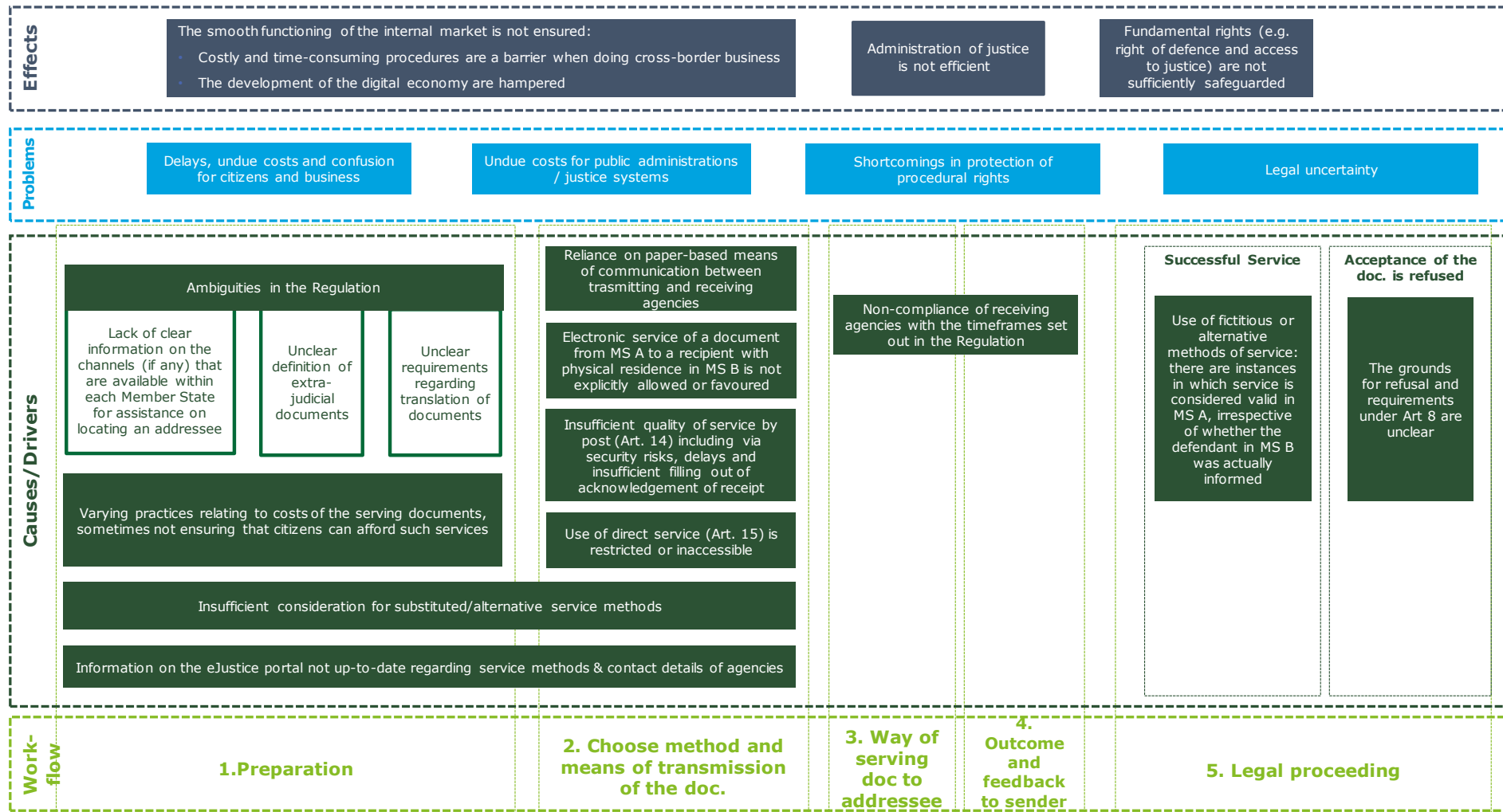
The problems, their causes and effects are presented below by means of a problem tree, which serves to illustrate the problems faced by EU citizens and businesses due to current limitations or shortcomings in the Regulation, the causes of these problems and their effects.

The issues identified at the bottom of the so-called 'problem tree' are considered to be the root causes/drivers of the problems that ensue for citizens. Ultimately, the problems

have effects at the level of overarching EU objectives. The figure should thus be read from the bottom to the top.

In the following sub-sections, each element of the problem tree is examined in further detail, starting with the causes/drivers of the problem and the resulting problems for citizens. It should be noted that the problems identified in this section are those which were evidenced in the parallel evaluation report on this Regulation. Both the evaluation and the impact assessment reports are based on data collected for both reports.

**Figure 1: Problem Tree**



Source: Deloitte elaboration

## 2.2. What are the problem drivers?

As demonstrated in the problem tree, the problems under the Regulation are relatively few but their causes/drivers are many. Therefore, the causes/drivers are first explained in detail, after which it is explained how they lead to problems and what are their larger effects (i.e. based on a reading the problem tree from bottom to top).

### 2.2.1. Ambiguities concerning the application of the Regulation

The Regulation either neglects certain aspects that are regarded as a priority by stakeholders or is not sufficiently clear in a number of provisions:

#### 2.2.1.1. Lack of clear information on the channels available for assistance on locating an addressee

It is clearly stated in Article 1(2) of the Regulation that it does not apply where the address of the person to be served is not known. As also highlighted in the Commission's 2016 comparative legal analysis of the relevant laws and practices of the Member States regarding the service of documents<sup>11</sup>, in practice this provision causes significant problems for transmitting and receiving agencies.

Firstly, it is difficult to establish when an address is known or unknown. For example in some Member States it is sufficient to address a document to the last known address of the person to be served (e.g. in France). In some cases, documents are transmitted to national central bodies or receiving agencies with the expectation that they would assist in locating the addressee. In fact, Member States have different understandings on who is responsible for locating the addressee. In about half of the Member States, this responsibility lies exclusively with the party that wants a document to be served<sup>12</sup>, while in the others, although the party may still be required to specify an address for the addressee, the court seized, the court officer or the bailiff have a duty to take certain measures in order to trace the whereabouts of the addressee<sup>13</sup>.

Therefore, there are currently different approaches in the Member States on the assistance provided (outside the Regulation) to applicants in civil and commercial matters on locating the whereabouts of an addressee or clarifying their address, once this is proven incorrectly indicated or obsolete. Consequently, the attitudes of the central bodies or the agencies designated under the Regulation vary in how they react to a situation where there is a deficiency in the address.<sup>14</sup> Such interventions ultimately lead to delays if no assistance is provided by that Member State. Most of the stakeholders consulted agreed that the idea of helping to identify whereabouts is satisfactory since the

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<sup>11</sup> [http://ec.europa.eu/justice/civil/files/report\\_service\\_documents\\_en.pdf](http://ec.europa.eu/justice/civil/files/report_service_documents_en.pdf) pg. 7.

<sup>12</sup> [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf), pg. 122.

<sup>13</sup> Ibid.

<sup>14</sup> See corresponding Evaluation Report by the Commission in Annex 8, p. 22.

regulation was created in order to initiate proceedings. The need will be to have tools to identify whereabouts during the proceedings (i.e. bank enforcement order that cannot be enforced for lack of address). Based on the assessment of the needs of stakeholders, a mechanism is required to assist the actors concerned in legal proceedings in clarifying an address in another Member State<sup>15</sup>.

#### 2.2.1.2. Unclear definition of extra-judicial documents

Article 1(1) stipulates that the Regulation applies to both judicial and extrajudicial documents. In the *Roda Golf & Beach Resort SL* judgement, the CJEU extended the scope of application of the Regulation to purely private documents (i.e. document which do not emanate from a public authorities) if their service is needed for the assertion or safeguarding of rights.<sup>16</sup> From this perspective, the definition of extra-judicial documents is unclear for the majority of stakeholders.<sup>17</sup> In fact, the broad interpretation of the Court contributed to the ambiguity of this concept, since in a lot of the legal systems there is a clear distinction between the mail delivery for private reasons and the legal concept of service of documents, whereby the latter is only conceivable in the context of legal proceedings.

While this was not found as a problem which would directly affect the daily application of the Regulation (receiving agencies informed the economic contractor that in most cases they just comply with the incoming requests for service without strictly reviewing the nature of the documents to be served). The ambiguity around this concept of "extrajudicial documents" in the Regulation, the fragmented interpretation of its content relying on the diverging views of the national procedural laws, is against the stated intention of the EU legislator to have this notion as an autonomous concept of EU law<sup>18</sup>. Most of the stakeholders (and especially The European Union of Judicial Officers) consulted suggested that the unclear definition of extra-judicial documents could lead to legal uncertainty.

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<sup>15</sup> See corresponding Evaluation Report in Annex 8, p. 54., or COM(2013) 858 final, p. 7.

<sup>16</sup> CJEU 25.06.2009 - C-14/08 - *Roda Golf & Beach Resort SL*, unalex EU-179

<sup>17</sup> More than half of the respondents to the online survey of Deloitte indicated that the meaning of "extrajudicial documents" under the Regulation was not clear.

<sup>18</sup> See CJEU judgment in Case C-14/08, *Roda Golf & Beach Resort*, paragraphs 49 and 50. Already anticipating this interpretation the EU legislator deleted from the current version of the Regulation (which was adopted in 2007) the obligation to draw up a "glossary" with the list of documents which Member States considered as falling under the "scope" of the Regulation.

### 2.2.1.3. Unclear elements in the right of the addressee to refuse<sup>19</sup> the acceptance of the document on the basis of its inappropriate language

The unclear aspects of language requirements of documents to be served under the Regulation are causes of significant difficulties for stakeholders. The assessment of whether the addressee understands the language of the document generates practical problems in the absence of clear indicators or guidance in the Regulation<sup>20</sup>. The burden of proof, and therefore the responsibility to present to court all relevant information indicating the actual language skills of the addressee is usually placed upon the sender (the adversary to the addressee in the proceedings). This is regarded as complicated in practice.

The requirement to provide information on the right to refusal<sup>21</sup> is also not sufficiently clear in the Regulation. This element appears in 20 out of 114 cases analysed on the Unalex database. In these cases, in general it was an issue before the court that the information on the right of refusal according to Article 8 of the Regulation had been misleading or not given. According to some interviewed stakeholders, the annex forms are not required to accompany the document served if the documents are already provided in (or translated into) either a language the addressee understands or an official language of the place of service. This practice is, in fact, contrary to the conclusion of the CJEU on the issue, which holds that the receiving agency is required, in all circumstances and without a margin of discretion, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to the Regulation<sup>22</sup>. This misunderstanding of the CJEU case-load is due to the fact that Regulation lacks clarity in terms of rights of addressees who do not understand the official language of the place of service and to the provision of information to addressees on the right to refusal and where it is clear that the addressees understand the language of the document. Some of the stakeholders, such as the The European Union of Judicial Officers and Chamber Européen des Huissiers de Justice related that there is a lot of reluctance in attaching the Annex II in all the languages.

A well-founded refusal does not render the service of the document invalid, but is regarded as an error which may be rectified by the subsequent transmission of the translation of the documents to be served (Article 8(3)). Such a remedy leads to additional delays which induced an unwanted consequence in practice, since transmitting agencies in some Member States require or encourage claimants to provide a “precautionary” translation of the relevant documents from the beginning.<sup>23</sup> Such a

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<sup>19</sup> For ground for refusal, the corresponding cause/driver box is presented under “Acceptance of the doc. is refused” within Workflow point 5. “Legal proceeding” in the problem tree.

<sup>20</sup> See examples for the relevant problems: corresponding Evaluation Report in Annex 8, p. 26.

<sup>21</sup> In the problem tree, the corresponding cause/driver box is presented under “Acceptance of the doc. Is refused” within Workflow point 5. “Legal proceeding”.

<sup>22</sup> Judgment in Case In C-519/13, *Alpha Bank Cyprus*

<sup>23</sup> 2017 MPI Study, p. 55.

practice is difficult to reconcile with the objective of the Regulation to minimize the instances of cross-border service of documents where translations are actually required.<sup>24</sup>

### *2.2.2. Varying practices relating to costs of the serving documents (leading to both delays and inequalities in the market)*

Article 11 of the Regulation on the costs of the service of documents was inherited from the preceding Hague Conventions and is based on the respect for diversity of the legal systems. This solution functions well with different legal traditions, and this aspect is also relevant in the EU context, since the systems Member States have in place with respect to the service of documents differ significantly. This difference of the procedural laws implies that a certain number of Member States charge costs for their services, whereas the majority of them do not. This tension was somewhat mitigated by the revision of the Regulation in 2007 obliging Member State using a bailiff system to notify a flat rate fee in advance, thereby creating transparency in the context of the costs. Nevertheless, differences still remain significant, including one Member State which asks for 132 € + VAT for serving a single document. As a repercussion of this situation, there is a trend, according to which also those States which do not use the "bailiff system" notify a flat rate fee for their services provided in return under the Regulation.

However, in Member States where judicial officers are not generally involved in the service of documents (e.g. in Ireland) the burden for compliance with the Regulation is felt to be higher. This is because the processing and arrangement of serving documents is not seen as a typical "court" function and additional resources have to be mobilised to become acquainted with this service and to administer the requests.

The consultation with stakeholders indicated that administrative formalities for transmitting and receiving agencies are felt to be heavy and quite bureaucratic. This is because of the rigid use of the long and complex standard forms in the Annex for communication between the agencies and the heavy reliance on paper-based procedures and postal service.

### *2.2.3. Reliance on paper-based means of communication between transmitting and receiving agencies*

The parallel evaluation of the Regulation found that communications between the designated agencies under the Regulation are overwhelmingly paper-based. This significantly prolongs the process and hinders the efficient and speedy transmission of documents under the Regulation. Although the Regulation includes declarations in favour of the more frequent use of electronic means of communication, as a result of a continuous reluctance of Member States to accept such communication means, it did not fulfil its objective to promote in practice the use of the modern communication channels.

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<sup>24</sup> See in this regard historical context in the corresponding Evaluation Report by the Commission, in Annex 8.

The majority of the Member States still relies exclusively on the paper-based communications: only seven Member States accepted e-mail as eligible means of communication for all types of interactions with their agencies under the Regulation, but the evaluation has shown that even in relations where electronic communication would be an option, they are not preferred in practice.

The findings of the Evaluation Report can be verified by the results of a questionnaire conducted in the context of the European Judicial Network in civil and commercial matters, on the legal aspects of electronic service of documents under the Regulation, in 2017<sup>25</sup>. The analysis of the replies received from 15 Member States has shown that whereas 88% held that there are no specific obstacles in their domestic procedural law which would prevent their transmitting agencies from forwarding the documents to be served under the Regulation through electronic channels, only 38% held it possible (technically and in legal terms) that their receiving agencies accept another Member States' electronic documents for purposes of service in their Member State. The replies to another question gave a blatant proof of the influence of old habits on the issue: when asked if receiving agencies would transform incoming paper documents into electronic messages, if those documents could be served electronically to the addressee in accordance with the law of the Member State addressed, 18% of the respondents answered that this is not done in practice even if this would be legally possible.

Most of the stakeholders consulted, such as The European Union of Judicial Officers (UEHJ) the Chamber Européen des Huissiers de Justice and the Council of Bars and Law Societies of Europe supported the move towards electronic transmission of documents to be served or evidence, as it will allow rapid management of judicial cooperation

#### *2.2.4. Direct electronic service of a document from MS A to a recipient with physical residence in MS B is not explicitly allowed or favoured*

The evaluation of relevance demonstrates that the Regulation is not well-adapted for technological developments already existing at the national level. Electronic service of documents is an emerging method in civil proceedings in the Member States, national procedural codes are opening up more and more towards this possibility (although the types of cases and the circle of addressee eligible for this method of service varies hugely)<sup>26</sup>. However the Regulation does not mention electronic service as a possible method for the service of documents in cross-border proceedings, and therefore falls behind those national systems already including such method. In respect with the direct

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<sup>25</sup> The results of the EJM questionnaire were presented in the meeting of the EJM (civil) of 30 November and 1 December 2017, in Tallinn. The results are not published.

<sup>26</sup> A good summary of the state of play in 2016 in the Member States can be found in the Study containing a comparative legal analysis of laws and practices of the Member States on service of document (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI, published in November 2016), Available at: [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf).



electronic service, the Council of Bars and Law Societies of Europe and the European Union of Judicial Officers raised questions in relation with (i) the certainty of the fact that the served person takes note of the content, (ii) the date of service of document and about (iii) the validity of the documents sent and their content.

#### *2.2.5. Insufficient quality of service by post (Article 14) including delays and insufficient filling out of acknowledgement of receipt*

Although service by post is a preferred method of service for the majority of stakeholders<sup>27</sup>, there are still concerns regarding delays as well as the legal uncertainty when acknowledgments of receipt are not sufficiently completed.

Regarding delays, stakeholders highlighted the uncertainty that accompanies using postal service with regard to the time it takes to reach the addressee, including considerable periods being necessary in some Member States. The biggest issue seems to be the different levels of quality of postal services in the Member States.<sup>28</sup> Some interviewees pointed out that post is unreliable since they do not know if the postal services will deliver in time or to the right person. The origin of this practical problem lies in the fact that the Regulation does not harmonize the conditions relating to the eligible recipients in addition to the addressee (i.e. which other persons under the address can receive the document if the addressee is not present at the time of the delivery), and does not regulate the consequences of an unclaimed delivery (i.e. when the document is left uncollected and is returned to the sender by the postal operator).

Even when delivery of the document is successful through postal services, often there are issues with the acknowledgement of receipt supplied by the mail carrier and effective service is not recognised in the court of origin. This is due to the fact that the acknowledgment of receipt is often not sufficient to prove that service was effective. For example the date of receipt may not be properly filled in or the signature is illegible or not supplied. In addition, some interviewees highlighted the fact that it is unclear whether digital versions of acknowledgment are regarded as “equivalent” to original versions. Some of the stakeholders consulted (the European Union of Judicial Officers and the Hague Conference on Private International Law) suggested that that it would be advisable to have an EU label envelope.

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<sup>27</sup> In the online public consultation, with regard to the question on the preference of the traditional (judicial assistance) channel of transmission to the direct methods of service (service by post, or direct service) almost half of those who expressed an opinion preferred the use of the direct methods (47%). This finding can be corroborated by the results of the Study on the application of Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters, launched by the Commission and prepared by MainStrat, final report July 2012: 48.6% of the interviewees of this latter 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 of the Study. Deloitte estimated in its economic study, based on its own research and data collection, that the proportion of the use of the postal service method amounts to 55% of all instances where the Regulation is applied (2018 Deloitte economic study, p. 33).

<sup>28</sup> This issue has appeared in 19 out of 114 cases analysed on the Unalex database.

### *2.2.6. Use of direct service (Article 15) is restricted or inaccessible*

Article 15 of the Regulation allows that any person interested in legal proceedings in one Member State (Member State of origin) may request directly a judicial officer (bailiff), official or other competent person in another Member State (Member State addressed) to serve a document there. The availability of this method of service in the Regulation is limited in two senses: first, only persons involved ("interested in") a legal proceeding may apply this way of service, consequently transmitting agencies are not permitted to exploit this possibility. Second, this may be applied only in those Member States where the domestic law permits the service of the document through judicial officers or other competent professionals. Direct service is regarded as an efficient method of service among stakeholders. However, the use of the method is not available in all Member States, restricting the access of some applicants to a rapid and direct mean of serving documents. In addition, confusion is generated when Member States accept the direct service of documents domestically but restrict its application for cross-border service. The consultation with the stakeholders also indicated that Article 15 of the Regulation is a very effective tool and that extending its scope of application will mean a great step forward. Moreover, the group of experts suggested that Member States should leave open all the methods available under national law and should provide at least one person who can provide service under national law according to Article 15 of the Regulation.

### *2.2.7. Use of fictitious or alternative methods of service at national law is preferred to the Regulation*

This problem driver is generated by the vague precondition of the Regulation determining the scope of application, according to which it should apply only when a document has to be transmitted from one Member State to another. This precondition enables courts to keep the service of a document in a "domestic" context and to use national methods of substituted or fictitious<sup>29</sup> service of documents also in cases where the addressee has his/her residence or seat in another Member State. This constitutes a clear disadvantage for foreign addressees, since when the Regulation is not used, the uniform standards therein protecting the rights of the defence (such as Art. 8 or Art. 19) do not apply. The frequency of this problem can be demonstrated by the fact that in total 19 out of 114 cases analysed on the Unalex database involve considering service valid in

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<sup>29</sup> "Fictitious/notional method of service of documents" is, where the legislator does not want to inform the party anymore, but just to ensure that there is an act considered as formal service so that the proceedings may be continued ("publication on the court board", placing the doc. to be served to the case file). It is almost certainty that the defendant does not get the information.

"Substituted/alternative method of service of documents" is, where the document is not delivered on the addressee in person, but to another person/place, from where you can presume that the document will reach him/her (giving the document to an adult member in the same apartment, or to the employer of the addressee; placing it in a mailbox belonging to the addressee; delivering to a place which is owned by the addressee etc.). In these situations there is a probability that the defendant will be informed in the end.

Member State A by the use of fictitious or alternative methods, irrespective of whether the defendant in Member State B was informed.

In general, interviews with stakeholders found that fictitious service is quite common in cross-border proceedings. Nevertheless the lack of guidance of the Regulation on the use at domestic level of fictitious and substituted service on addressees with a residence or seat in another Member State causes uncertainty and fragmentation concerning the rights of parties in the Member State. In this sense, the group of experts suggested that more streamline rules are necessary with regard to the persons that can be substituted and proposed to codify *Henderson Case*<sup>30</sup>.

This divergence of approaches in practice remained even after the conclusions of the CJEU made on the scope of the Regulation in the *Alder Case*, which underlined that whenever the addressee has his/her residence or seat in another Member State, the Regulation should apply and the service of the document on him/her shall be attempted through the channels of the Regulation<sup>31</sup>. There is evidence, that this conclusion of the Court is not followed and that there is a tendency of national courts to prefer "domestic" methods of service of documents even in cases where they are aware of the foreign residence of the addressee.

#### 2.2.8. *Insufficient protection of the defendant against the effects of default judgments*

Interviews in the fieldwork Member States found that default judgments are quite common in cases falling under the Regulation. According to Article 19(1) of the Regulation courts are limited by various requirements in passing default judgments against defendants on whom the document instituting the proceedings has had to be transmitted to another Member State. Irrespective of this, the interests of the defence are not in all instances properly protected, since Article 19(2) of the Regulation allows, for reasons of procedural economy, a continuation of the proceedings even if the court could not establish that the foreign defendant was actually informed.

The consultation with stakeholders showed that the means of communication within the EU are different and therefore is difficult to assess when the judgements become definitive. The 2017 MPI Study found that the court of origin will often not be able to establish whether or not service in another Member State has been effected on the defendant or whether the defendant has at least received the relevant document because a

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<sup>30</sup> Judgement of 2 March 2017 in Case C-354/15, *Henderson*, ECLI:EU:C:2017:157. According to the Court, Regulation No 1393/2007 must be interpreted as meaning that postal service of a document instituting proceedings is valid, even if:– ‘The document to be served has not been delivered to its addressee in person, provided that it has been served on an adult person who is inside the habitual residence of that person and is either a member of his family or an employee in his service.’

<sup>31</sup> Judgment of 19 December 2012 in Case C-325/11 *Alder*, ECLI:EU:C:2012:824. According to the Court, the only exceptions from the application of the Regulation in these cases are: if the address of the addressee is not known or if the addressee has an authorized representative in the Member State of origin.

court will often not be in a position to investigate the details of the service process in another Member State.<sup>32</sup> Furthermore, the Study concludes that the reservation, which allows for the continuation of the proceedings after six months have elapsed and has been notified by more than half of the Member States, does result in fictitious service on the defendant. That will not only undermine the defendant's protection but it is also contrary to the idea of mutual trust.<sup>33</sup>

Another weakness in the protection of the right of the defence is detected in the uneven level and lack of transparency of the available legal remedies after a default judgment has been issued. Article 19(4) of the Regulation provides a special, autonomous provision according to which the judge can relieve the defendant from the effects of the expiry of the time limit for ordinary appeal in cases of error of service of the document instituting the proceedings. The problem with this autonomous extraordinary relief is that its accessibility may be limited in time by the Member States (a majority of them communicated to the Commission that they will not entertain a request for the relief once one year has passed from the issuance of the default judgment). Another problem of this autonomous extraordinary relief is its relationship to further extraordinary reliefs in national law.

#### *2.2.9. Information on the e-Justice portal not up-to-date or easy to find*

Despite the usefulness of the information contained on the e-Justice portal regarding the service of documents,<sup>34</sup> it was found that information regarding the application of the Regulation, the contact details of agencies and central bodies and the national laws and practices on service of documents is often not up-to-date or easy to find. This generates uncertainty for the stakeholders involved and can add additional delays to the process of serving a document where e.g. information is relied upon and subsequently found to be incorrect. In the dedicated meetings with the Member States, some of them conveyed that there is an advantage in making it easier to search existing registers, including via the e-Justice Portal: UK, Netherlands, Cyprus, Austria, Germany, Portugal and Romania.

#### *2.2.10. Non-compliance of receiving agencies with the timeframes set out in the Regulation*

It is broadly recognised that the timeframes for the communication between transmitting and receiving agencies (i.e. sending the acknowledgement of receipt within 7 days, serving the document with 30 days etc.) are not respected. The non-compliance with the timeframes leads to uncertainty and delays for the parties involved. As shown in the corresponding Evaluation Report, difficulties in meeting the time limits in the Regulation

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<sup>32</sup> 2017 MPI Study, p. 170.

<sup>33</sup> 2017 MPI Study, p. 171.

<sup>34</sup> According to 68% of respondents to the public consultation, the relevant pages of the European e-Justice Portal properly inform the parties to a proceeding or the recipients of judicial documents about their rights and obligations related to the cross-border service of documents.

by the designated agencies are directly connected with the problem driver relating to the reluctance to use modern means of communication for interactions between the agencies<sup>35</sup>.

### **2.3. What are the problems for citizens, businesses and public administrations**

The difficulties/causes identified in the previous section lead to concrete problems for citizens, businesses and Member States. There are four main problems.

#### *2.3.1. Delays, undue costs and confusion for citizens and business*

Delays and undue costs are caused for citizens and business by all difficulties/causes. There is also a strong interplay between delays and costs, for example confusion generated by the uncertainties in the Regulation (e.g. efforts to clarify an address or to find the proper interpretation of an ambiguous provision) leads to delays in the process and ultimately undue costs for such delays.

#### *2.3.2. Undue costs for Member States (Public administrations and justice systems)*

Member State's central bodies and relevant authorities experience undue costs under the Regulation in terms of resources (i.e. staff costs, administrative costs) spent on dealing with requests and decisions under the Regulation. These undue costs are driven by uncertainties concerning the application of the Regulation.

Undue costs are also strongly driven by the reliance of transmitting and receiving agencies on paper based means of communication.

#### *2.3.3. Shortcomings in protection of procedural rights*

Shortcomings in the protection of procedural rights are closely linked with the use of fictitious or alternative methods of service where the addressee is not in real terms informed of the existence of the document.

In addition, the unclear elements in the right of the addressee to refuse the acceptance of the document on the basis of its inappropriate language also contributes to the problem of protection of rights for both the applicant and the addressee. As the grounds for refusal may be determined on a test of the addressee's understanding of the language, which protects the addressee, this refusal method may also be abused, which leads to unnecessary delays in the procedure and denial of the procedural rights of the applicant.

Insufficient protection of the Regulation against default judgments feeds also in to this problem.

Similarly, the non-compliance of receiving agencies with the timeframes set out in the Regulation can affect the procedural rights of the parties as well as the insufficient consideration for substituted/alternative service methods.

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<sup>35</sup> Evaluation Report p. 29.

#### *2.3.4. Legal uncertainty*

Without a doubt, ambiguities concerning the application of the Regulation lead to legal uncertainty. In addition, legal uncertainty under the Regulation is connected to the preference of fictitious or alternative methods of service at national level to the use of the Regulation as this directly affects the scope of application of the Regulation.

The insufficient quality of service by post is also a main driver of legal uncertainty. First, the acknowledgement of receipts (return slips) filled in an inappropriate way, may not prove in a legally appreciable way that service have been effected. Second, the silence of the Regulation on the eligible substituting recipients or on the consequences of an unclaimed delivery adds to the uncertainty of the result of the assessment of the delivery.

Further, legal uncertainty may also derive from the fact that in some Member States the use of direct service is restricted/inaccessible, despite it being allowed domestically – as lawyers or transmitting agencies may rely on this method of service being acceptable though it is not.

### **2.4. Effects at the level of wider EU policy**

As shown in the Problem Tree figure (see Figure 1), the causes and problems identified and explained in the previous section have wider effects, influencing general EU policy objectives. The following effects have been identified:

- The smooth functioning of the internal market is not properly ensured
- Administration of justice is not efficient
- Fundamental rights are not sufficiently safeguarded

The following subsections present the assessment of these effects.

#### *2.4.1. The smooth functioning of the Internal Market*

Some of the problems previously described hinder the functioning of the Internal Market, which is manifested by:

- Costly and time-consuming procedures are a barrier to cross-border business;
- The development of the digital economy is hampered.

First, both citizens and businesses should be able to not only make use of the advantages of the Internal Market (i.e. an undisturbed flow of cross-border procedure), but also to solve any disputes that may arise in this context, regardless of the Member State concerned. Nevertheless, some concrete problems arising from the application of the Regulation are preventing the Internal Market from providing such benefits.

The delays and undue costs and confusion created by the ambiguities concerning the application in the Regulation constitute a significant barrier for businesses and citizens. Businesses should be able to operate and solve any issue they face with their counterparts in any of the EU Member States. The lack of a smooth facilitation of the Internal Market by the Regulation may constitute a deterrent for citizens and businesses in getting

involved in cross-border transactions in the future as they might prefer to avoid administrative hassle, delays and involved costs.

Second, a proper functioning of the Internal Market should entail the development of the digital economy. However, as described in the previous section, transmitting and receiving agencies still strongly rely on paper based means to communicate and cross-border electronic service of documents is practically not possible under the Regulation. Yet, paper-based communication entails delays and costs for public administrations, justice systems, and citizens/businesses alike. The development of digital economy is therefore hampered in this case.

#### *2.4.2. Administration of justice*

Public administrations as well as justice systems are facing several issues when implementing this Regulation which hampers their efficiency. As previously explained, they are facing undue costs in terms of resources (i.e. staff costs, administrative costs) spent on dealing with requests and decisions under the Regulation. These undue costs are driven by ambiguities in the Regulation and by the reliance of transmitting and receiving agencies on paper based means of communication.

In addition, the legal uncertainty arising from the ambiguities in the Regulation (e.g. relating to the quality of service by post) together with the shortcomings in the protection of procedural rights also indicate that the administration of justice fails to be as efficient as it should be.

#### *2.4.3. Fundamental rights*

Article 47 of the EU Charter of Fundamental Rights, stipulates that “Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law”<sup>36</sup>. The access to justice is broader, and entails<sup>37</sup>: effective remedies, access to court, fair trial, redress, judicial protection and due process.

All these rights are at stake when the procedural rights of the parties are not duly respected in cross-border proceedings. It was found in the parallel evaluation exercise that the fundamental rights of a party to a cross-border proceeding may be at risk with regard to two main issues:

- Service of documents in a language not understood by the addressee (or conversely an abuse of this right).
- Insufficient level of protection of the defendant against default judgments in case he/she was not properly served with the document instituting the proceedings.

The policy package addresses these shortcomings. Firstly, the policy package would contribute to more clarity and predictability of the procedure revolving around the right

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<sup>36</sup> Article 47 EU Charter of Fundamental Rights, <http://fra.europa.eu/en/charterpedia/article/48-presumption-innocence-and-right-defence>

<sup>37</sup> FRA, Access to justice in Europe: an overview of challenges and opportunities, March 2011.

of refusal of addressees and a better protection of their procedural rights. In addition, the proposal will state the criteria to assess the language skills of the addressee. Such amendment would further protect addressees ensuring they understand the content of the document they have been served on the one hand, and would safeguard the non-abuse of the right of refusal, thus equally protecting the plaintiff's rights on the other hand.

As regard the protection of the defendant against default judgements, it should be noted that Article 19 of the Regulation contains provisions on the consequences of a defendant not entering an appearance. The provision limits the possibility for the court to give judgment against a defendant who has not appeared and who was to be served abroad. Paragraph 4 enables the judge to free the defendant from the effects of the expiry of the time for appeal against a default judgment. This provision thus provides a safeguard to make sure that the defendant's procedural rights have been taken into account. It is complemented by the possibility to refuse recognition of a judgment on the ground that the defendant was not served with the document which instituted the proceedings or an equivalent document correctly, as stipulated in the Brussels Ia Regulation (Art. 45(1)(b)). The policy package will add more clarity concerning the due diligence to be carried out before issuing default judgements by obliging courts to send alert messages through all means of communication which are reasonably likely to be accessible (i.e. email address, social media etc).

The possibilities created by the e-CODEX electronic system would have a positive impact on the ability to exercise the right to an effective judicial remedy, and are therefore in conformity with Article 47 of the Charter of Fundamental Rights since electronic communication and document transmission enhances and reduces the time of the court proceedings. Stakeholders have pointed out that Article 47 also guarantees the right to an impartial and independent tribunal, and that in order to be in conformity with that Article, future governance and coordination of e-CODEX and e-CODEX-related activities need to ensure that the system does not interfere with the functioning of the judiciary is guaranteed<sup>38</sup>. Moreover, the electronic method of service together with the proposed 'digital by default' principle is expected to not only have a positive effect on access to justice, but also contribute to faster proceedings. Furthermore, it reduces costs or failures of service of documents experienced otherwise, where an inefficient method to effect service would have been chosen due to a lack of options under the baseline scenario. Likewise, the clarification provided by the proposal on the definitions and concepts would reduce legal uncertainty and speed up procedures under the Regulation in practice.

Next under the baseline scenario, the protection of personal data is not considered to be affected by the current Regulation. External factors influencing data protection and privacy are the General Data Protection Regulation (GDPR) and the growing threats to cybersecurity (also affecting public authorities). After entering into force in May 2018,

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<sup>38</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3600084/feedback/F2268\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3600084/feedback/F2268_en)



the GDPR is expected to increase awareness on the issue, prompt actions to ensure security and integrity of databases and swift reactions to breaches of privacy in the judiciary. However, data protection in the judiciary will continue to be largely determined by national decisions and the integrity of postal services or the agencies/authorities involved in the process of cross-border service under the Regulation. At the same time, the incidence of attempted attacks on public IT infrastructure is expected to increase until 2030. This will also affect the judiciary in the Member States, depending on the proliferation of electronic communication, court IT systems and the interconnectedness with other IT systems or databases. Lastly, the wide variety of potential uses for social media corresponds to an equally broad range of legal issues relating to these communication channels. However, it should be noticed that documents will not be sent via social media, but these networks will be only used to sent information notice.

## **2.5. How will the problem evolve?**

With regard to the timeframe 2018-2030, the main findings of the quantification exercise are as follows:

- Number of legal proceedings in which the Regulation is expected to be applied:
  - In year 2018, it can be expected that there are up to 3 255 070 legal proceedings across all EU Member States in which the Regulation will be applied;
  - Until 2030, this number is expected to increase up to 4 164 734 per annum (i.e. +24%)<sup>39</sup>

For service through postal services, cases are expected to increase from 1.9 million to 2.4 million between 2018 and 2030. For service through transmitting and receiving agencies, the number is expected to increase from around 1 million to 1.3 million over this time span. Regarding direct service, the number is expected to increase from 445 431 in 2018 to 569 911 in 2030. Finally, for service through diplomatic channels, the number is expected to increase from 68 528 in 2018 to 87 679 in 2030.

The increase in the number of proceedings, where the Regulation will be applied, would generally amplify the existing problems, without any appropriate intervention. In particular, the continued reliance on paper based means of communication and transmission of documents would increase the gap between the output efficiency of the judicial assistance procedures of the Regulation and the demands and needs of EU citizens in a more digitalized world. Where society and governance is more and more

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<sup>39</sup> These figures reflect the estimates which Deloitte presented in the economic study, based on Eurostat, CEPEJ, European Commission, and information gathered as part of the interviews. The estimates of Deloitte are decreased by 5% which include the approximate number of administrative proceedings (i.e. legal proceedings between a public authority and a business or citizen)m which types of cases are excluded from the scope of the Regulation

digitalised, a system of cross-border service of documents, which is not following this trend but continue to be based on paper, will hamper the general governance of justice<sup>40</sup>.

### **3. WHY SHOULD THE EU ACT?**

#### **3.1. Legal basis**

The legal basis is Article 81 TFEU (judicial cooperation in civil matters having cross-border implications). The broad mandate of Article 81 aims at creating an integrated system of circulation of judgments and other documents from one Member State to another. Subparagraphs (b) and (d) of paragraph (2) of this Article grants the EU the power to adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the cross-border service of judicial and extrajudicial documents and the cooperation in taking of evidence.

#### **3.2. Subsidiarity**

The aim of the policy area concerning judicial cooperation in civil matters has been always be to establish a genuine area of freedom, security and justice where judicial decisions circulate and legal situations acquired under one legal system are acknowledged within the EU across borders without unnecessary obstacles. This approach is based on the conviction that without a genuine judicial area the underlying freedoms of the single market cannot be fully exploited. Some of the other EU instruments enacted under judicial cooperation in civil matters, however, prevent the circulation (either the recognition or enforcement) of judgments when at the origin of the proceedings there was a defect in service of process, such that the defendant did not receive proper notice of the existence of proceedings.<sup>41</sup>

The problems to be tackled by the initiative arise in cross-border judicial proceedings which by definition transcend the reach of national legal systems and stem either from the insufficient level of cooperation between the authorities and officers of the Member States, or from the lack of interoperability and coherence of the existing domestic systems and legal environment. Rules in the area of private international law are laid down in Regulations because that is the only way to ensure the desired uniformity of rules. While nothing prevents Member States in principle from digitalising the way they communicate, past experience and the projection of what will happen without EU action shows that progress be very slow and that even where Member States take action, inter-

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<sup>40</sup> More details on the possible effects of an unchanged scenario can be read in chapter 7.1 assessing the impacts of the status quo.

<sup>41</sup> See, e.g., Art. 34(2) of the old Brussels I Regulation (44/2001) and Art. 45(1)(b) of the Brussels I Regulation as recast.

operability cannot be ensured without a framework under EU law. The objective of the proposal cannot be sufficiently accomplished by the Member States themselves and can therefore be only achieved at Union level. At a time when *exequatur* procedures are being gradually abolished, thus removing preventive verification of proper service before enforcement, the need to ensure that the defendant received actual notice is even more important. The EU added value lies in further improving the efficiency and speed of judicial procedures, by simplifying and accelerating the cooperation mechanisms with regard to the taking of evidence and thus improving the administration of justice in cases with cross-border implications.

#### 4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

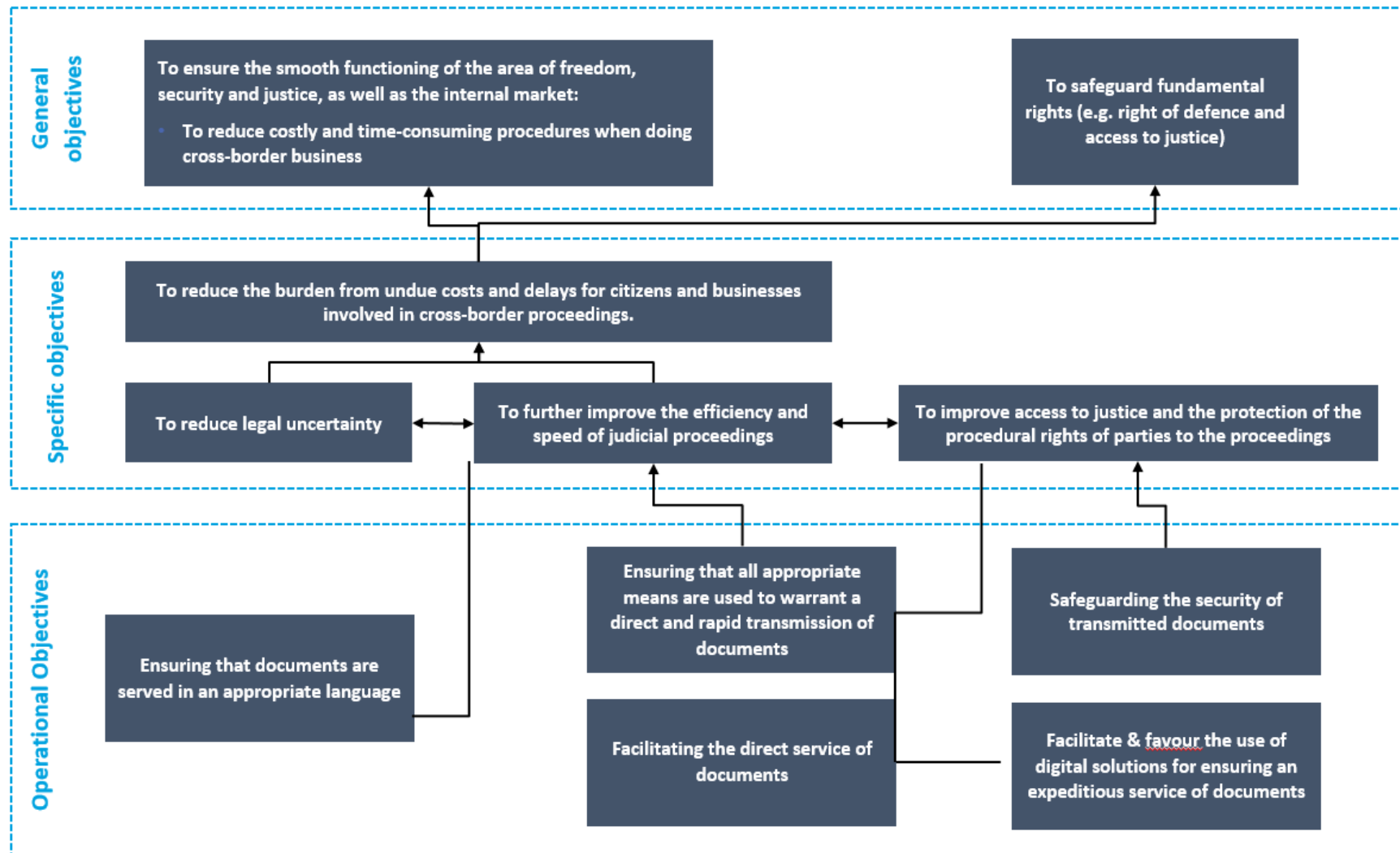
The policy objectives set out the political priorities and aims for action in the relevant field. They are an essential step of every impact assessment, including because they support the creation of a logical link between the identified problems and the solutions considered.

Policy objectives are normally identified at the following levels:

- **Operational objectives** concern deliverables or objectives of actions;
- **Specific objectives** relate to the specific domain and set out what the Commission wants to achieve with the intervention in detail; and
- **General objectives** refer to Treaty-based goals and constitute a link with the existing policy setting.

The following figure presents the policy objectives.

Figure 2: Objectives Tree





#### 4.1. General objectives

The general objective of the initiative is to ensure proper administration of justice in cases with cross-border implications, thereby contributing to a better functioning of the Internal Market and reducing unnecessary costs whilst at the same time safeguarding fundamental rights (e.g. rights of the defence).

#### 4.2. Specific objectives

The specific objectives are to further improve the efficiency and speed of judicial proceedings, in a way which maintains or improves the existing level of access to justice and the protection of the rights of the defence in cross-border proceedings. This could be achieved through **promotion of faster and direct means of digital communication, like e-Codex**. The intervention should also reduce the burdens for citizens and businesses involved in cross-border proceedings resulting from undue costs and delays, and reduce the level of legal uncertainty identified in course of the evaluation of the Regulation.

#### 4.3. Operational objectives

The operational objectives ensure that all appropriate means are used to warrant a direct and rapid transmission of documents. In particular, this will include the determination of clear conditions under which the electronic delivery of a document to the user account of an addressee in another Member State would be considered as valid under the Regulation.

In addition, the intervention should ensure that the direct methods of service of documents), become more attractive, efficient and broader. As for the service by post, benefit can be expected from greater certainty and reliability in terms of service by post (with the use of a specific return slip). In respect with Article 15 ('direct service'), its application will be considerably enhanced by enlarging the access of parties involved in a cross-border proceeding to services that are available in the Member States.

Lastly, the intervention will reduce the instances where addressees are refusing the acceptance of the document due to the inappropriate language, by clarifying that Annex II of the Regulation should be attached in all cases, even where the document is in the language of the MS of the addressee or if there is a clear indication that he understands the language of the document and to include clear information on the legal consequences of the refusal for the recipient in the Annex.

## **5. WHAT ARE THE AVAILABLE POLICY OPTIONS?**

For each driver, a range of options from non-legislative to different levels of ambition of legislation has been identified. They are shown in the table below.

**Table 1: Overview of options for each problem identified**

<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>
<p><b>The judicial system does not provide support to identify an unknown address cross border</b></p> <p>Service of documents can only reach its objective if the person who initiates the service process disposes of information on the actual whereabouts of the addressee. This requires a correct physical address. Practical problems arise if the initiator of the service of the document either does not have any such information ("whereabouts unknown") or if the information at his/her disposal turns out to be incorrect. Currently, the Regulation does not provide any tool in order to help claimants in cross-border proceedings finding the whereabouts of a person abroad.</p>		
<p>1.0 No policy change apart from what is already underway or currently planned</p>	<p>1.1.1 Providing information on the e-Justice Portal on the tools and options for citizens and business available at national level for locating an addresses.</p> <p>1.1.2 Creating a uniform search mask on the e-justice Portal, through which individual requests can be forwarded to national domicile registries</p>	<p>1.2 Member States will be obliged to facilitate address enquiries through (at least) one of the following alternatives tools:</p> <p>a) providing judicial assistance upon request of courts/transmitting agencies from other Member States;</p> <p>b) accepting requests from individuals to national domicile registers which are transmitted through the e-justice portal;</p> <p>c) providing detailed information (with appropriate hyperlinks) on available tools in the territory of the Member State.</p>
<p>•</p>		
<p><b>2. Insufficient protection of the defendant against the effects of default judgments (Art. 19)</b></p>		



<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>		
<p>Both recognition and enforcement of a judgment may be refused (under arts. 45(b) and 46 Brussels I Regulation) "where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his/her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so".</p> <p>Article 19 (4) does not provide a harmonised rule establishing a time period for the restitution against default judgements which can generate a different degree of protection of the procedural rights across the Member States.</p>				
4.0 No policy change apart from what is already underway or currently planned	No options specified	<p>4.2.1(a) If service fails or the physical address is not known, oblige agencies and central bodies to send alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-mail addresses and social media accounts through private communications.</p> <p>4.2.1(b) Introduce uniform time period of 2 or 3 years for the availability of the extraordinary review in Art. 19(4) to set aside a</p>	<p>4.2.2 Extraordinary reliefs in national law for <i>restitutio in integrum</i> against default judgments may not be applied for purposes of cross-border recognition and enforcement of the default judgment after the expiry of the 2 year period in 19(4). (codification of the Lebek ruling<sup>42</sup>):</p>	<p>4.2.3(a) If service fails or the physical address is not known, oblige courts to send alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-mail addresses and social media accounts through private communications.</p> <p>4.2.3(b) Delete time-periods in Art. 19(4) to set aside a default judgement</p>

<sup>42</sup> As the CJEU has held in C-70/15, Lebek, Art. 19(4) does not only set a minimum standard for the possibility of *restitutio in integrum*, but a maximum one excluding the availability of other extraordinary reliefs under national laws beyond the time-period open for the relief in Article 19(4). The Court stated that when the time limit communicated by the Member State for the relief in Article 19(4) has elapsed, the defendant cannot bring an application for relief under national law after the elapse of this time limit, even when national law provides for a longer time limit. The consequence of such a rule “for cross-border recognition and enforcement of the default judgment” would entail with it that a

<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>	
		default judgment	
<b>3. Reliance on paper-based means of communication between transmitting &amp; receiving agencies</b>			
<p>The Regulation expressly promotes the use of electronic means of communication between the designated national authorities in a general manner. However, this did not materialise in practice since there is evidence that Member States' designated authorities do not accept electronic means of communications for transmitting documents between themselves Using existing EU products, such as the CEF e-Delivery building block (eCODEX) could be a reasonable solution since it is already used in almost 20 Member States. The e-CODEX system provides standard components for a communication system for the justice area, and it encompasses all the necessary standards to allow legal electronic communication between Members States or authorities in specific cross border legal procedures.</p>			
7.0 No policy change apart from what is already underway or currently planned	7.1 Sharing of best practices between MS (designated authorities) on e-communication	7.2.1 Codifying the principle of "digital by default" for communications and transmission of documents between transmitting and receiving agencies	7.2.2 Oblige Member States that all agencies and central bodies under the Regulation use, as a default, for purpose of communication and exchange of documents between each other a secure electronic channel (e-CODEX)
<b>4. Electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured</b>			
<p>Currently, electronic service methods are not used in cross-border situations under the Regulation. The recently adopted eIDAS Regulation<sup>43</sup> defines the concept of electronic trust services in the EU and regulates cross-border recognition aspects. According to Art. 43(2) of the eIDAS Regulation, "<i>data sent and received using a</i></p>			

defendant who was not informed properly about the institution of the proceedings against him/her, may still rightly invoke Article 45(1)(b) of Regulation 1215/2012 ("Brussels Ia") to block the recognition and enforcement of that judgment in another Member State.

<sup>43</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, *OJ L 257, 28.8.2014, p. 73–114*. The Regulation sets the regulatory environment for secure electronic transactions between citizens and businesses. The eIDAS Regulation: 1) ensures that people and businesses can use their own national electronic identification means even if for other countries (on the basis of the

<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>		
<i>qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service".</i>				
8.0 No policy change apart from what is already underway or currently planned	No options specified	8.2.1 Introduce cross-border electronic service as an accepted method of service under the Regulation, provided that this complies with some uniformly defined conditions: a) the document is transmitted electronically to an end-user who is a client of a qualified Electronic Registered Delivery Service (ERDS) (according to the standards of eIDAS Regulation <sup>44</sup> ), OR b) the document is sent to another electronic mailbox or user account, if there is an express consent by the recipient in the individual case to use this account for purposes of serving on him/her.	8.2.2 Oblige MS to ensure interoperability between their domestic e-delivery systems used in legal proceedings in civil and commercial matters, where such systems exist at the national level	
<b>5. Insufficient quality of service by post (Art 14) including delays and insufficient filling out of acknowledgement of receipt</b>				
Due to its low cost and expeditiousness service by post is used frequently and is even preferred to the method of transmission through transmitting and receiving agencies. However, there are several practical difficulties which affect the efficiency of this service method negatively, i.e. with acknowledgments of receipt which are filled in improperly or incompletely because they do not provide appropriate evidence on the relevant facts of the effected or attempted service. In such cases, courts in the requesting Member States may be unable to determine from the return receipt to whom the delivery was performed or when.				
9.0 No policy	No options specified	9.2.1 (a) Clarifying in a recital the uniform standard character of the	9.2.2 (a) Clarifying in a recital the uniform standard character of the	9.2.3 (a) Create a uniform list of eligible alternative ("substituting")

principle of mutual recognition). 2) creates an European internal market for "electronic trust services" by ensuring that they will work across borders and have the same legal status as traditional paper based processes.

<sup>44</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.

<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>		
change apart from what is already underway or currently planned		existing conditions in Article 14 to postal service + 9.2.1(b) Obliging transmitting agencies to label envelopes containing documents to be served through which the postal operators and addressees are alerted to the official nature of the document	existing conditions in Article 14 to postal service + 9.2.2 (b) Introducing a specific uniform international return slip (acknowledgement of receipt) through which documents under the Regulation are served by post (postal operators have to follow specific rules in course of the delivery of such docs)	methods of service, once the document has to be served to another Member State: Acceptable methods could constitute the ones e.g. included in Art. 13-14 of Reg. (EC) 805/2004 <sup>45</sup> or Art. 13-14 of Reg. (EC) 1896/2006 <sup>46</sup>  9.2.3 (b) Fine tune/upgrade the standard form in the Annex on the service of the document, so that it reflects in more detail the eligible alternative methods

#### **6. Use of direct service (Article 15) is restricted or inaccessible**

In accordance with Article 15, only persons "interested in" the legal proceedings may have recourse to this method of service, which prevents transmitting agencies (who are not involved in the underlying proceedings as parties) from applying this way of service.

<sup>45</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0805&from=EN>

<sup>46</sup> Council Regulation (EC) NO 1896/2006 of 12 December 2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1896&from=EN>; and Regulation (EU) 2015/2421 of the European parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2421&from=EN>

<i>Baseline Option 0</i>	<i>Non-Legislative Option 1</i>	<i>Legislative Option 2</i>	
10.0 No policy change apart from what is already underway or currently planned	10.1 Information sheet for citizens and legal practitioners on the availability of direct service (Article 15) + Practice guide for the courts/ designated authorities on how to use Article 15 in the Regulation	10.2.1 Extending the scope of application of Article 15 so that also transmitting agencies (bodies, legal persons and bailiffs) of the MS of origin may apply for it	10.2.2 Obliging all Member States to ensure that foreign persons interested in legal proceedings may directly turn to competent persons or officials in their territory with a request to serve a document. This would imply that those Member States whose laws currently does not recognize such type of service should allocate this task to a particular branch of profession.
<b>12. Information on the e-Justice portal not up-to-date or easy to find</b>			
12.0 No policy change apart from what is already underway or currently planned	<i>Measures related to the e-justice portal are considered in non-legislative options for other problems</i>		

Source: Deloitte elaboration

## 6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

This chapter presents the assessment of impacts of the individual options. It starts with an assessment of the options proposed for all high-priority issues. The preferred options are then combined into a “Preferred Policy Measure”, which is assessed against the baseline scenario (Option 0).

This section includes the assessment of the options proposed for all problems identified in the problem assessment. The different options are assessed using the following common assessment criteria:

### *Assessment Criteria for assessment of the options*

<b>Criterion</b>	<b>Examples of elements to consider</b>
<b>Effectiveness</b> (i.e. extent to which the options address the policy objectives)	<ul style="list-style-type: none"> <li>• Potential of the options to achieve the key policy objectives, in particular:               <ul style="list-style-type: none"> <li>○ <i>To reduce legal uncertainty</i></li> <li>○ <i>To further improve the efficiency and speed of judicial proceedings</i></li> <li>○ <i>To improve access to justice and the protection of the procedural rights of parties to the proceedings</i></li> <li>○ <i>To reduce the burden from undue costs and delays for citizens and businesses involved in cross-border proceedings.</i></li> </ul> </li> </ul>
<b>Efficiency</b> (i.e. cost-benefit balance)	<ul style="list-style-type: none"> <li>• Main cost factors for various (public and private) stakeholders</li> <li>• Main benefits for various stakeholders</li> </ul>
<b>Proportionality</b> (i.e. extent to which the options are in line with what is needed to achieve the policy objectives)	<ul style="list-style-type: none"> <li>• Assessment of whether the option goes further than what is needed, based on:               <ul style="list-style-type: none"> <li>○ Scope of the option</li> <li>○ Type of instrument proposed (e.g. hard law vs. soft measures)</li> </ul> </li> </ul>

The assessment tables, organised per problem to be addressed, are presented in Annex 5.

As a consequence of this "high-level" assessment, for all specific problems we retain one option which received the highest ranking among the others addressing the same problem. The combination of these retained options will compose the preferred "Policy Package", for which a detailed assessment (including a cost-benefit analysis, and analysis of various other impacts) will be carried out, in line with the Better Regulation Guidelines of the Commission.

The results of the assessment of the Preferred Policy Package can be summarised as follows:

<b>Problems</b>	<b>Option</b>
<b>1. Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address</b>	1.2 Member States will be obliged to facilitate address enquiries through (at least) one of the following alternatives tools: a) providing judicial assistance upon request of courts/transmitting agencies from other Member States; b) accepting requests from individuals to national domicile registers which are transmitted through the e-justice portal; c) providing detailed information (with appropriate hyperlinks) on available tools in the territory of the Member State.
<b>2. Unclear definition of extra-judicial documents</b>	2.2.1 Codify the CJEU case law by specifying in the Regulation that its application is not restricted to documents which emanate from a public or judicial authority (for instance a public notary), but includes also private documents if formal service is required in order to prove or protect rights of the claimant.
<b>3. Unclear elements in the right of the addressee to refuse the acceptance of the document on the basis of its inappropriate language</b>	3.2.1 Amend provisions in the Regulation to clarify that: <ul style="list-style-type: none"> <li>• information on the right to refuse should <i>always</i> be provided, regardless of the language of the documents to be served, by the competent agency, diplomatic or consular agent, or the authority or person serving the document by postal service, through the standard form in Annex II of the Regulation (CJEU case-law).</li> <li>• improvement of the content of the information note contained in Annex II of the Regulation (clearer messages to the recipient on the legal consequence of the refusal)</li> <li>• inclusion of indicators (non-exhaustive examples) in a recital helping the assessment of the language skill of the addressee in case of refusal by the forum court..</li> </ul>
<b>4. Insufficient protection of the defendant against the effects of default judgments (Art. 19)</b>	4.2.1(a) If service fails or the physical address is not known, oblige agencies and central bodies to send alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-mail addresses and social media accounts through private communications.  4.2.1(b) Introduce uniform time period of 2 or 3 years for the availability of the extraordinary review in Art. 19(4) to set aside a default judgment + 4.2.2 Extraordinary reliefs in national law for <i>restitutio in integrum</i> against default judgments may not be applied for purposes of cross-border recognition and enforcement of the default judgment after the expiry of the 2 year period in 19(4) (codification of the Lebek ruling
<b>5. Use of fictitious or alternative methods of service at national law is preferred to the Regulation</b>	5.2.2 Codify that the use of fictitious methods are allowed against foreign parties, who, despite the invitation of the court seised, do not appoint representatives for purposes of service in the MS of the proceedings + 5.2.3 Transfer the content of recital 8 to the normative rules + 5.2.4 Set the principle with regard to the use of fictitious and "alternative"

<b>Problems</b>	<b>Option</b>
	(substituting) domestic service methods: as a default rule, service should be attempted through the ways of the Regulation, if the addressee has its seat/residence in another MS.
<b>6. Varying practices relating to costs of serving documents (leading to both delays and inequalities in the market)</b>	6.1 Provision of information on the e-Justice portal on the approach to costs in the Member States i.e.: Clarifying whether a Member State charges for service by receiving agency Clarifying whether such payment is to be pre-paid and which means of payment are accepted
<b>7. Reliance on paper-based means of communication between transmitting &amp; receiving agencies</b>	7.2.2 Oblige Member States that all agencies and central bodies under the Regulation use, as a default, for purpose of communication and exchange of documents between each other a secure electronic channel (e-CODEX)
<b>8. Direct electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured</b>	8.2.1 Introduce cross-border electronic service as an accepted method of service under the Regulation, provided that this complies with some uniformly defined conditions: a) the document is transmitted electronically to an end-user who is a client of a qualified Electronic Registered Delivery Service (ERDS) (according to the standards of eIDAS Regulation <sup>47</sup> ), OR b) the document is sent to another electronic mailbox or user account, if there is an express consent by the recipient in the individual case to use this account for purposes of serving on him/her.
<b>9. Insufficient quality of service by post (Art 14) including via security risks, delays and insufficient filling out of acknowledgement of receipt</b>	9.2.2 (a) Clarify in a recital the uniform standard character of the existing conditions in Article 14 to postal service + 9.2.2 (b) Introduce a specific uniform international return slip (acknowledgement of receipt) through which documents under the Regulation are served by post + 9.2.3 (a) Create a uniform list of eligible alternative ("substituting") methods of service, once the document has to be served to another Member State and 9.2.3 (b) Fine tune/upgrade the standard form in the Annex on the service of the document, so that it reflects in more detail the eligible alternative methods
<b>10. Use of direct service (Article 15) is restricted or inaccessible</b>	10.2.2 Extend the scope of application of Article 15 so that also so that also transmitting agencies (bodies, legal persons and bailiffs) of the MS of origin may apply for it + 10.2.3 Oblige all Member States to ensure that foreign persons interested in legal proceedings may directly turn to competent persons or officials in

<sup>47</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.



<i>Problems</i>	<i>Option</i>
	their territory with a request to serve a document.
<b>11. Non-compliance of receiving agencies with the timeframe set out in the Regulation</b>	11.2.2 Introduce a “digital-by-default” principle obliging Member States’ agencies and authorities to use, as a rule, electronic means of communications for their interactions with each other.

**7. COMBINED EFFECTS OF THE PREFERRED OPTION AS A PACKAGE**

As a next step, first the baseline scenario and then the preferred policy package are assessed in relation to the following five criteria:

- Effectiveness;
- Efficiency;
- Coherence;
- Impacts on diversity, non-discrimination and the protection of personal data;
- Environmental impacts.

**7.1. Baseline scenario**

Before the Regulation and its predecessor (Regulation (EC) 1348/2000) entered into force, the cross-border service of judicial and extrajudicial documents in civil and commercial matters was regulated by a various set of international conventions or bilateral mutual agreements between the Member States. There were two major global conventions elaborated in the Hague Conference on Private International Law, at least one of which each Member State was a party to, but these global conventions allowed for the use of bilateral agreements or arrangements if these further facilitated the cross-border service of documents. Consequently, there was a hugely fragmented legal landscape as to the applicable legal basis.

The legal sources in place before the Regulation (EC) 1348/2000 provided for a cumbersome and slow transmission and service of the documents. Mainly based on the traditional diplomatic or consular channels, or as the 1965 Hague Convention on the intervention of Central Authorities, they included several intermediary steps until the document reached the local authority (court or judicial officer) in the State addressed, who was responsible for the actual service of the document to the addressee. The average timeline for serving a single document was between 6 and 9 months, which was visibly reduced with the introduction of the EU Regulation (2 months on average). e-CODEX has the potential to become the main digital solution for cross-border cooperation between judicial authorities and cross-border judicial procedures in the European Union

Another feature of the baseline scenario was the high costs of the cross-border service, since the previous legal sources of the international law always required the translation of the documents to be served in the official language of the Member State addressed for a

formal delivery of the document. The EU Regulation constituted a paradigm shift in this regard, since here the translation of the document is not an inevitable precondition of the service of the document, but an element for the protection of the rights of the defence, which becomes only necessary, if the original language of the documents is not understandable to the addressee.

The baseline scenario is assessed in relation to these five criteria and afterwards the policy package. The detailed assessment is to be found in Annex 6.

The results of the assessment can be summarised as follows:

Criteria	Assessment	
	Rating	Summary
<b>Effectiveness</b>	0	The status quo is not highly effective at meeting the policy objectives. Although the Regulation would continue to have a limited positive effect on the efficiency and speed of judicial proceedings, delays based on uncertainties and practical challenges would persist. A major impact on the effectiveness of the Regulation going forward is the continued reliance on paper based means of communication and transmission of documents. In addition, cross-border proceedings are expected to grow up until 2030 and thus the application of the Service Regulation will become more common. Therefore, current legal uncertainties may become more widespread with the current issues on the access to justice not fully alleviated
<b>Efficiency</b>	0	The efficiency of the status quo is limited. Although the assessment of efficiency in the evaluation did not indicate that the costs currently outweigh the benefits, going forward the current process of serving documents may become more cumbersome or incompatible with more modern processes at the domestic level, leading to more inefficiencies. Delays and costs are expected to remain at an equal level per case but increase at an overall level in line with the overall increase of cases. Postal services and process services are expected to generate additional revenue also because of the increase in cases.
<b>Coherence</b>	0	In the baseline scenario, the overall internal and external coherence of the Regulation is expected to be ensured to a certain extent with both national and EU measures. Digitisation is a crucial trend that will challenge the coherence of the Regulation with other EU instruments and policies.
<b>Impacts on fundamental</b>	0	The baseline scenario is expected to ensure the access to justice and the procedural rights. Nevertheless, some difficulties and confusions will

<b>rights</b>		still remain hampering the rights of the parties. In addition, the protection of personal data is not considered to be affected by the current Regulation.
<b>Environmental impacts</b>	0	In the baseline scenario, the environmental impacts of the Regulation are expected to increase due to the increasing number of cross-border proceedings, the service of document via the service methods foreseen in its provisions, and the paper-based communications between the designated authorities.
<b>Overall rating and conclusion</b>	0	Under the baseline scenario, the problems identified in the problem assessment, including in relation to costs and delays, would likely continue.

## 7.2. Policy package

Next, the policy package is first assessed in relation to the five criteria.

The detailed assessment is to be found in Annex 7.

At this place, the presentation of the assessment will restrict only to the major relevant points, after which a summary of the assessment will be outlined in a table.

### 7.2.1. *Use of e-CODEX for communications and document exchanges between the designated agencies and central authorities*

The ideas of this option envisages that in the future, if possible, all interactions between the agencies and central bodies designated under the Regulation should be carried out electronically, through the e-CODEX (which uses the CEF e-Delivery building block, which is generally promoted by the EU in pan-European IT solutions). Using this channel “as a default” means in this context, that the legislator may consider some justified exceptions from this rule, but any such exceptions must be defined narrowly and exhaustively. Two possible exceptions may be considered. One situation is, when the document instituting the proceedings contains voluminous annexes of documentation pertaining to the cause of action, one may argue that the transformation of such a volume of documentation to electronic form and then back to paper-format constitutes an unnecessary burden both on the transmitting and on the receiving agencies. This argument is, however, less convincing given that most civil procedures allow for enclosing documentation through digital data storage medium. The other situation with relevance for a possible exception includes cases where the procedural law of the Member State of origin expressly requires the delivery of the true original of the document (in paper format). Nevertheless, even in such cases, the legislator shall thoroughly consider, why a digital equivalent (furnished with the same legal effects as the originals) could not be used.

This option would constitute an important step towards the digitalization of workflows in the area of civil and which can be accomplished at moderate costs. The baseline scenario calculations estimate that currently, due to the paper-based communication processes, the

processing of one request for service can take up to 2 months when no complications arise. With the use of e-CODEX, agencies will have access to direct communication and transmission of documents, thereby reducing the overall time for processing a request by about 3 – 9 days<sup>48</sup>.

As to the costs of the deployment of this solution, our estimates indicate that acquisition costs for the e-CODEX hardware are marginal at one-off costs of approx. EUR 15 000 and approx. EUR 2 000 annually for hardware maintenance.<sup>49</sup> This cost concerns the deployment of the national connector and gateway which are the components of the e-CODEX enabling the interactions between the relevant national IT systems of the various Member States. Of course, Member States have to ensure that all their national transmitting and receiving agencies (and central bodies) at local level will be connected to their national gateway, so that all of these local agencies serve as e-CODEX access points in the national system. Nevertheless, additional hardware acquisition costs in this context are not included in the calculation, because it was assumed that all agencies and bodies designated under the Regulation (courts, bailiffs, governmental authorities) have internet connection and, at least, one PC point. It is to be mentioned that even these costs falling to a Member State under the proposed policy option may not incur, since those Member States (and there are many of them) who have already deployed the necessary infrastructure in the context of the previous e-CODEX pilot projects may choose to reuse this infrastructure (national connector and gateway) for purposes of the communication system to be established under the Service Regulation.

#### *7.2.2. Facilitate the uptake of electronic means of serving documents*

The most relevant improvement of the preferred Policy Package in this context is the introduction of (direct) cross-border electronic service as an accepted method of service of documents under the Regulation, provided that this complies with some uniformly defined conditions.

Such introduction is a gradual, but but important step towards digitalization in cross-border proceedings. It has full regard to the various IT developments and to the differing level of achievement in digitalization of the Member States, without unjustified interference with the pace of such national developments. Nevertheless, this step, by legitimizing the direct cross-border electronic service of documents (“direct” means here: sent directly from the applicant of one Member State to the user account of the recipient in the other Member State), it will certainly incentivize the use of this method. It is to be reminded that under the current Regulation such instances of service of documents do not

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<sup>48</sup> Draft Commission Staff Working Document. Impact Assessment. Cross-border e-Justice in Europe. Accompanying the document: Regulation of the European Parliament and of the Council on the computerised cross-border communication in judicial proceedings (eCODEX) (unpublished – provided to the study team by the EC).

<sup>49</sup> Draft Commission Staff Working Document. Impact Assessment. Cross-border e-Justice in Europe. Accompanying the document: Regulation of the European Parliament and of the Council on the computerised cross-border communication in judicial proceedings (eCODEX) (unpublished – provided to the study team by the EC).

happen in practice, mainly due to the silence of the Regulation on the legal effects of such a delivery. The two alternative conditions set for the use of direct electronic service is in coherence with the EU digital policy (by reusing and promoting the standards of the eIDAS Regulation), and ensures compatibility with national procedural laws (by introducing the uniform requirement of the express consent of the addressee, which fully respects the rights of the defence).

As to the cost-implications of this option of the preferred Policy Package, it should be noted that certain types of businesses will benefit from the implementation of the digitalization measures.<sup>50</sup>

### 7.2.3. *Address enquiries*

The policy package introduces a few new measures with regard to the problems associated with the situation where the physical address of the addressee is not known or proves to be incorrect or obsolete:

According to the first measure proposed, Member States have to ensure that they provide assistance to persons interested in legal proceedings from other Member States in finding information about the physical whereabouts of their adversaries. In this flexible systems, Member States shall choose at least one of three different options by which they provide this assistance to right-seekers from other Member State:

- i. Their courts or authorities shall provide judicial assistance upon the request of courts or transmitting agencies from other Member States to determine the current address of a person in their territory , or
- ii. Their national domicile registers shall accept applications from persons interested in legal proceedings in other Member States forwarded to these registers electronically, via the European e-Justice Portal, or
- iii. They have to provide detailed information (with appropriate hyperlinks) on the tools available for right seeking persons from other Member State for purposes of clarifying the physical address of a person in their territory;

With this measure it may be expected the reduction of the number of instances where the foreign defendants are actually not informed of the legal proceedings instituted against them abroad. Currently, such situations occur frequently, insofar as it is possible to conclude on such a frequency from the high rate of default judgments in cross-border cases<sup>51</sup>. Claimants in legal proceedings with no information about the address of their adversaries abroad (e.g. proceedings against private individuals based on non-contractual claims) are left without any help in locating their counterparts. With the alternative set of options outlined above, these claimants will receive effective assistance in those Member States which will opt for the alternatives under i. or ii., whereas they will receive a useful guidance from where they can move on in getting to the information needed in those Member States which will opt for the alternative iii.

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<sup>50</sup> See detailed assessment in Annex 7, p. 152.

<sup>51</sup> See p. 36 of the corresponding Evaluation Report by the Commission in Annex 8.

Although the options under i. and ii. will generate some costs on the side of the public administrations, these costs will be marginal, assuming that only those Member States will opt for these options who have already similar tools in place: With regard to the option in i., relating to the provision of judicial assistance, it is to be noted that the commitment by States to execute requests for address enquiries in civil and commercial proceedings is a recurring element of mutual (bilateral) judicial assistance agreements of public international law. Such provisions have a history also in the agreements concluded between the Member States<sup>52</sup>. With regard to the option under ii., relating to the direct applications to domicile registers via the e-Justice Portal, it should be underlined that due to the flexibility of the measure it does not create an obligation to Member States which currently do not have a central domicile register to create one. The latter Member States may simply opt for the other two tools when deciding the way they wish to assist EU citizens and businesses in address enquiries. Furthermore, it should be noted that the only additional “burden” falling on those Member States who opt for the solution in ii. is that in the future they will accept applications from other Member States via e-mails (the request submitted through the relevant web-service of the e-Justice Portal would be forwarded to the electronic account of the national register indicated by the Member State, and as of that moment of transmission the application will be treated in accordance with the relevant national rules in force there). Even if in this case, the domicile register of the Member State may expect the increase in the volume of applications, the additional workforce needed to address those extra applications could easily be compensated by the introduction of a reasonable fee corresponding the service (nothing in the EU Regulation would prevent a Member State to charge a fee for such a service).

The second measure in the preferred option proposes that the courts seised with legal proceedings in the Member State of origin send, in the context of their duty under Article 19(1) and (2) of the Regulation, alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee. It should be underlined that this option does not oblige agencies to attempt service of documents through social media; it only obliges the agencies in the Member States to look for other possible ways of alerting the addressee that service of a document has been attempted. By this, it will increase the number of situations where defendants whose physical whereabouts are not known to the court or claimant get actually informed about the fact that a foreign proceeding is instituted against them. In most of the cases, it may be assumed that good-faith defendants will activate themselves and try to engage in time into the proceedings.

#### *7.2.4. Facilitating access to direct service*

Two new measures are introduced to facilitate the access to direct service of documents:

- a. Extending the scope of application of Article 15 so that also transmitting agencies (bodies, legal persons and bailiffs) of the Member State of origin may apply for it;

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<sup>52</sup> See MLA-s between the MS previously belonging to the “communist block”, or the Nordic Convention.

- b. Obliging all Member States to ensure that foreign persons interested in legal proceedings may directly turn to competent persons or officials in their territory with a request to serve a document.

The two measures above essentially open up the scope of application of direct service which is less prone to undue delays and costs than other service methods. As demonstrated in the evaluation, direct service, where no complications arise can be 2 times quicker than service by post. Allowing access to these services, even in the territory of Member States where currently this is not a possibility, will allow the choice for parties in a proceeding and also contributes to fair competition across the EU. This option may require adaptation in those Member States the procedural laws of which do not know the method of service of a document by a judicial officer, official or other competent person. But, it should be noted that only a minority of the Member States is affected: although, in line with the communications of the Member States to Article 15 of the Regulation there are 14 Member States acknowledging direct service of documents under Article 15, there are other Member States where the laws allow for a direct delivery to the addressee by a professional (competent person), such as a solicitor (lawyer) or a process server. For example, in the UK jurisdictions or in Ireland the service of a document may be performed by lawyers. Furthermore, it is to be noted that in those Member States, which have to allocate this task to a certain type of professionals as a novelty in their procedural law, this requirement does not directly affect the functioning of domestic procedural law, because this type of service should be provided only for the purpose of the Regulation, upon direct applications incoming from residents of the other Member States. In addition, any costs deriving by the introduction by and the adaptation to this new system could be compensated in a mid-term, if the national legislator allows that the competent persons charge a fee for their services.

#### *7.2.5. Strengthening quality of postal service under Article 14 of the Regulation*

The introduction of a specific uniform return slip (acknowledgment of receipt) through which documents under the Regulation have to be served by postal service providers is expected to have an impact on the number of instances where service is deficient due to incomplete acknowledgements of receipt or possible ambiguities as to who actually received the documents in question. In this regard, strengthening the quality of service by post is also expected to reduce undue costs and delays for citizens caused when service is regarded as deficient. From experiences of Member States where the postal service of judicial documents is carried out on the basis of a special regime (different from the rules based on the framework of the Universal Postal Union), it can be expected an enhanced diligence from the postal service operators when delivering such documents.

Such a measure might generate additional costs for the postal service operators who are requested to carry out the delivery of the document under Article 14. While majority of these costs would in principle seem to be of one-off nature, mainly concerning the adaptation (installation of relevant procedures, training of personnel etc.), it is clear that these might be very varied among Member States due to the different use of letters in general and of such letters in particular as well as to the different financial position of

operators and their different cost structure. However, it would appear that with time the additional costs generated by the use this special acknowledgment of receipt would fade out, on the basis of the assumption that those documents have to be delivered by the postal service providers anyway to the addressee, and the only difference to normal mail delivery service provided by these operators would be the different legal basis of their duty. Although these additional costs of adaptation to the new obligations should not be overlooked, it is also important to note that in the vast majority of the Member States, postal service providers have to comply already now with specific rules of their national civil procedural law (supplementing the provisions for letter post of the Universal Postal Union Convention), when they are requested to deliver judicial documents in legal proceedings. In a number of Member States, the postal service providers are obliged not just to follow specific procedures when delivering, but they also have for example to use special acknowledgment of receipts (e.g Hungary) or special envelopes (e.g. Romania, Slovenia, Italy). Obviously, the adaptation of postal service providers in these Member States will be less cumbersome, since here they just have to change the already existing national regime to a European one.

#### 7.2.6. Summary of the results of the assessment

The results of the assessment can be summarised as follows:

Criteria	Assessment	
	Rating	Summary
<b>Effectiveness</b>	+2	Under the policy package, the effectiveness of the Regulation would be improved compared to the status quo. Mainly, the introduction of e-CODEX as a mandatory communication tool between the agencies and the facilitation of electronic and direct service will contribute to the efficiency and speed of proceedings, lowering the burden of citizens and businesses. The contribution of the package to access to justice and legal certainty are also high with the inclusion of measures to clarify ambiguities and locate an addressee.
<b>Efficiency</b>	+2	The policy package is expected to generate moderate costs for Member States but significant benefits for citizens and businesses involved in cross-border proceedings. The main cost driver for Member States is associated with the implementation of e-CODEX as a mandatory tool for transmitting and receiving agencies. Nevertheless, on balance the costs do not outweigh the benefits.
<b>Coherence</b>	+2	Under the combined policy package, the coherence of the Regulation would be improved compared to the status quo. The amendments introduced by the policy package would positively contribute to both the



		internal and external coherence of the Regulation.
<b>Impacts on fundamental rights</b>	+1.5	The policy package would ensure the access to justice and an equal protection of the procedural rights, regardless the Member States. Its provisions on the electronic service of documents and the electronic communications would be aligned with the data protection standards required.
<b>Environmental impacts</b>	+2	In the policy package is expected to decrease to a great extent the environmental impacts of the Regulation as it would introduce electronic provisions, such as the electronic service of documents and the use of electronic means to replace the paper-based communications between the designates authorities.
<b>Overall rating and conclusion</b>	+1.9	The policy package performs better than the baseline scenario in relation to all of the assessment criteria. It brings benefits in particular by reducing costs and delays (e.g. through introducing an electronic communication system and encouraging the use of e-service of documents). In addition, negative environmental impacts are reduced and coherence with other legal instruments continues to be ensured.

## 8. CONCLUSIONS

Based on the assessment and ratings provided in the previous section, the policy package performs better than the baseline scenario regarding all assessment criteria. Thus, an amendment of the current Regulation (as well as a horizontal update of guidance documents) is justified and necessary.

### 8.1. REFIT (simplification and improved efficiency)

REFIT Cost Savings – Preferred Option(s)		
Description	Amount	Comments
Reduced costs by providing additional information for the e-Justice portal, awareness raising and training activities	reduce the volume of instances in which defendants are served with the document instituting proceedings through a fictitious method; decrease of cases where default judgments are rendered	Beneficiaries: citizens

<p>Reduced costs by making available detailed information on the e-justice portal on the approach to costs of service of documents in the Member States (amount to be paid, accepted methods, timing of payment etc.)</p>	<p>Reduce delays caused by the lack/conflicting information about the costs</p>	<p>Beneficiaries: citizens</p>
<p>Annual cost savings for the use of e-CODEX as a mandatory tool for interactions between transmitting and receiving agencies</p>	<p>30 to 78 million EUR per year across the entire EU.</p>	<p>Beneficiaries: public authorities and citizens Public authorities are expected to save costs in relation to labour costs, paper, envelopes, printer cartridges, shelves, archiving material, and archiving space.</p>
<p>Cost savings for the use of a specific return slip for service by post under Article 14 of the Regulation</p>	<p>Costs of adaptation falling on the postal operatives. Not quantifiable but however not considerable since the vast majority of the Member States already comply with special rules (different from the rules based on the framework of the Universal Postal Union), when serving judicial documents in domestic cases.. These costs on postal operators will be outweighed by the benefits gained on the increase in instances of successful service of documents by post</p>	<p>Beneficiaries: citizens The costs for individual Member States would naturally be different depending on the number of requests they send under the Regulation.</p>
<p>Reduced hassle costs through the provision of judicial assistance for requests for address enquiries</p>	<p>Provision of this type of judicial assistance is not obligatory for Member States, but depends on their choice. We may assume that only those Member States would opt for this options, which have already familiarity with such judicial assistance (based on sources of international public law). Consequently, in these States</p>	<p>Beneficiaries: citizens This type of judicial assistance already exists in some legal systems.</p>

	<p>no additional investment is required (costs generated by the increase of number of requests should be marginal).</p> <p>Cost savings indirectly appear in the result of a higher level of protection of the rights of the defence. More cases where the defendant is actually informed generate less default judgments.</p>	
<p>Reduced hassle costs through direct applications to national domicile registers via the e-Justice Portal</p>	<p>Gains to be expected up to 1.6 million EUR across the EU per year</p> <p>As to the Provision of this type of judicial assistance is not obligatory for Member States, but depends on their choice (see row above).</p>	<p>Beneficiaries: citizens and public authorities</p>
<p>Costs savings related to the definition of “extrajudicial documents”</p>	<p>Reduces number of cases where a document cannot be served due to its nature.</p>	<p>Not quantifiable – data is not collected.</p> <p>Beneficiaires: citizens</p>
<p>Costs savings related to the obligation of information on right to refuse the acceptance of a document to be served</p>	<p>Reduces the number of instances where the addressee claims that his/her rights of the defence have not be respected; reduces legal uncertainty.</p>	<p>Not quantifiable – data is not collected.</p> <p>Beneficiaires: citizens</p>
<p>Reduced costs by obliging courts to send alert messages to electronic accounts of the defendants prior to the issuance of a default judgment</p>	<p>decrease in the number of cross-border proceedings where the defendant did not appear, and consequently decrease in the number of default judgements. This again results in less appeals and reliefs against such judgments on the basis of lack of proper service of the documents instituting the proceedings.</p>	<p>Not quantifiable – data is not collected.</p> <p>Beneficiaires: citizens and indirectly judicial systems due to the decreased number of relief proceedings.</p>

<p>uniform time period for the extraordinary relief against default judgments in Article 19(4)</p>	<p>more legal certainty in terms of the available remedy leads to a better protection of the rights of the defence</p>	<p>beneficiaries: citizens</p>
<p>Reducing costs by codifying the principle regarding the use of fictitious or substituted (alternative) methods of service of documents at domestic level: as a default rule, service should be attempted through the ways of the Regulation, if the addressee has its seat/residence in another MS.</p>	<p>reduces legal uncertainty.</p>	<p>Beneficiaires: citizens</p>
<p>Costs savings by making acknowledging (under certain conditions) the (direct) cross-border electronic service as an accepted method of serving documents</p>	<p>eliminates the legal obstacle in the way of cross-border electronic service of documents under the Regulation; reduced delays generated by the transmission of paper documents; if document is served through an ERDS, this reduces security problems relating to the transmission;</p>	<p>Beneficiaires: citizens and public authorities</p>
<p>Reduced costs by expanding the scope of application of Article 15 to other legal professions</p>	<p>Greater choice of various ways of serving documents across borders to the citizens. Avoid restrictions in terms of the scope of application of Article 15</p>	<p>Beneficiaires: citizens</p>

The initiative is included in the Commission Work Programme 2018 under the REFIT initiatives in the Area of Justice and Fundamental Rights Based on Mutual Trust<sup>53</sup>. The

<sup>53</sup> Commission Work Programme 2018 – An agenda for a more united, stronger and more democratic

Commission also looked at opportunities to simply and reduce burdens in relation to service of documents in particular at the level of the citizens and businesses involved in cross-border civil judicial proceedings. The nature of this legislation means that it applies to all cross-border civil proceedings. The beneficiaries of this proposal range from citizens to legal professions and public administration. The impact assessment estimated annual cost savings generated by modernization of the procedures of the Regulation, in particular by the acceleration of the transmission of documents via eCodex and also by the implementation of the principle 'digital by default'. Citizens, business and public administration will also benefit from reduced hassle costs through transmission of the documents through electronic channels between the designed authorities and through direct electronic service of the documents in cross-border proceedings.

In the framework of the REFIT Platform, stakeholders recommended to the Commission to explore possibilities to assist the actors concerned in cross-border legal proceedings in clarifying an address in another Member State, and also for service entailing the lowest cost.

This proposal will include a tool necessary to identify information on the actual whereabouts of the addressee if the initiator of the service of the document either does not have any such information ("whereabouts unknown") or if the information at his/her disposal turns out to be incorrect. This is especially quintessential for initiating cross border litigation across the EU since a service of documents can only fulfil its objective if the person who initiates the service process disposes of information on the actual whereabouts of the addressee. The proposal will also limit the instances when service of documents is deficient through the introduction of a specific uniform return slip. This is useful for strengthening the quality of postal service and for reducing undue costs and delays for citizens. The proposal addresses also the issue related to the insufficiency protection of the defendant against the effects of default judgements, by providing that agencies and central bodies should send alert messages through all means of communication.

The proposal establishes a framework of judicial cooperation aligned with the Digital Market Strategy. It will contribute to improving the speed and the efficiency of cross-border proceedings by reducing the time spent on transmission of documents between agencies and by less reliance on paper-based communication. The impact assessment estimated that the implementation of e-Codex as a mandatory tool for transmitting and receiving agencies could amount to potential savings of approx. EUR 30 to 70 million per year across the EU. This solution would ensure a safe electronic communication and exchange of documents between the users of the system, and it would provide for automatic recording of all steps of the workflow, as well as would ensure the genuine identity of the participants. The proposed Regulation establishes concurrently that the

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Europe, COM(2017) 650 final of 24.10.2017, Annex II point 10, p.4.

delivery of a judicial or extrajudicial document to the recipient through a digital service which meets the requirements of the (qualified) ERDS under the eIDAS is accepted as a valid means of service of documents, which will contribute to the acceleration of transmission of documents.

## **9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?**

It is recommended that a sound monitoring system of the Regulation will be put in place, including a comprehensive set of qualitative and quantitative indicators, as well as a clear and structured reporting and monitoring process. This is important to ensure that the amended Regulation is implemented efficiently in the Member States and to verify if the Regulation is successful in achieving its specific objectives.

In order to provide guidance in the monitoring process, the following table presents examples of indicators that may serve to analyse the achievement of the specific objectives. In terms of timing, an evaluation every 3-5 years would be useful in order to closely monitor the evolution of the impacts and the context in which the Regulation operates.

It should be stressed out the importance of the European Judicial Network in civil and commercial matters (EJN civil) in the implementation and application of the Regulations on Service of Documents. This forum is a key factor in getting relevant feedback from Member States (from the field) on the application of the various instruments and in identifying the real practical problems as it brings together national ministries as well as the central authorities and agencies dealing with the implementation of the Regulations. In the past, the EJN organized annual dedicated meetings on the analysis of the application of the Regulations on service of documents and taking of evidence. This practice will be continued in the future as well.

The EJN also created a working group on assessing options of accurate data collection with regard to the application of the instruments, this forum could contribute further work to analysing possibilities of collecting data on the Regulations.

The model of bilateral (peer to peer) meetings between central bodies of the Member States in the margins of the EJN contact point meetings, discussing and finding solutions to difficult cases, that has been established for other EU instruments, could be extended to the Regulations on Service of Documents and Taking of Evidence (this has been in fact proposed by some of the Member States in the latest meeting dedicated to the service of documents, in December 2017, in Tallinn).

### Evaluation and monitoring framework

Assessment criterion	Indicator	Frequency
<i>Horizontal aspects</i>	Number of cases in which the Regulation is applied	Once per year
	Number of citizens and businesses affected by the application of the Regulation	At least for every evaluation
<b>Further improving the efficiency and speed of judicial proceedings and reduce the burden for citizens and businesses</b>	Number of cases in which service through transmitting/receiving agencies is used	Once per year
	Number of cases in which service through post is used	Once per year
	Number of cases in which diplomatic channels are used	Once per year
	Number of cases in which direct service is used	Once per year
	Number of documents served electronically by transmitting/receiving agencies	Once per year
	Number of cases in which direct electronic service is used	Once per year
	Estimates on the length of proceedings in civil and commercial matters and reasons for undue delays	At least for every evaluation
	Estimates on the costs of proceedings in civil and commercial matters	At least for every evaluation
	Number of instances where e-CODEX could not be used for communication between the agencies and the reasons why	Once per year
	Usefulness of information contained on the e-justice portal	At least for every evaluation
<b>Improving access to</b>	Number of cases where service attempts failed due to unknown address	Once per year

<b>justice and the protection of the procedural rights of parties to the proceedings</b>	Number of cross-border default judgments passed	Once per year
	Number of refusals of documents for language reasons	Once per year
<b>Reducing legal uncertainty</b>	Case law at national level pointing to uncertainties (e.g. lack of clarity on certain concepts)	At least for every evaluation
	Case law at EU level pointing to uncertainties (e.g. lack of clarity on certain concepts)	At least for every evaluation



## **ANNEX 1: PROCEDURAL INFORMATION**

### **1. Lead DG, AGENDA PLANNING AND WORK PROGRAMME**

This impact assessment and the related initiatives are a responsibility of the Directorate-General for Justice and Consumers (JUST).

The project has been added to the 2018 European Commission work programme<sup>54</sup> under the section 'An Area of Justice and Fundamental Rights Based on Mutual Trust' as well as the Regulatory Fitness and Performance Programme under 'Priority 7 – Simplification and Burden Reduction for upholding the rule of law and linking up Europe's Justice Systems'. It envisages "modernising services taking into account new technologies, to promote the use of more direct and cheaper methods of judicial assistance (such as the service by post) and reinforce the right of the defence for parties with residence in another Member State"<sup>55</sup>.

The aim to improve the framework of judicial cooperation within the EU is also in line with the objectives of the Commission set by the Digital Single Market Strategy<sup>56</sup>. In the context of e-Government the Strategy expresses the need for more actions to modernise public (including judicial) administration, achieve cross-border interoperability and facilitate easy interaction with citizens.

### **2. Organisation and timing**

Work on the preparation of this initiative started on 24 October 2017 with the 2018 European Commission work programme. The impact assessment was prepared with the involvement of JUST C.3 (Data protection) as well as the following Services through the Inter-Service Steering Group, chaired by the Secretariat General:

the Commission's Legal Service;

Directorate-General for Informatics;

Directorate-General for Communications Networks, Content;

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs;

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<sup>54</sup> COM(2017) 650 final, Annex II.

<sup>55</sup> Regulatory Fitness and Performance Programme - REFIT Scoreboard Summary of 24 October 2017, p. 29.

<sup>56</sup> COM(2015) 192 final, p. 16.

Directorate-General for Communication;

Directorate-General for Employment;

Directorate-General for Economic and Financial Affairs;

Directorate-General for Migration and Home Affairs;

Directorate-General for Research and Innovation;

Directorate-General for Taxation and Customs Union and

Directorate-General for Competition.

The Steering Group is going to have three meetings. A first meeting took place on 24 October 2017. The following ISCG meetings are scheduled:

- 4 April 2018: 2<sup>nd</sup> meeting on draft evaluation reports and draft impact assessment studies
- Beginning of May 2018: 3<sup>rd</sup> meeting on the draft legislative proposals)

On each occasion, the members of the Steering Group are given the opportunity to provide comments orally and/or in writing on the draft versions of the documents presented.

### **3. Consultation of the Regulatory Scrutiny Board**

The impact assessment report is to be submitted to the Regulatory Scrutiny Board on 9 April 2018. The Regulatory Scrutiny Board reviewed the draft impact assessment at its meeting of 3 May 2018 and delivered a positive opinion with comments on 7 May 2018. DG Just took into account the Board's recommendations and the report explains better the relationship between the two initiatives (Tackling of Evidence Regulation) for judicial cooperation and the wider context. The major problems and the baseline are now better identified and explained. The explanation of subsidiarity of the instrument and of the EU value added was enhanced. Moreover, the conclusions of the evaluation regarding the effectiveness have been further developed and the policy options now focus on the main elements (electronic communication) and the assessment of these main issues has been developed in the main text.

### **4. Evidence, sources and quality**

The Commission consulted widely and received input from various sources for this impact assessment work.

Evidence used in this impact assessment was gathered following a consultation strategy, which included an external study, a consultation with renowned experts in the field (practitioners as well as members of academia) through the Expert group on

Modernisation of Judicial Cooperation in Civil and Commercial Matters and a public consultation through an online questionnaire accompanied by a consultation document . The public consultation strategy is described in detail in Annex 2. A workshop with Stakeholders is going to be held on 16 April 2018 for further consultation of the impact on them.

On 4 May 2018 the Commission is going to hold a meeting with Member States' experts on international civil procedure to inform them of the planned initiative and the solutions envisaged.

Furthermore, the following discussions have taken place within the framework of the European Judicial Network in civil and commercial matters (EJN):

- 30 November–1 December 2017, Tallinn: dedicated meeting of the EJN addressing practical problems and possible improvements of the Regulation.
- 14–15 November 2016: dedicated meeting of the EJN addressing practical problems and possible improvements of the Regulation
- 20 November 2013: meeting of the EJN dedicated to the evaluation of the application of the Regulation on taking of evidence

In addition, the following studies and reports haven been taken into consideration:

**2017:**

- European Parliament resolution of 4 July 2017 with recommendations to the Commission on common minimum standards of civil procedure in the European Union (2015/2084(INL))
- An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (launched by the Commission, carried out by a consortium led by MPI Luxembourg) – final report delivered in June 2017.

**2016:**

- Study containing a comparative legal analysis of laws and practices of the Member States on service of document (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI) – published in November 2016 ;

**2013:**

- Report of the Commission 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) – COM(2013) 858 final;

**2012:**

- Study on the application of Council Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters (launched by the Commission, carried out by Mainstrat and the University of the Basque Country) – final report adopted in June 2012.

The Commission services have taken into account the observations from all the above-mentioned sources in the impact assessment.

## **ANNEX 2: STAKEHOLDER CONSULTATION INCLUDING THE OUTCOME OF THE PUBLIC CONSULTATION ON REGULATION (EC) NO 1393/2007<sup>57</sup>**

The Commission **consultation strategy included many different and complementary ways of consulting stakeholders:**

- Member States gave their opinion within two dedicated meetings of the European Judicial Network addressing practical problems and possible improvements of the two EU Regulations (14-15 November 2016, Bratislava and 30 November – 1 December 2017, Tallinn). In addition, a dedicated meeting with the representatives of the Member States was organized on 4 May 2018.
- Dedicated meeting with stakeholders (on 16 April 2018). It was a workshop composed of selected stakeholders with particular interest in issues relating cross border legal proceedings. Industry and business organisations, Trade Unions, consumer organisations, professionals' associations and academic institutions and think tanks with the widest possible representation across EU or worldwide were invited with a view to share their views on the initiative.
- Expert group meetings (on 8-9 January 2018, 6 March 2018, 27-28 March 2018 and 24 April 2018). The Expert group on Modernisation of Judicial Cooperation in Civil and Commercial Matters was created in the end of December 2017 (the detailed list of experts is available in the Register of Commission expert groups accessible on <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3561&news>).
- The Inception Impact Assessment was published on 7<sup>th</sup> December 2017, inviting stakeholders' feedback (but it did not draw any response).
- A single public consultation was launched to address both Regulation 1393/2007 on service of documents and Regulation 1206/2001 in order to receive input from all the concerned stakeholders, and in particular, those which are engaged in cross border legal proceedings. Member States were also invited to provide their input. The public consultation was launched on 8 December 2017 and ended on 2 March 2018 (which complies with the minimum standard of 12 weeks for public consultations of the European Commission). 131 contributions from 27 MS were submitted and the country with the overall contributions was Poland, followed by

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<sup>57</sup> Regulation (EC) No 1393/2007<sup>57</sup> 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 and repealing Council Regulation (EC) No 1348/2000

Germany, Hungary and Greece. Approximately 64% of replies were made on behalf of the judiciary, while the rest were mainly from associations of legal professions at a national level or European level, notaries, bailiffs, NGOs, academics. In addition, 13 replies were received from the public authorities of 10 Member States (Austria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Latvia, Poland and UK).

- A Commission study providing a comparative legal analysis of laws and practices of the Member States on service of documents was carried out by a consortium (University Firenze, University Uppsala and DMI) – published in November 2016<sup>58</sup>;
- An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law was launched by the Commission (carried out by a consortium led by MPI Luxembourg) – final report delivered in June 2017<sup>59</sup>.

Most of the stakeholders supported the idea of 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 and repealing Council Regulation (EC) No 1348/2000.

## **1. Application of the Regulation**

### **1.1 General approach**

In general, when asked whether they have been involved in cross-border judicial proceedings, 73 % of the stakeholders responded affirmatively. More than 70 % of the respondents have been involved in cases in which the Regulation had to be applied. The procedural rights of the addressee in the other Member State were adequately respected in course of the proceedings, 49 % did not give an answer.

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<sup>58</sup>

Available

at

[http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://collections.internetmemory.org/haeu/20171122154227/http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf)

<sup>59</sup> Available at <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>.

## 1.2 Difficulties in the application of the regulation

### 1.2.1 Address enquiries

The MPI study underlined that most of the legislations of the Member States establish the duty of the serving authority to make specific efforts in order to locate the domicile of the addressee. When Regulation (EC) No 1393/2007 is applied, such an effort is not always done and forms are turned back to the requesting authority, either as unsuccessful or as incorrect. As to the closed questions in the interviews within the study, 98 respondents support the idea that “Service of document in the EU needs to be improved with a better harmonization of the methods of service”, against 22; 101 answers favour the idea that “Service of document in the EU needs to be improved with a common solution when the domicile of the defendant is unknown”, against only 11 contrary opinions; finally, 88 respondents believe that “Service of document in the EU needs to be improved with a common solution as to who can be served instead of the defendant”, whereas only 16 do not<sup>60</sup>.

The public consultation asked the stakeholders to indicate if regulation should ensure greater transparency in terms of finding the whereabouts of addressees who are residing in the territory of other Member States, e.g. the e-Justice Portal could be used as a tool for accessing such type of information in other Member States (provided that such information is publicly available there). More than 90 % of those (70% coming from the judiciary) providing an opinion found that the relevant pages of the European e-Justice Portal provided proper information to the parties to a proceeding or the recipients of judicial documents about their rights and obligations. This shows the importance of concise, up-to-date and easily accessible information to citizens regarding the judicial cooperation in civil and commercial matters and how well the e-Justice Portal addresses these needs.

**The Regulation on service of documents should ensure that there is greater transparency in terms of finding the whereabouts of addressees who are residing in the territory of other Member States. E.g. the e-Justice Portal could be used as a tool for accessing such type of information in other Member States (provided that such information is publicly available there):**

In addition, in the dedicated meetings with the Member States, some of them conveyed that there is an advantage in making it easier to search existing registers, including via the e-Justice Portal: UK, Netherlands, Cyprus, Austria, Germany.

The public consultation asked the stakeholders also about the idea of introducing a special judicial assistance for that purpose (if this is requested by a court in the Member State of origin in accordance with the law of that State). 55 % of the respondents giving their opinion strongly agreed with this idea and 33 % tended to agree with it. On the contrary, only 7 % tended to disagree, while only 5 % strongly disagreed.

It is to be noted that the proportion of supporters of the idea of judicial assistance for finding the whereabouts of a person in another Member State is even higher than the one of supporters for providing access to information publicly available in other Member States.

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<sup>60</sup> Study of MPI Luxembourg, paragraph 173, p. 82.

### 1.2.2. Costs

The public consultation asked the stakeholders whether the serving of documents in another Member State under the ways provided by the Regulation is too costly. More than half of the respondents stating their opinion tended not to see the service of a document under the Regulation as too costly, but the percentage of respondents tending to agree went up to 24 %.

Moreover, stakeholders indicated in the MPI study that there are jurisdictions where bailiffs or *huissiers de justice* are responsible for performing service of documents sent from another Member State and are entitled to charge their fees (Belgium, Netherlands, Luxembourg and France; paying the fees, additionally, is in many cases troublesome for foreign residents) whereas in other Member States the performance of service in the requested Member state is free<sup>61</sup>.

### 1.2.3. Delays

Most of the stakeholders consulted in the MPI study considered that the Regulation (EC) No 1393/2007 does not work smoothly, especially in some Member States. On the other hand neighbouring countries such as the Nordic countries and the Benelux seem to encounter less trouble in cooperation<sup>62</sup>.

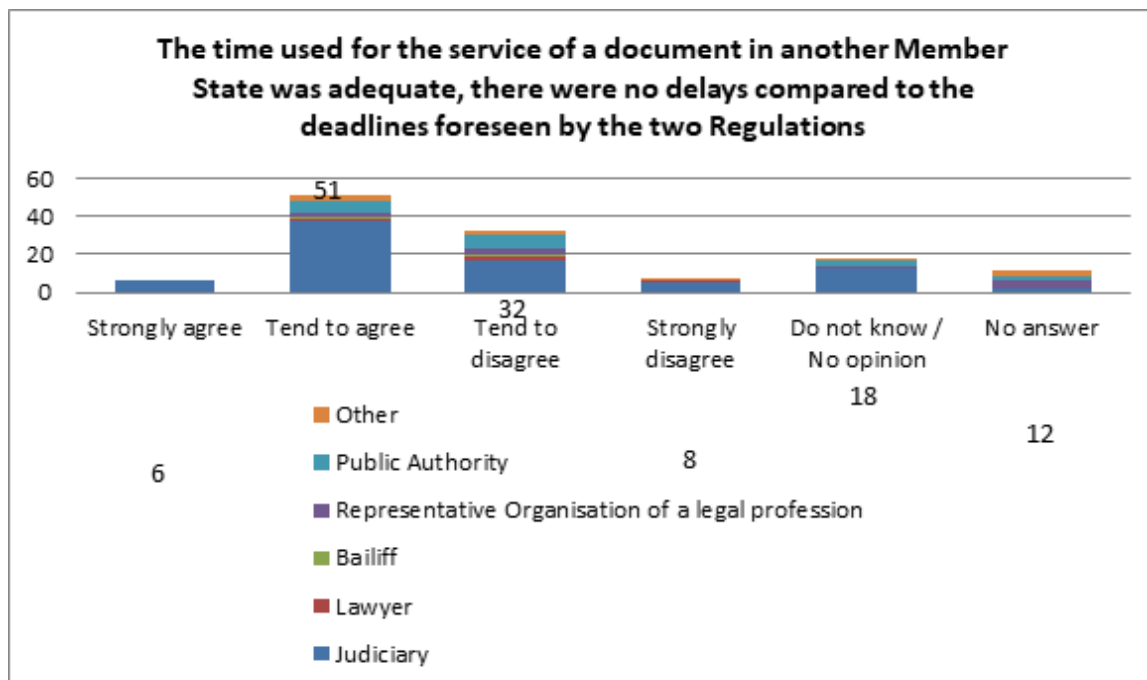
However, 53% of the respondents to the public consultation answered that the time used for service of documents in another Member State was adequate (cca 43% from the judiciary) while 33% of the stakeholders tended to disagree.

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<sup>61</sup> Study of MPI Luxembourg, paragraph 129, p. 55.

<sup>62</sup> Study of MPI Luxembourg, paragraph 129, p. 55.





### 1.3 Possible improvement: Electronic communication

According to the MPI study, some stakeholders indicated that in part of the Member States electronic communications are still not a real possibility (Belgium, Greece, Luxembourg, Malta and The Netherlands). In most Member States, where electronic service is possible it remains an option conditioned by the parties' willingness to use it (Croatia, France, Hungary, Latvia, Poland, Romania, Slovakia) and the use of secured electronic signature is a common requirement. Some Member States have created specific platforms to perform electronic exchange of judicial documents in a secure way (ERV in Austria, Digital Post in Denmark, DEMail in Germany, Liteko in Lithuania, LexNet in Spain), and, among them, a few have established its use as mandatory, at least for lawyers and other legal professionals (Austria, Spain). This policy option is also consistent with the obligation of businesses, lawyers and other professionals to have a certified e-mail address that can be used for judicial proceedings or to be registered at the relevant official platform: it exists only in a few MS (Austria, Croatia, Denmark, Italy, Lithuania and Spain).

Stakeholders from Denmark and Spain indicated that in their countries the possibility of serving the claim on the defendant electronically is not envisaged. This possibility exists in a few Member States (but only effective if there is acknowledgement of receipt-; Finland, in an indirect way –recipient receives a notice indicating that the documents are

available at a specific server-; Germany, if the addressee has expressly agreed to it. However, indication of the email address solely on the letterhead is not sufficient.

The public consultation asked the stakeholders whether it was not possible to transmit electronically a request for service or a document to be served to the designated agency of another Member State. What stands out from the answers to this question is the particularly high amount of answers not stating an opinion. One could conclude from that that the majority of practitioners have not yet tried to transmit a request for service electronically. The high percentages of answers strongly agreeing or tending to agree with the above statement show that the majority of those who have tried to do so did not succeed.

However, the public consultation shows that when asked whether the use of electronic means should become the default standard communication between the authorities/agencies involved in cross-border judicial cooperation in civil matters, 61% of the respondents agreed with this proposal and 39% of them tend to agree, while only 12% tend to disagree. In this respect, also the majority of the experts favoured the idea that electronic communication should be the default means of communication between the designated authorities of the Member States.

Council of Bars and Law Societies of Europe (CCBE) emphasised that it would like to see the e-CODEX infrastructure being used only in cross-border e-Justice initiatives based on interconnection of judicial systems as well as communications by stakeholders in justice, such as servicing of documents or exchanging evidence. While the e-CODEX system currently follows the legal and interoperability frameworks of the EU eSignature legislation and the EU e-Signature Standards Framework, its e-delivery concept is currently not based on any standards, since, for the time being, there is no standard in place for electronic registered delivery service. As long as there is no such standard, users, including lawyers, will have to adapt to the specific technical e-delivery solution of e-CODEX, which requires additional technical measures and resources.

Moreover, this organization stresses out there is currently no EU standard format for end-users (including lawyers) regarding (a) what documents and files they are expected to be able to read, and (b) to what formats they should convert evidence at their disposal so that the courts and other participants in litigation can work with such files. Unless there are such standard formats and easily available software libraries to use, it is very difficult to determine and satisfy the requirements of all end-users. Therefore, the systems, formats, and software lawyers will be expected or forced to use when documents to be served or evidence obtained are transmitted or exchanged through electronic channels, should be easily capable of integrating with the technical tools lawyers currently work with. In this respect, it is important to take into account that lawyers are not consumers, but business users and their IT systems are very diverse.

In the MPI study, no action at all on the side of the EU is unmistakably not an option for the respondents to the interviews: 79 would reject inaction, and only 8 would agree. As to what such action should be, to the question “Do you think that the Regulation should introduce a mandatory mechanism of electronic service for cross border cases”, 71 answers go for “no” while 44 would support it; the figures underpin electronic service clearly as optional, and non-mandatory, as shown by the 99 voices in favour against only 23 against.

## **2. Use of the means of transmission and service of document under the Regulation**

According to the MPI study<sup>63</sup>, different stakeholders indicated that Regulation (EC) No 1393/2007 is applied in different ways in the Member States:

- some countries prefer recourse to the central bodies (Article 4): Greece, Malta;
- some show preference for post service with acknowledgment of receipt (Article 14): Finland, Germany, Luxembourg, Poland, Spain, Sweden;

other optional methods of service are not accepted uniformly:

- transmission by consular or diplomatic channels is not allowed (Article 13): it is not admitted in Italy or Spain, unless addressed to nationals of the other MS concerned;
- the same applies to direct service of documents (Article 15): for instance, Bulgaria, Latvia.

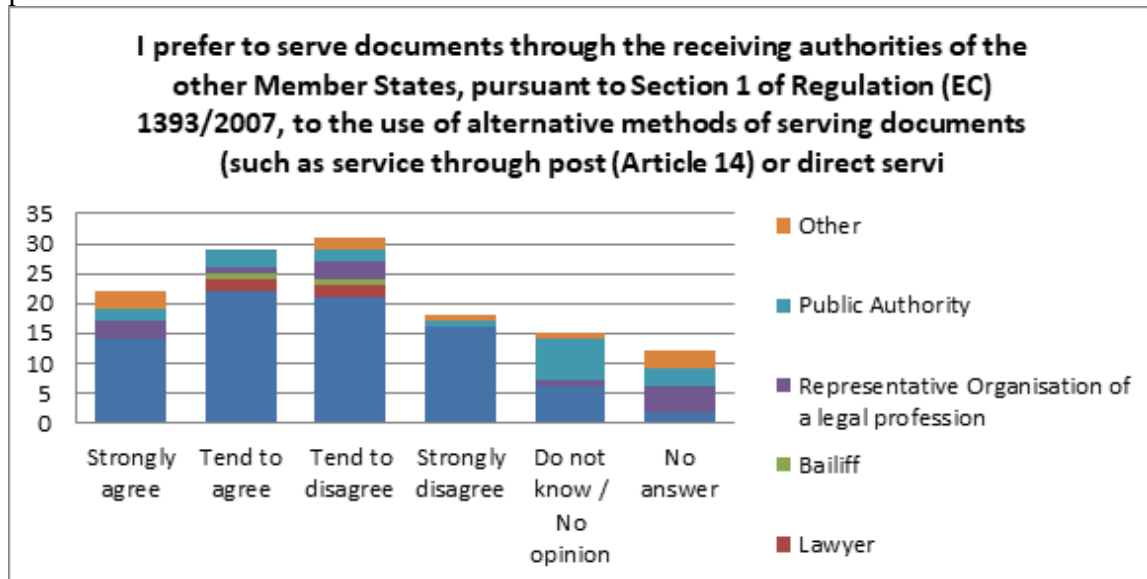
The role of bailiffs and judicial officers as national authorities is also considered differently. Indeed, who is to be considered as transmitting and receiving authority may differ: the courts in most Member States, but also bailiffs in some jurisdictions (France, Italy, The Netherlands, Belgium) and/or public prosecution offices (Greece, Belgium).

The public consultation asked the stakeholders if they prefer to serve documents through the receiving authorities of the other Member States, pursuant to Section 1 of Regulation (EC) 1393/2007 to the use of alternative methods of serving documents (such as service through post (Article 14) direct service. The answers to this question were quite balanced. 31 % of the respondents stating an opinion tended to prefer an alternative method of service or direct service, while around 29 % tended to prefer service pursuant to Section 1 of the regulation. 22 % strongly preferred service through the receiving authorities, whereas 18 % strongly preferred an alternative method of service or direct service.

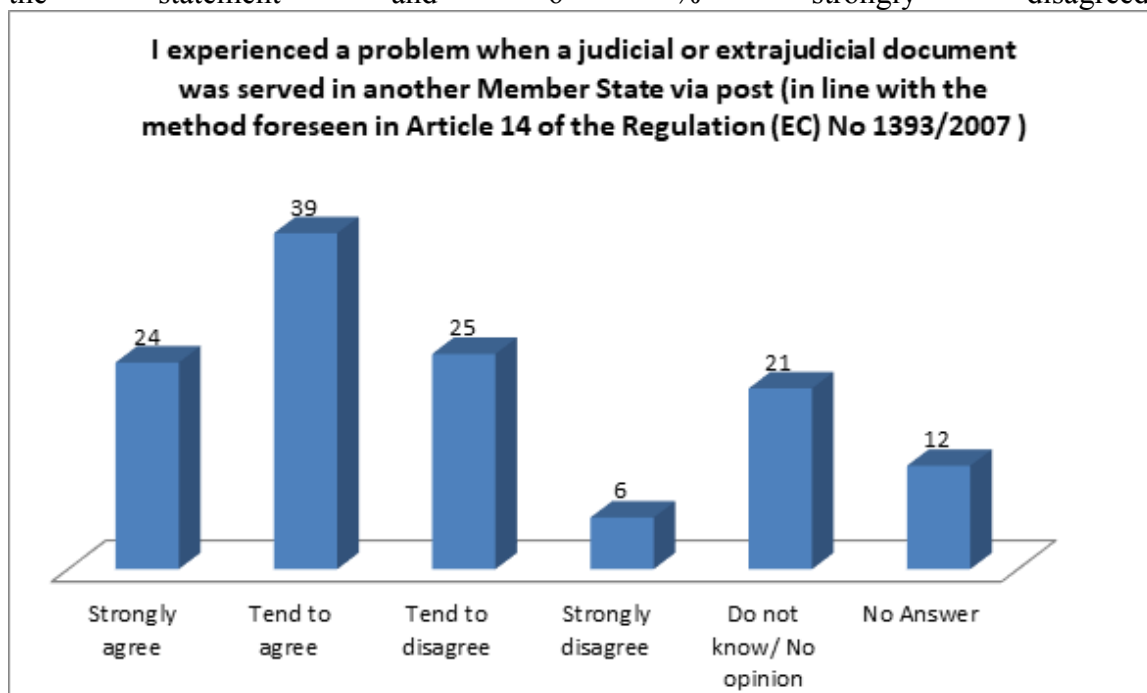
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<sup>63</sup> Study of MPI Luxembourg, paragraph 129, p. 54.

Interestingly, neither the judiciary, nor the lawyers, nor the bailiffs tend to have strong preference for one method or the other.



However, the public consultation showed that 26 % of the respondents stating their opinion strongly declared that they experienced a problem when a judicial or extrajudicial document was served in another Member State via post (in line with the method foreseen in Article 14 of the Regulation (EC) No 1393/2007). 41 % of the respondents tended to give the same answer, while 27 % of them tended to disagree with the statement and 6 % strongly disagreed.



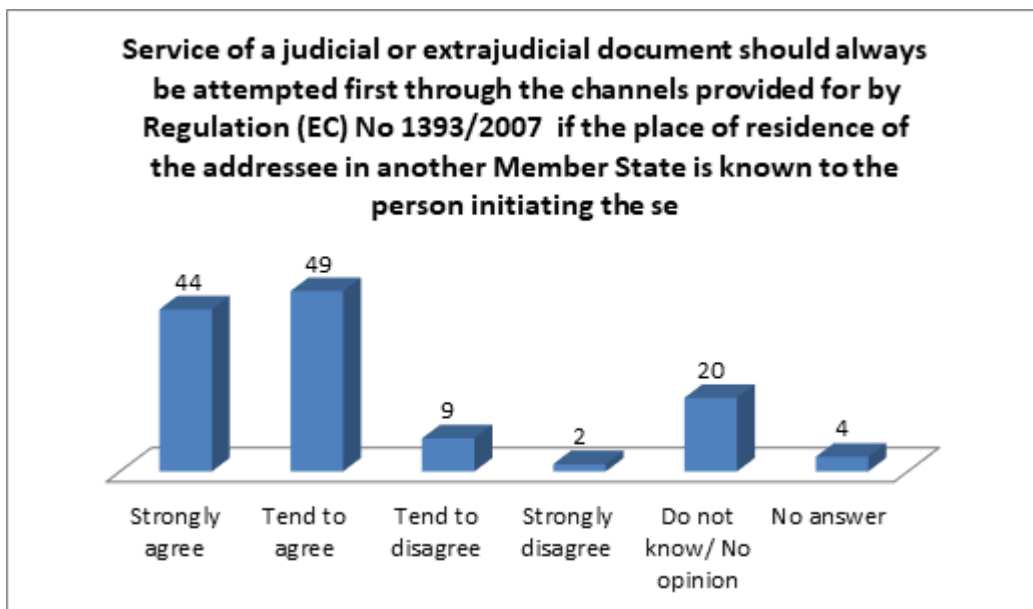
## 2.1 Alternative/fictitious service methods (Article 14)

According to the MPI study<sup>64</sup>, many stakeholders indicated that when the address is unknown (or no longer valid) the most frequent system is service by publication, although differences arise concerning the sort and the place for such a publication: official journals, court boards, court’s websites, town halls or even newspapers. In some Member States, fictitious service is followed by the appointment of a curator to defend the defendant’s position, although it is not a common practice (Austria, Romania).

Other stakeholders stated that apart from service by publication, other frequent methods of fictitious service are envisaged by the legislation of some Member States: sending the document to the public prosecutor (Belgium, Italy); posting the notification on the door or in the mailbox of the respondent (Bulgaria, Netherlands, Slovenia); sending letters (normal and with acknowledgement of receipt) to the last known address (France, Luxembourg).

Some Member States have introduced specific precautions and limits to fictitious service when the addressee is domiciled abroad: Denmark accepts service by publication if the relevant foreign authority denies or fails to comply with a request to serve the document abroad; in Finland fictitious service is not available to serve documents in proceedings that are being carried out outside Finland; Germany only admits fictitious service within the country and in proceedings here the Regulation does not apply.

In the public consultation, all the stakeholders representing the Member State which responded (Estonia, Latvia, Poland, Germany, Finland, Austria and Czech Republic) agreed that service of a judicial or extrajudicial document should always be attempted first through the channels provided for by the Regulation (EC) No 1393/2007 if the place of residence of the addressee in another Member State is known to the person initiating the service.



## 2.2 Direct service (Article 15)

<sup>64</sup> Study of MPI Luxembourg, paragraph 131, p. 55.

Direct service is a very useful option that is left open by the Regulation, allowing parties to bypass the complex and long process of transmission of documents between designated agencies, as well as the uncertainty of post service. However, as showed the study carried by the University of Firenze, only some Member States grant to parties the possibility to perform direct service<sup>65</sup>. According to the declarations rendered by Member States,<sup>66</sup> direct service according to Article 15 is permitted in Belgium, Cyprus, Denmark, France, Finland, Germany (with limitations)<sup>67</sup>, Greece, Italy, Luxembourg (under condition of reciprocity), Malta, Netherlands, Portugal (arts. 228ff. CPC), Scotland, Sweden. It is not permitted in Austria, Bulgaria, Czech Republic, Estonia, Hungary, Ireland, Latvia, Lithuania, Poland, Romania, Slovenia, Slovakia, Spain, England.

In the public consultation, stakeholders were asked whether competent persons as bailiffs or process servers could be directly requested from abroad in all Member States to perform service of documents in their territory. 35 % of the respondents taking a stand strongly agreed with this idea, while 46 % tended to agree. 14 % of them tended to disagree, whereas 4 % strongly disagreed.

### **3. Refusal of acceptance of the a document (Article 8)**

Some Member States require or encourage claimants to provide a sort of “precautionary” translation of the relevant documents before accepting them to be sent to the requested MS – e.g., Denmark, Germany, Romania or Spain. In other Member States the court itself will translate the writ of summons (Finland, Slovakia). It is not always clear to what extent all the annexes have to be translated, although they might be very voluminous (the practice in Denmark, for instance, is to request the plaintiff to procure a translation for these documents, if perceived as necessary); finding translators in some MS of the official languages of other MS might prove to be difficult some times<sup>68</sup>.

In the public consultation, many of the stakeholders support the idea of giving indications in the text (recital or article) which help the assessment of the courts in determining the existence of a language skill of the recipient in the case of refusal. Supports: Estonia, Finland, Austria, France, Czech Republic, Bavaria, Lower Saxony. Disagrees: Latvia, Poland.

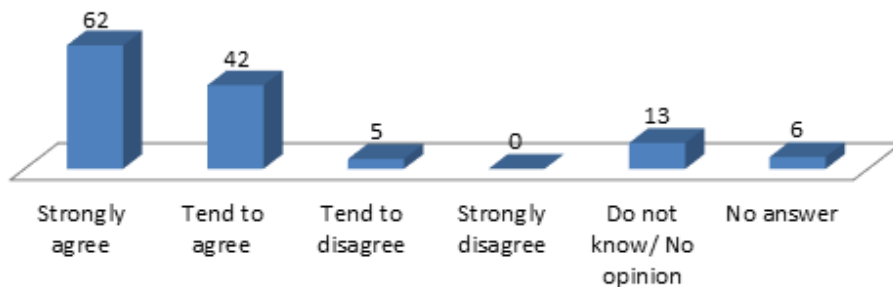
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<sup>65</sup> Study containing a comparative legal analysis of laws and practices of the Member States on service of documents (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI) – published in November 2016, p.4.

<sup>66</sup>Information are available at [http://ec.europa.eu/justice/home/judicialatlascivil/html/ds\\_information\\_en.htm](http://ec.europa.eu/justice/home/judicialatlascivil/html/ds_information_en.htm).

<sup>68</sup> *Study of MPI Luxembourg, paragraph 129, p. 55.*

**The mechanism in the Regulation on service of documents relating to the right of the addressee to refuse the acceptance of a document on the basis of its language (Article 8) should be designed in a way which helps the court to determine the languages wit**



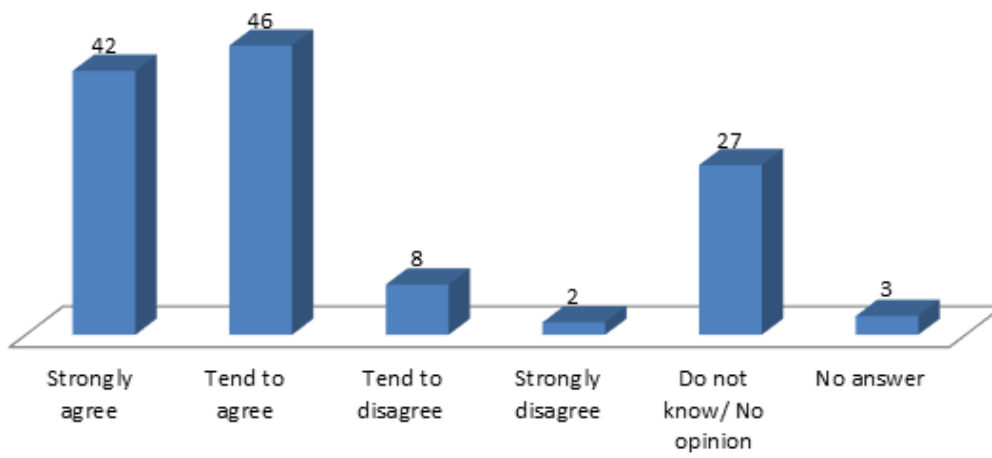
#### **4. Extraordinary remedy against default judgements (Article 19)**

The service of documents - and in particular the service of documents instituting proceedings - is directly linked to the right to be heard and to the guarantees of due process and fair trial. In the study carried by University Firenze, stakeholders indicated that in the majority of Member States, a default judgment accepting the claimant's requests may be rendered against a defaulting party and in any case, also in those Member States in which the judge may only grant a judgment in so far as the claim has been proved by the claimant; an absent party loses the opportunity to bring its own case and evidence. However, stakeholders took notice that the time limit to file an ordinary appeal or an *opposition* against a default judgment differs from a Member State to another<sup>69</sup>.

In the public consultation, many of the stakeholders 43 % of the respondents giving their opinion strongly agreed with the idea of ensuring a uniform level of protection for defendants from another Member State who did not appear before court and 47 % tended to agree. On the other hand, 8 % tended to disagree and 2 % strongly disagreed.

<sup>69</sup> Study containing a comparative legal analysis of laws and practices of the Member States on service of documents (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI) – published in November 2016, p. 187-209.

The Regulation on service of documents should ensure a uniform level of protection for defendants from another Member State who did not appear before the court. E.g. the time limit for the availability of an extraordinary remedy against any default judgment





## **ANNEX 3: WHO IS AFFECTED AND HOW?**

### **1. Practical implications of the initiative**

#### **1.1 IMPACT ON PUBLIC AUTHORITIES**

The right balance between the costs and benefits would determine the ultimate outcome of the Regulation. Currently, Member States incur similar costs concerning the communication with transmitting/receiving agencies, serving documents through post or judicial officers, providing information to the e-Justice portal and processing requests under the Regulation. Accordingly, national authorities benefit from the judicial cooperation, mutual recognition and standardised approach to serving documents across borders. New policy package implies subsequent costs and additional benefits to the current system.

Member States will be required to provide additional information for the e-Justice portal awareness raising and training activities. Therefore, new fields would be added for clarification concerning the costs for the service of documents by post or direct service means. Additionally, the implementation, development and maintenance of e-CODEX, as the default channel of electronic communication, would also require extra costs from national authorities alongside co-financing from the European Commission. However, some Member States already possess a pilot version of e-CODEX, which they may reinstall and upgrade for the current purposes. Moreover, such electronic system follows a multifunctional approach for other digitalized EU mechanisms in order to avoid unnecessary expenses. Furthermore, specific international acknowledgement of receipt shall be systematically used by transmitting agencies and postal services, thus automating this element of the procedure. Importantly, this technology already exists and is used in some Member States, which limits implementation costs. Furthermore, receiving agencies will be asked to make a quick check of the addressee location in order to avoid unnecessary delays of court proceedings.

All abovementioned costs are in keeping with the advantages which Member States are expected to gain under the policy package. Thus, the implementation and use of e-CODEX would reduce costs compared to the use of postal services - including expenses related to paper, envelopes, printer cartridges, toner or ink, shelves, archiving materials and space. This would also save personnel time, which can be used instead to deal with the cases, thus limiting delays in court proceedings and increasing overall efficiency.

## **1.2 IMPACT ON LEGAL PROFESSIONALS**

Legal professionals are expected to incur initial costs to get acquainted with and understand the new legislation and practices, so as to analyse the changes and possibilities to serve the documents. However, some of these costs are expected to be forwarded to clients. Judges would also need time to get familiar with new rules. Nevertheless these costs will only be incurred initially for both groups, and for those who frequently manage cases under the Regulation, the proceedings are expected to become more efficient and less time consuming.

In particular, lawyers will benefit from the implementation of e-CODEX and Electronic Registered Delivery Service (ERDS), which facilitates the process of dealing with different cases. Therefore, the proceedings are becoming more efficient and less time consuming. Consequently, lawyers, under the policy package, would be able to handle a higher number of cases, even though the client fees for each individual case would be reduced. Therefore, qualified lawyers would gain benefits from the increased number of cases and from higher quality of service.

## **1.3 IMPACT ON BUSINESS AS SERVICE PROVIDERS**

Different businesses will get diverse consequences from the application of the Regulation. Some traditional means of communication will to be used less in the future. Therefore, such providers will incur negative impacts. In particular, postal service providers are expected to have less income due to the number of evidences taken using electronic means of communication; nevertheless, many postal services already make use of electronic communication. Paper and office supply providers and paper-based archiving companies are also expected to incur a reduction in sales. Furthermore, bailiffs and private process servers would incur decreased demand. Their revenues are thus likely to be reduced due to the implementation of e-CODEX and Electronic Registered Delivery Service. This is why some Member States currently oblige to provide service of documents only through bailiffs. In such cases, they will need to adjust to the new electronic communication in order to be efficient in legal proceedings.

Meanwhile, some businesses are expected to benefit from the implementation of the policy package. First of all, providers of IT consulting services could gain a profit of around 1 million Euros for helping to implement the e-CODEX system. Furthermore, judicial authorities deploying new technologies would also require services from internet and telecommunication providers, cloud storage service providers and archiving service providers. All these different businesses are likely to gain revenues under the revised Regulation. Furthermore, maintaining these new technologies will also require assistance from businesses in order to operate the system and provide all necessary maintenance supply.

## **1.4 IMPACT FOR CITIZENS AND BUSINESS (STAKEHOLDERS)**

Taking advantages of higher legal certainty and mutual trust in cross-border services, citizens and businesses are also likely to incur increases in the cost of court fees, legal services, service methods, etc. The trend for a continued increase in cross-border cases is likely to increase costs related to court fees and service methods and to become more time consuming for the parties.

Nevertheless, the digitalization of the service of documents would have a positive impact on citizens and businesses as parties of legal proceeding and they would gain benefits without major additional costs. The development and establishment of e-CODEX, as a modern electronic communication, would make the procedures more efficient. Such consequences are especially important for businesses as it saves time.

Additionally, the implementation of e-CODEX would decrease legal fees paid to lawyers for their services. Indeed, legal professionals will spend less time on the cases, allowing citizens and businesses to have less costly and less stressful proceedings. Nevertheless, average costs paid to lawyers will depend on other factors, and might not fully pass on this positive impact.

## **1.5 IMPACT ON ENVIRONMENT**

An environment impact will be incurred under both the baseline scenario and the policy package.

Under the baseline, the necessity to use paper-based communication by the receiving and transmitting agencies would require costs or papers, toner or ink. Additionally, postal services involve relevant transport, including gas emissions and fuel usage, envelopes, wrapping, etc. Nowadays, some of these sources are non-renewable, which have a negative impact on environment.

The policy package would provide generally positive impact on environment, even though some negative consequences will remain.

On the one hand, transmitting agencies would be obliged to use a label indicating the nature of the document in order to increase the general awareness for addressee. Such label would have to be printed and distributed.

On the other hand, the establishment of the electronic service of documents as one of the methods to serve documents would avoid unnecessary printed documents and its physical displacement. Postal service will hence be less frequently resorted to, with a positive impact on environment through reduced gas emissions and fuel for transport.

In addition, the development and implementation of electronic communication via CEF eDelivery would substitute paper –based communication. Therefore, this wide EU-tool among the Member States would serve for different purposes, such as taking of evidence,

which would increase the positive impact; thus reducing both the usage of toner or ink and the creation of non-renewable resources (special booklets for guidance on how to fill in special forms would no more be needed). Additionally, stakeholders reported that reprinted and duplicated prints often occur: the probability to waste such resources would thus be reduced.

<b>I. Overview of Benefits (total for all provisions) – Preferred Option</b>		
<b>Description</b>	<b>Amount</b>	<b>Comments</b>
<b>Direct benefits</b>		
<p><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</b></p>	<p>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.</p> <p>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 served, whose address is not known or where the known address proves to be incorrect or obsolete. The tools to be provided by the Member States (based on their choice) include:</p> <p>a) providing judicial assistance upon request for foreign courts for clarifying the address of a person;</p> <p>b) ensuring that applications to national domicile registers in another Member State are accepted electronically, through the e-Justice Portal</p> <p>c) providing detailed guidance or information on the e-Justice Portal on available tools for locating a person in their country.</p>	<p>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.</p> <p>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 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>70</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</li> </ul>

<sup>70</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>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 judgements against them.</p> <p>1) to 3) we may expect 480 million euro saving for citizens (and justice administrations. )</p>	for the justice systems)
<b>Eliminate unnecessary costs for cross-border service of documents</b>	<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>71</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>
<b>Eliminate unnecessary costs for cross-border service of documents</b>	<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</p>	<ul style="list-style-type: none"> <li>•</li> </ul>

<sup>71</sup> <http://cdt.europa.eu/en/documentation-type/budget>

	<p>reduced practically to zero (by submitting the document through the e-CODEX channel, it appears immediately on 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>
<b><i>Indirect benefits</i></b>		
<b>Eliminate unnecessary costs for service of documents</b>	By definition of extrajudicial documents, the number of case 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.
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## ANNEX 4: ANALYTICAL METHODS

In order to estimate the quantitative aspects of current and future application of the Regulation (EC) 1206/2001, it is necessary to have an overview on the **number of legal proceedings** in which it was applied, as well as on the **use of different channels for taking evidence** under the Regulation. For this purpose, a model has been prepared by Deloitte which includes calculations and projections on these aspects. The model is based on primary and secondary data, which have been combined in order to build robust estimates on the application of the Regulation.

### BRIEF DESCRIPTION OF THE MODEL

The main **purpose** of the model is to estimate the number of legal proceedings in which the Regulation (EC) 1206/2001 is applied or will be applied in the future, both under the baseline scenario and the policy package. In addition, it serves to estimate the share of the different channels under the Regulation.

**Primary data (i.e. statistics)** concerning the number of legal proceedings in which the Regulation (EC) 1206/2001 has been applied is not readily available. Therefore, **estimates** have been made **based on secondary information available** for the timeframe 2000-2017, as well as expert assumptions, which feed into the model. These concern the following types of legal proceedings:

- Divorces, legal separations, and parental responsibility proceedings;
- Insolvencies, e.g. relevant in relation to B2B or B2C claims;
- Successions and wills;
- Property transactions, e.g. immovable property in B2B, B2C, and C2C constellations;
- Contractual obligations, e.g. liability in B2B or B2C contracts;
- Administrative cases, e.g. concerning disputes between citizens and authorities; and
- Compensation for damages, e.g. subsequent to criminal cases or as part of liability proceedings.

Both a **bottom-up and a top-down approach** have been used to estimate the respective data. In this case, a bottom-up approach means that the estimates are largely based on available Eurostat data or data from national statistical offices, as well as qualitative / quantitative information available in secondary sources. The number of legal proceedings was estimated based on this data and respective assumptions. In contrast, the top-down approach uses quantitative information available through the CEPEJ database on the overall number of legal proceedings and attributes the individual case load to specific types of legal proceedings based on assumptions.

The following table indicates the main data source for the estimates, as well as the type of approach used per type of legal proceeding.

Table 2: Types of legal proceedings, respective data sources, and approach used

Type of legal proceeding	Source for estimate	Approach used for estimate	
		Bottom-up	Top-down
Divorces, legal separations, and parental responsibility	<ul style="list-style-type: none"> <li>• Eurostat, e.g. concerning the overall number of divorces</li> <li>• Brussels IIa Impact Assessment<sup>72</sup>, e.g. concerning the number of cross-border divorces and legal separations between 2008 and 2012</li> </ul>	X	
Insolvencies	<ul style="list-style-type: none"> <li>• Eurostat, e.g. concerning the number of businesses in the EU</li> <li>• Insolvency Impact Assessment<sup>73</sup>, e.g. concerning the share of insolvencies with cross-border elements</li> </ul>	X	
Successions and wills	<ul style="list-style-type: none"> <li>• Eurostat, e.g. concerning the number of deaths</li> <li>• Successions &amp; Wills Impact Assessment<sup>74</sup>, e.g. concerning the share of deaths with an "international component"</li> </ul>	X	
Property transactions	<ul style="list-style-type: none"> <li>• CEPEJ data<sup>75</sup> on the caseload of Member States' courts in 2014 concerning land register cases</li> <li>• Eurostat data concerning the population in EU Member States</li> </ul>		X
Contractual obligations	<ul style="list-style-type: none"> <li>• CEPEJ data on the caseload of Member States' courts in 2014 concerning litigious &amp; non-litigious civil &amp; commercial cases</li> <li>• Eurostat data concerning the</li> </ul>		X

<sup>72</sup> See: Study on the assessment of Regulation (EC) No 2201/2003 and the policy options for its amendment. See: [http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/15/bxl\\_ija\\_final\\_report\\_analtical\\_annexes.pdf](http://edz.bib.uni-mannheim.de/daten/edz-k/gdj/15/bxl_ija_final_report_analtical_annexes.pdf)

<sup>73</sup> SWD(2012) 416 final. Impact Assessment accompanying the document "Revision of Regulation (EC) No 1346/2000 on insolvency proceedings". See: <http://insreg.mpi.lu/Impact%20assessment.pdf>

<sup>74</sup> SEC(2009) 410 final. Impact Assessment accompanying the Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of successions and on the introduction of a European Certificate of Inheritance. See: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009SC0410&from=EN>

<sup>75</sup> Council of Europe (2016): Evaluation of European Judicial Systems. Dynamic data set concerning civil and commercial matters. See: [https://public.tableau.com/views/2010-2012-2014Data/Tables?:embed=y&:display\\_count=yes&:toolbar=no&:showVizHome=no](https://public.tableau.com/views/2010-2012-2014Data/Tables?:embed=y&:display_count=yes&:toolbar=no&:showVizHome=no)

Type of legal proceeding	Source for estimate	Approach used for estimate	
		Bottom-up	Top-down
	population in EU Member States		
Administrative cases	<ul style="list-style-type: none"> <li>• CEPEJ data on the caseload of Member States' courts in 2014 concerning administrative cases</li> <li>• Eurostat data concerning the population in EU Member States</li> </ul>		X
Compensation for damages	<ul style="list-style-type: none"> <li>• CEPEJ data on the total caseload of Member States' courts in 2014</li> </ul>		X

Source: Deloitte

In addition to the sources identified above, the estimates draw on expert assumptions, e.g. in relation to the share of legal proceedings that relate to cross-border cases, or qualitative information gathered as part of the interviews, e.g. approximate share of cases in which the Regulation (EC) 1206/2001 was applied. A detailed description on the assumptions is provided in the next section *Underlying assumptions and data input*.

The assumptions were inserted in a **complex Excel model developed by Deloitte** in which different types of data from various sources have been linked and extrapolated. The following graph visualises the high-level approach used for the development of the estimates and indicates illustrative types of data, the level of detail at which they are available, the respective sources, as well as specific examples of indicators that have been used.

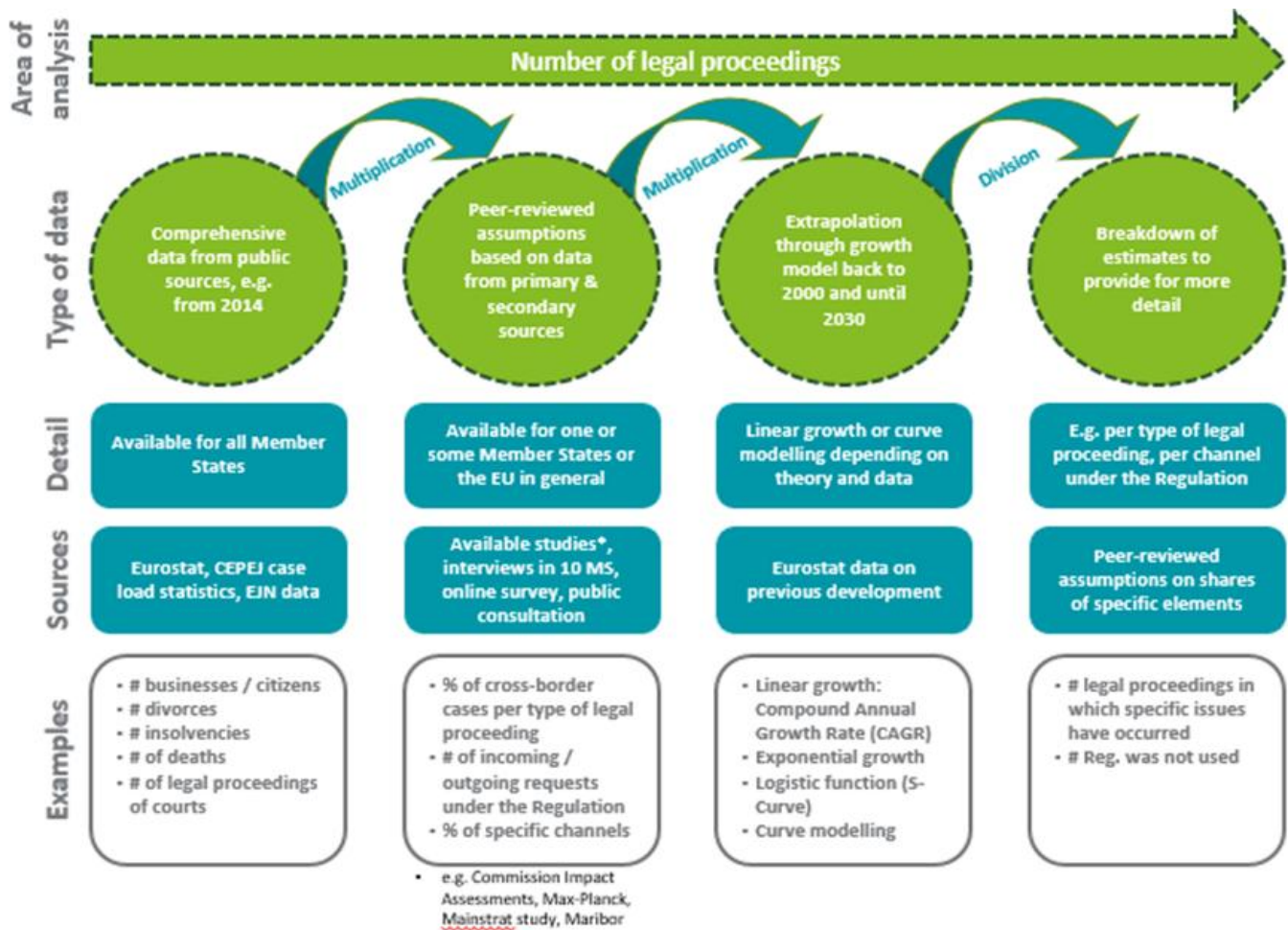


Figure 3: High-level approach used to develop the estimates

Source: Deloitte

The assumptions were subject to an **internal, in-depth peer review process**. As part of this process, different assumptions were introduced in the model to compare the different outcomes. The result of this **sensitivity analysis** was that the assumptions provided in the table below seem to be, at this stage, the most reasonable and pragmatic based on the best data available in relation to this specific subject.

### UNDERLYING ASSUMPTIONS AND DATA INPUT

#### a) Baseline and key assumptions

As previously explained, the model works with different assumptions indicated in the table below.

Table 3: Key assumption used in the model

Type of estimate	Assumption	Sources			
		Commission	Interviews	Expert assumption	Other

Type of estimate		Assumption	Sources			
			Commission	Interviews	Expert assumption	Other
<b>Basic statistical estimates</b>						
Share of divorces accompanied by a parental responsibility proceeding		25%			X	
Additional parental responsibility proceedings per divorce		25%			X	
Share of businesses that go insolvent		1%	X			
Share of cross-border insolvencies		25%	X			
Average number of legal proceedings per insolvency		1.0			X	
Share of cross-border cases of all incoming cases	Minimum	4%	X			
	Maximum	15%	X			
Speed of growth of "cross-border CAGR"		1.5			X	
Share of deaths with an "international component"	Minimum	1%	X			
	Maximum	25%	X			
	Average	13%				
Share of "international deaths" for which a will is available and can be contested in court		60.4%	X			
Share of property transactions with "international component"		1%			X	
Share of contractual obligations with an "international component"		9.3%	X			
Share of all given cases in which the Regulation (EC) 1206/2001 was applied	Minimum	0.5%				X
	Maximum	5%			X	
	Average	4%				
<b>Taking of evidence</b>						
<b>Shares of cases</b>						
Share of cases in which VC is used	Minimum	10%			X	
	Maximum	40%			X	
	Average	25%				

Type of estimate		Assumption	Sources			
			Commission	Interviews	Expert assumption	Other
Share of cases in which direct ToE was performed	Minimum	5%		X		
	Typical	20%		X		
	Maximum	80%		X		
	Average	35%				
<b>Delays</b>						
Number of months it takes to take evidence across borders	Minimum	2				
	Maximum	12		X		
	Average	7				
<b>Costs</b>						
Share of paper based communication		80%		X		
Cost of VC equipment		90,000 €		X		
Transcript of recording		270 €				
Translation costs	Minimum	500 €				
	Maximum	1,000 €		X		
	Average	750 €				

Source: Deloitte

#### b) Key sources

The assumptions were built on the data gathered during the **interviews with practitioners** both at EU and national level carried out as part of this study, **desk research** as well as the expertise of the Deloitte study team and the external legal expert.

#### c) Construction of the baseline and core policy simulations

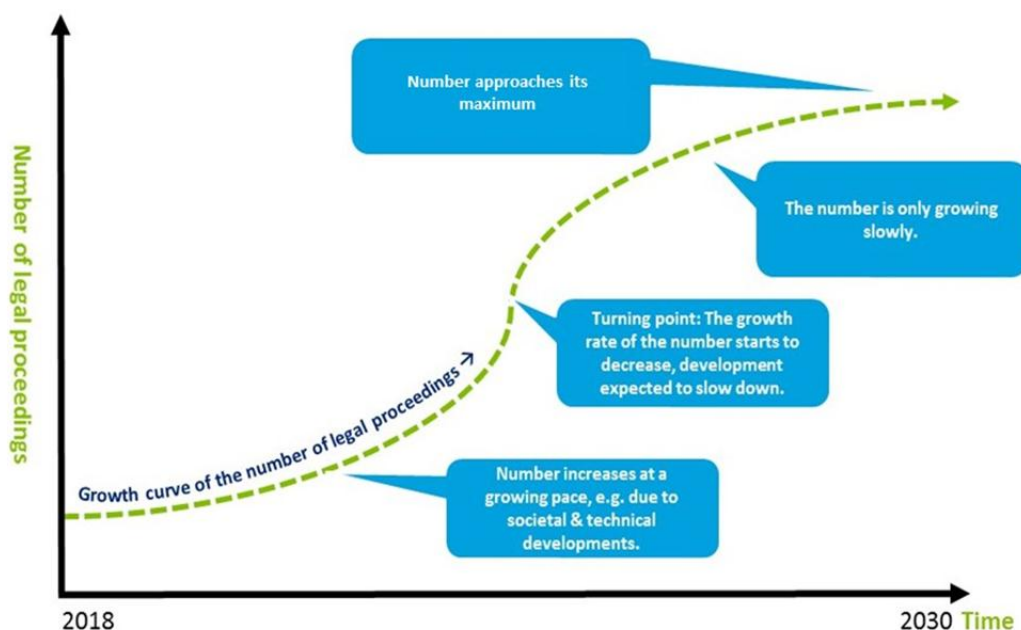
Based on the assumptions and key sources previously explained, the number of legal proceedings in which the Regulation was and was not (but could have been) applied was estimated for the period 2000-2017 (i.e. the baseline).

In addition to the construction of the baseline, the Deloitte study team has developed the quantitative estimates in terms of the number of legal proceedings in which the

Regulation is expected to be applied between 2017 and 2030, as well as the use of different channels under the Regulation.

The projections are based on the same data and assumptions than for the baseline. A growth model has been developed based on which the expected development of the estimates in the future is projected. The model used in this study is based on the S-curve concept which is widely applied in macro-economic modelling. The concept is visualised below.

*Table 4: Illustrative S-curve development of the number of legal proceedings in which the Regulation was applied*



Source: Deloitte

Within this concept, the growth of a certain set of data over time, e.g. the number of legal proceedings in which the Regulation (EC) 1206/2001 was applied, increases over time up to a point at which the growth rate eventually declines and the data only grows marginally (the curve “flattens out”).

Such a curve can be modelled with a **logistic function**. The general formula used for the logistic function is the following.

$$P(t) = \frac{P_0 * e^{r-t}}{1 + P_0(e^{r-t} - 1)/P_{MAX}}$$

The formula contains the following elements:

- $P$  represents the data point at a given time  $t$ ;
- $P_0$  represents the data point today;
- $P_{MAX}$  represents the data point that can reasonably be achieved until 2030; and



- $r$  represents the parameter by means of which the data point is expected to increase annually; and
- $e$  is the mathematical that is the base for the natural logarithm ('Euler's number').

The curve can be modelled in such a way that it does, however, not resemble the S-curve in a given period of time, e.g. by mathematically stretching its development over a timeframe that exceeds the scope of this study (i.e. the flat part of the curve will not be reached by 2030). This has been used within this study as it can reasonably be expected that societal trends and increasing judicial cooperation will remain over the next twelve years until 2030. Thus, the graphs depicted in this section do not encompass the typical "flattening out" part of the S-curve.

This has been the basis for **estimates on the application of the revised Regulation under the selected policy package**. The values applied to the baseline scenario have been used as the start value for the modelling of the application of the revised Regulation. It was assumed that there would not be any significant changes in the first two years at least, as the legislative changes would first need to be adopted and implemented.

For the time after that, the assumptions concerning the speed of growth have been adjusted based on the qualitative assessment of the selected policy options. For every aspect of the policy option, it was assessed how and to what extent it would impact on the number of cases in which the Regulation (or specific channels) have been applied, based on expert judgment.

Overall, it was assumed that the application of the Regulation would increase based on the envisaged policy changes. Again, it was assumed that the development would be S-curve shaped.

Assumptions have been made for the overall application of the revised Regulation in the future as well as the application of individual channels, as follows:

- **Overall application of the revised Regulation (including the new channels added):** 67.5 – 90% of all cross-border cases in civil and commercial matters;
- **Application of the channels that exist currently under the Regulation (Art. 10ff and Art. 17):** 15 – 20% of all cross-border cases in civil and commercial matters;
- **Application of direct Taking of Evidence under Art. 17 of the Regulation:** up to 40% of all cases in which the Regulation is applied;
- **Use of videoconferencing under Art. 17:** up to 70% of all cases in which Article 17 of the Regulation is applied.

The estimates in the graphs provided should not be read as concrete projections but rather as 'corridors of estimates' in which the 'actual' concrete number of legal proceedings is likely to be.

- d) Sensitivity of model results and likely robustness to changes in the underlying assumptions and/or data input



As previously explained, as part of the in-depth peer review of the model, assumptions were introduced to compare the different outcomes. These assumptions were based on the expertise and judgement of the Deloitte study team. In addition, the estimations were provided in corridors in the graphs in order to take into account possible variations that might occur.

**ANNEX 5: TABLES WITH ASSESSMENT OF OPTIONS FOR PROBLEMS**

**Table 5: Assessment of options for problem 1 “Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address”**

<i>Problem 1: Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address</i>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<b>1.1.1 Providing information on the e-Justice Portal on the tools and options for citizens and business available at national level for locating an addressee</b>	<ul style="list-style-type: none"> <li>This option would improve access to justice for businesses and citizens who in this case would have at their disposal the necessary means for locating an address and hence be enabled to launch the legal proceeding.</li> <li>It would also speed up procedures, as businesses and citizens would be able to find out about the tools (e.g. national domicile registries) available in one country, and whether the</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>Concerning the benefits, this soft measure would provide information (if shared by the Member States) to the transmitting agencies, businesses and citizens to support them on the localisation of an addressee.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>This option would entail costs of provision information for Member States. It would mean that they have to upload</li> </ul>	<ul style="list-style-type: none"> <li>This option is proportionate as it represents a natural evolution of the current situation in that it would entail the improvement of the e-Justice portal by including more information concerning Member States national systems.</li> <li>It does not entail additional efforts for implementation to any stakeholders.</li> </ul>	0.5	<p>This option would not entail significant costs for the Member States, and would be proportionate to the objective to be achieved.</p> <p>Nevertheless, in term of effectiveness, this option would not contribute to the efficiency nor the speed of the procedures.</p>

***Problem 1: Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address***

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	<p>receiving agency has access to it. Nevertheless, although the claimant finds out through the information on e-justice that there is a national domicile registry in place in the Member States concerned, there is no guarantee that the receiving agency would have access to it, and if it does, how promptly the information requested would be shared. Therefore, the claimant might suffer some delays due to a reduced or complete lack of access to the tools and options available.</p>	<p>to the e-Justice Portal information on national tools/options for locating an addressee in their territory (and to ensure that such information is up-to-date at all times).</p>			
<p><b>1.2 Member States will be obliged to facilitate address enquiries through (at least) one of the following</b></p>	<ul style="list-style-type: none"> <li>This option would facilitate access to justice of the parties, as there would be effective tools at the disposal of right-</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>This option presents benefits for the parties from other Member States, compared to the</li> </ul>	<ul style="list-style-type: none"> <li>The flexibility of the system, which enables that the Member States define in compliance with their national</li> </ul>	<p>2</p>	<p>This option contributes to a smooth cooperation between the authorities for the locate an address or clarify it. It suggests a</p>

*Problem 1: Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address*

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>alternatives tools:</b></p> <p><b>a) providing judicial assistance upon request of courts/transmitting agencies from other Member States;</b></p> <p><b>b) accepting requests from individuals to national domicile registers which are transmitted through the e-justice portal;</b></p> <p><b>c) providing detailed information (with appropriate hyperlinks) on available tools in the territory of the Member State</b></p>	<p>seekers from other Member State to clarify the address, facilitating service of documents.</p> <ul style="list-style-type: none"> <li>In addition, this option would contribute to the efficiency and speed of the proceedings, as there will be higher chances that the address of the recipient is located.</li> </ul>	<p>current situation, since these, since these parties will receive assistance or efficient guidance from the other Member State even when the address is not known.</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>Although the options under i. and ii. will generate some costs on the side of the public administrations, these costs will be marginal, assuming that only those Member States will opt for these options who have already similar tools in place. <ul style="list-style-type: none"> <li>One may count, however, on an increased number of requests (under tool i.) or applications (under tool ii.) compared to what the Member State</li> </ul> </li> </ul>	<p>procedural regime the way in which they are ready to provide assistance to foreign right-seekers, is a guarantee that the intervention is propositional and does not go beyond what is necessary to achieve these specific objectives.</p>		<p>practical and flexible approach where authorities would make use of the tools available in order to clarify or correct addresses in civil proceedings.</p>

**Problem 1: Lack of clear information on the channels (if any) that are available within each Member State for assistance on: locating an addressee, clarifying an address**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
		<p>concerned currently deal with. But, even in the case under ii., the domicile register of the Member State can easily compensate the additional workforce needed to address those extra applications by the introduction of a reasonable fee corresponding the service (nothing in the EU Regulation would prevent a Member State to charge a fee for such a service)..</p>			
<p>Preferred policy measure</p>	<p>The preferred policy measure would be option 1.2 as it would contribute most to the efficiency and speed of the proceedings, at the same time also facilitating the access to justice for the parties. It does entail some costs but it is comparatively still the option with the least costs, which are, however, outweighed by the benefits. The measure is proportionate.</p>				

**Table 6: Assessment of options for problem 2 “Unclear definition of extra-judicial documents”**

<i>Problem 2: Unclear definition of extra-judicial documents</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>2.1 Providing information on the e-Justice Portal concerning the types of national documents in the Member States which are considered as "extra-judicial" documents</b></p>	<ul style="list-style-type: none"> <li>Under this option, transmitting agencies would have available information on what type of national documents are regarded as "extrajudicial documents" in each Member State. Therefore, the likelihood of a document being rejected due to its nature would be reduced, contributing to the efficiency and speed up of proceedings.</li> <li>Nevertheless, this soft measure does not provide a harmonised definition on "extrajudicial documents". Based on the findings from our fieldwork, a clear definition of</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>As explained under effectiveness, this option would bring some guidance to stakeholders involved in cross-border proceedings as they would be aware of which extra-judicial documents can be served in the different Member States.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>This option would entail costs of provision information for Member States. It would simply mean that they have to upload to the e-Justice Portal information on which documents they regard as "extra-judicial".</li> </ul>	<ul style="list-style-type: none"> <li>This option is proportionate as it represents the continuation of the status quo and only requires the provision of more information on the already existing e-Justice Portal.</li> <li>It does not entail additional efforts for implementation by any stakeholders.</li> </ul>	0.5	<p>This option would provide some guidance on the e-Justice portal to the authorities concerning the "extra-judicial" documents. Although it would not entail significant costs and would be proportionate, it would fail to address the problem as it would not bring a legal definition of the concept.</p>

<i>Problem 2: Unclear definition of extra-judicial documents</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	extrajudicial documents is not amongst the first concerns of the stakeholders involved. Nevertheless, there is a need to provide a clear definition in order to ensure the legal certainty concerning this concept, and reduce in this sense the discrepancies between Member States slowing down the proceeding.				
<b>2.2.1 Codifying the CJEU case law by specifying in the Regulation that its application is not restricted to documents issued by a court or a state authority (for instance a notary), but includes also private documents if</b>	<ul style="list-style-type: none"> <li>This legislative measure would reduce the legal uncertainty to some extent, bringing the necessary clarifications concerning the definition of extra-judicial documents.</li> <li>As explained above, this would contribute</li> </ul>	Benefits: <ul style="list-style-type: none"> <li>As explained in effectiveness, this option would enable to decrease the legal uncertainty. The stakeholders involved in the service of documents in cross-border proceedings would benefit from this</li> </ul>	<ul style="list-style-type: none"> <li>This option would entail the introduction of a legal measure codifying the definition of “extra-judicial documents”. This measure would be proportionate, as a legal measure is necessary to bring the necessary legal certainty concerning this concept.</li> </ul>	2.5	This option would clearly contribute to the legal certainty and the efficiency and speed of the proceeding. In addition, the implementation costs are not expected to be very high. Lastly, this measure is necessary to provide a clear definition and avoid any misunderstandings and confusions.

<b>Problem 2: Unclear definition of extra-judicial documents</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<p><b>formal service is required in order to prove or protect rights of the claimant.</b></p>	<p>to decrease the number of times a document cannot be served due to its nature. Therefore, the speed of the process would be improved.</p> <ul style="list-style-type: none"> <li>• However, the definition of “extrajudicial documents” would leave a margin of appreciation. The concept of extrajudicial documents would also include private documents (i.e. not issued by a court or state authority), if the service of document is required <i>in order to prove or protect rights of the claimant</i>. The interpretation on when the service of such document is required might differ</li> </ul>	<p>clear definition, and would be aware of what type of documents should be considered as “extra-judicial”.</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>			



<b>Problem 2: Unclear definition of extra-judicial documents</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
	from one Member State to another. Therefore, the rights of the parties might not be equally protected across the MS due to this margin of appreciation.				
<b>2.2.2 Deviating from the CJEU case law, by giving a clearer and more restricted approach towards the service of purely private documents by obliging that they must emanate from public or judicial authorities</b>	<ul style="list-style-type: none"> <li>This legislative measure would significantly reduce the legal uncertainty as it would provide a clearer and more restricted definition of extrajudicial documents.</li> <li>This definition would enable an efficient and speed of documents as authorities across the Member States would be aligned on which are the documents to be served.</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>As, for 2.2, this option would enable to decrease the legal uncertainty. The stakeholders involved in the service of documents in cross-border proceedings would benefit from this clear definition, and would be aware of what type of documents should be considered as “extra-judicial”.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>As for 2.2, this option would entail some implementation costs</li> </ul>	<ul style="list-style-type: none"> <li>This option would go beyond what is necessary to achieve the objective satisfactorily. As previously explained under 2.2, a legal measure is necessary to provide a clear definition of the concept, and hence ensure the legal certainty. However, the definition in this option goes beyond what is strictly necessary as it provides a too narrow and restricted interpretation of the concept.</li> </ul>	2	This option presents the same benefits as option 2.2 (explained above). However, this option is not proportionate as it provides a too restricted and narrow definition.

<i>Problem 2: Unclear definition of extra-judicial documents</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
		<p>for the Member States to ensure that the stakeholders duly implement this new legal measure (e.g. communication costs).</p> <ul style="list-style-type: none"> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>			
Preferred policy measure	The preferred policy measure is option 2.2.1 as this legal measure would bring the not only legal certainty to the proceeding but would also contribute to the efficiency and speed of the proceeding. In addition, the implementation costs are not expected to very high: costs related to the drafting of the new legislative instrument and some communication/awareness costs to ensure that the stakeholders duly implement this new legal measure (e.g. communication costs). The measure is proportionate.				

**Table 7: Assessment of options for problem 3 “Unclear requirements regarding the information on the right to refusal”**

<i>Problem 3: Unclear requirements regarding the information on the right to refusal</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<b>3.1(a) Best practice guide, to be</b>	<ul style="list-style-type: none"> <li>• This soft measure</li> </ul>	Benefits:	<ul style="list-style-type: none"> <li>• This option is</li> </ul>	1.5	Although this soft measure is

**Problem 3: Unclear requirements regarding the information on the right to refusal**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>elaborated in the context of the EJN (civil), addressed to staff involved (receiving authorities, Central Bodies, bailiffs) on how to inform the recipients on their right to refuse the documents if those are not in line with language requirements. This would include best practice examples going beyond the provision of the annex form.</b></p> <p>+ <b>3.1(b) Information to citizens/businesses about their right to refuse a document on language grounds contained in the Regulation. An appropriate tool for</b></p>	<p>would contribute to the protection of the rights of the parties as the staff involved would have at their disposal guidance and best practices on how to inform the recipient about his/her right of refusal. In addition, such further explanations on this right would be provided to businesses and citizens through an appropriate tool such as user-friendly website. Therefore, the recipient would be informed about his/her right to refusal through three different channels: the form, the transmitting agency and the website.</p> <ul style="list-style-type: none"> <li>• Nevertheless, this</li> </ul>	<ul style="list-style-type: none"> <li>• This measure would contribute to a coherent approach to the service of documents amongst the different stakeholders involved, ensuring that the right to refusal is duly explained when the document is served.</li> <li>• The recipient would be the main beneficiary of this measure as he/she would be aware of his/her right to refusal.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>• Identification of best practices, and drafting the guidance as well as translation of the material to all official languages;</li> <li>• Costs related to the dissemination of the guidance;</li> <li>• Costs include relevant information on the already existing website YourEurope and/or national websites.</li> </ul>	<p>proportionate as it is a simple form of action to satisfactorily achieve the objective of clarifying how to properly inform recipients on their right of refusal;</p> <ul style="list-style-type: none"> <li>• The provision of the required information on the (already existing) EU-website YourEurope and/or national websites is a proportionate option, as it does not entail additional efforts for implementation.</li> </ul>		<p>proportionate to address the problem, it presents some costs to be faced by the Member States. In addition, the measure would not be legally binding: the stakeholders would thus decide whether they apply or not. There is therefore no guarantee that the recipient would be duly informed about his/her rights to refusal.</p>

<b>Problem 3: Unclear requirements regarding the information on the right to refusal</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<b>provision of this information could be an EU website like Your Europe<sup>76</sup> (or national citizen's information websites).</b>	<p>would remain a soft measure: stakeholder might decide to follow the guidance or not. Therefore there is no guarantee that the recipient would be duly informed on his/her right to refusal.</p> <ul style="list-style-type: none"> <li>• Furthermore, individual recipients are not expected to be all aware of the existence of this website, and actually be inclined to access it. Therefore, the protection of the rights of the parties would not be fully ensured by this option.</li> </ul>				
<b>3.2.1 (a) Amend provisions in the Regulation to clarify that:</b>	<ul style="list-style-type: none"> <li>• This legal measure would reduce the legal uncertainty as transmitting agencies</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>• The requirement regarding the information on the right of</li> </ul>	<ul style="list-style-type: none"> <li>• This option is proportionate: the codification of existing case law is</li> </ul>	2.5	This legal measure would provide clarity on the requirement regarding the

<sup>76</sup> <http://europa.eu/youreurope/index.htm>

**Problem 3: Unclear requirements regarding the information on the right to refusal**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<ul style="list-style-type: none"> <li>• <b>information on the right to refuse should always be provided regardless of the language of the documents (CJEU case-law) by the transmitting agency, diplomatic or consular agent, or the authority or person serving the document by postal service, through the standard form in Annex II of the Regulation (CJEU case-law).</b></li> </ul>	<p>would be aware that they are required to always provide the information on the right to refuse, regardless of the language of the document.</p> <ul style="list-style-type: none"> <li>• This option would also contribute to a coherent protection of the right of the parties. This option would ensure that the recipient receives information on his/her right to refuse in all languages, and despite the language of the document or the method of service used.</li> </ul>	<p>refusal would be legally binding, ensuring that the recipient is correctly informed about his/her right. This would mainly benefit the recipient, as the protection of his/her rights would be ensured.</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>• This measure would entail some time-related costs, as the stakeholder serving the document would need to explain to the recipient his/her right to refusal.</li> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<p>a simple and necessary action to provide more legal certainty</p> <ul style="list-style-type: none"> <li>• The legal action is coherent with satisfactory achievement and effective enforcement of the objective (less legal disputes arising from an unclearness and/ or unawareness concerning the right of refusal; better protection of parties' procedural rights)</li> <li>• The (above all) administrative costs are commensurate with the objective to be achieved</li> </ul>		<p>information on the right to refusal, bringing the necessary legal certainty and ensuring the procedural rights. Despite the implementation costs, the measure is proportionate to address the problem.</p>
<p><b>3.2.1 (c) Indicators (non exhaustive examples) in the Regulation helping</b></p>	<p>Article 19 of the Regulation contains provisions on the consequences of a</p>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>• The language assessment would benefit the addressee who would receive a document in a</li> </ul>	<ul style="list-style-type: none"> <li>• This option is proportionate to some extent. Requiring a</li> </ul>	<p>2.5</p>	<p>This measure would provide a list of indicators to conduct a language assessment</p>

**Problem 3: Unclear requirements regarding the information on the right to refusal**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>the assessment of the language skills of the addressee in case of refusal by the forum court</b></p>	<p>defendant not entering an appearance. The provision limits the possibility for the court to give judgment against a defendant who has not appeared and who was to be served abroad. Paragraph 4 enables the judge to free the defendant from the effects of the expiry of the time for appeal against a default judgment. This provision thus provides a safeguard to make sure that the defendant's procedural rights have been taken into account. It is complemented by the possibility to refuse recognition of a judgment on the ground that the defendant was not served with the document which instituted the proceedings or an equivalent document correctly, as stipulated in the Brussels Ia Regulation</p>	<p>language he fully understands.</p> <ul style="list-style-type: none"> <li>• It would also benefit the plaintiff, as he would not need to translate the document to several languages. In addition, the plaintiff would have the certainty that the addressee understands the document and does not refuse it.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>• This measure would entail some time-related costs in order to carry out the assessment of the language skills.</li> <li>• It would also require some translation costs for the parties.</li> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<p>language assessment for each proceeding might be too burdensome. Therefore language assessment should only be conducted when there is confusion concerning the language of the addressee.</p>		<p>of the addressee. This would enable to bring legal certainty to the procedure, as well as to ensure the protection of the procedural rights. It would, however, entail some costs (such as time and translation costs). The measure would be proportionate as it would not require to conduct such assessment for each proceeding, but only provides guidance to conduct it if it is deemed necessary.</p>

<i>Problem 3: Unclear requirements regarding the information on the right to refusal</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	(Art. 45(1)(b)). •				
<b>3.2.1 (b) Amend Annex II to introduce clearer information on the legal consequences of the refusal for the recipient</b>	<ul style="list-style-type: none"> <li>This option would contribute to the protection of procedural rights, as the addressee would be aware of the consequences of their decisions.</li> </ul>	<p>Benefits</p> <ul style="list-style-type: none"> <li>The recipient would be the main beneficiary as he would be fully aware of the legal consequences of his/her refusal.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>This measure would entail that all the forms used by the courts would need to be replaced</li> <li>Costs re filling in the new fields</li> <li>There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<ul style="list-style-type: none"> <li>This option might be disproportionate to some extent as the same objective (i.e. inform the recipient about the consequences of his/her refusal), could be achieved through a soft measure (i.e. option 4.1).</li> </ul>	2.5	This measure would ensure the protection of the procedural rights, as it would include the legal consequences of the refusal in Annex II. The recipients would be hence aware of the consequences when refusing a document.
<b>3.2.2 Follow the recommendation of the ELI-Unidroit project "From Transnational Principles to European Rules of Civil Procedure": reverse the condition</b>	<ul style="list-style-type: none"> <li>This option would ensure the protection of the rights, in particular of the defendant, as the court would need to find out the languages he/she understands (and not simply rely on</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>The language assessment would benefit the addressee who would receive a document in a language he fully understands.</li> <li>It would also benefit the plaintiff, as he would not need to translate the document to several</li> </ul>	This option is proportionate as it is coherent with satisfactory achievement and effective enforcement of the objective (as after all it is the court to decide whether it is "justified to	1.5	This measure would contribute to the protection of procedural rights, although does not clearly explain how the objective approach to determine the language skills of the

<b>Problem 3: Unclear requirements regarding the information on the right to refusal</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<b>of the right of refusal and go back to an 'objective approach', the court should not simply rely on the allegations of the claimant as to the defendant's language skills<sup>77</sup>.</b>	<p>the information provided by the claimant).</p> <ul style="list-style-type: none"> <li>• Instead of the current solution where the assessment of the language knowledge of the addressee should take place only once there is a refusal, the ELI-UNIDROIT solution would require an upfront assessment of the language skills (first to determine, which is the appropriate language at</li> </ul>	<p>languages. In addition, the plaintiff would have the certainty that the addressee understands the document and does not refuse it.</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>• This measure would entail some time-related costs in order to carry out the assessment of the language skills.</li> <li>• It would also require some translation costs for the parties.</li> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> <li>• The objective criterion, that the</li> </ul>	refuse" this option may shorten the way to such discretionary decision)		recipient should be applied. In addition, the measure would entails some costs (such as time and translation costs).

<sup>77</sup> The language requirements set by the ELI-Unidroit project are set in Rule 15:

- (1) In the case of natural persons not engaging in independent professional activities the documents referred to in Rule 1 and the information referred to in Rule 2 must be in a language of the proceedings and, unless it is evident that the addressee understands the language of the forum, also in a language of the Member State of the individual's habitual residence.
- (2) In the case of legal persons, the documents referred to in Rule 1 and the information referred to in Rule 2 must be in a language of the proceedings, and also the language of the legal person's principal place of business, its statutory seat or of the principal documents in the transaction.

Although the rule does not provide a criteria from for language skills, it must, however, clearly express that an exception from the translation requirement is acceptable only in some cases. According to the comments of the draft text prepared by the ELI-Unidroit project, this may be the case "e.g. if the claimant can produce a document written by the defendant in the respective language or has evidence proving that the defendant's profession involves such language skills (teacher, interpreter), or that the defendant formerly lived in the forum state for some time and that it can therefore be presumed that he or she knows the language of the forum. The same can apply if the defendant is a national of the forum state but is presently living elsewhere".



<b>Problem 3: Unclear requirements regarding the information on the right to refusal</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rati ng</b>	<b>Conclusion</b>
	<p>the place of the delivery, and if it is evident that the addressee understands the original language of the proceedings).</p> <ul style="list-style-type: none"> <li>• Due to this additional task to be performed, in general, in all cases by the transmitting agency, the system would be less efficient..</li> </ul>	<p>language of the document should, as a general rule, correspond to the language at the residence or seat of the addressee, will necessarily increase the situations in which translations are necessary. This will increase the costs of the proceedings, and also add to the delays consumed with the translations.</p>			
Preferred policy measure	<p>The preferred policy measure is option 3.2.1 as it would bring the necessary clarity regarding the requirement regarding the information on the right to refusal. It would entail some implementation costs (such as: the agencies would need time to duly explain the right to the recipient, costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment). The measure is proportionate.</p> <p>The preferred policy measure is a combination of various options. This option would bring clarity and legal certainty on how the language skills of the addressee should be determined. In addition, the amendment of Annex II would clearly explain the legal consequences of the refusal, contributing to the protection of the procedural rights. There are some costs associated with the implementation of the option (related to the drafting of the new legislative text, time-related costs, and raising awareness of / training legal professionals on the amendment) and it is proportionate.</p>				

**Table 8: Assessment of options for problem 5 “lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)**

**Problem 4: Lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>4.2.1 (a) If service fails or the physical address is not known, oblige agencies and central bodies to send alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-mail addresses and social media accounts through private communications.</b></p> <p><b>4.2.1(b) Introduce uniform time period of 2or 3 years for the availability of the extraordinary review in Art. 19(4) to set aside a default judgment</b></p>	<ul style="list-style-type: none"> <li>• This option would contribute to a higher (than the current) protection of procedural rights:</li> <li>- The transmitting agency would use several means in order to inform the addressee when the physical service has failed. This might allow the service of the document, although the addressee cannot be physically localised (e.g. when the addressee is away for a long period without access to his/her postal mailbox). This option thus has the potential to decrease the number of default judgements issues by the courts.</li> <li>- The introduction of a harmonised rule</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>• The addressee would be the main beneficiary of this measure, as he would be reached via different channels.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>• Time-related costs for the transmitting agencies to send alert messages.</li> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<ul style="list-style-type: none"> <li>• This option is proportionate as it would require “making use” of the existing electronic/social media channels of communication/ It would entail efforts from the transmitting agencies to send the alert messages.</li> <li>• Introducing uniform time periods is a proportionate harmonised measure as it would enable a coherent achievement and effective enforcement of the objective (i.e. protection of the procedural rights) across the Member States.</li> </ul>	3	<p>This measure would ensure that the recipient is aware of the document to be served, although he/she is not physically present at his/her address. This would ensure the protection of his/her procedural rights. Such measure would entail some implementation costs. The measure is proportionate.</p>

<b>Problem 4: Lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
	introducing a uniform time period of 2 years for the addressee to request an extraordinary review, replacing the national deadlines, would ensure that the procedural rights are equally protected across the Member States.				
<b>4.2.2 Extraordinary reliefs in national law for restitution in <i>integrum</i> against default judgments may not be applied</b> for purposes of cross-border recognition and enforcement of the default judgment <b>after the expiry of the 2 year period in 19(4) (codification of the Lebek ruling<sup>78</sup>)</b>	<ul style="list-style-type: none"> <li>This option would introduce a harmonised rule establishing a time period (2 years) for the restitution against default judgements, for purposes of cross-border recognition and enforcement. Such measure would contribute to a</li> </ul>	<b>Benefits:</b> <ul style="list-style-type: none"> <li>Setting a maximum period for setting aside default judgements, for cross-border purposes, would ensure that after the expiry of these 2 years, the defendant can rely with more certainty on the refusal ground of the Brussels Ia Regulation relating</li> </ul>	<ul style="list-style-type: none"> <li>The introduction of a 2 years period is proportionate to target the problem. It only affects the cross-border effects of the availability of extraordinary reliefs against default judgments in national procedural laws. For domestic purposes,</li> </ul>	2.5	This measure would enable a balanced protection of procedural rights across the Member States. Concerning the costs, legal practitioners would be informed about this

<sup>78</sup> As the CJEU has held in C-70/15, Lebek, Art. 19(4) does not only set a minimum standard for the possibility of *restitutio in integrum*, but a maximum one excluding the availability of other extraordinary reliefs under national laws beyond the time-period open for the relief in Article 19(4). The Court stated that when the time limit communicated by the

**Problem 4: Lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	<p>balanced protection of the procedural rights across the Member States.</p>	<p>to the inappropriate service of the document instituting proceedings (Art. 45(1)(b)), should the claimant request the cross-border enforcement of the default judgment.</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>Awareness costs would be necessary to inform the legal practitioners about this measure.</li> </ul>	<p>these reliefs will be applied further on without restrictions.</p>		
<p><b>4.2.3 (a) (same as 42.1(a))</b> If service fails or the physical address is not known, oblige courts to send alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-</p>	<ul style="list-style-type: none"> <li>This option would entail a higher (than the current) protection of the procedural rights:                             <ul style="list-style-type: none"> <li>The Court will use several means in order to serve the document when the physical service has failed. This might</li> </ul> </li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>The addressee would be the main beneficiary of this measure, as he would be reached via different channels.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>The use of alternative means (such as emails</li> </ul>	<ul style="list-style-type: none"> <li>This option is proportionate as it would require “making use” of the existing electronic/social media channels of communication/ It would entail efforts from the transmitting agencies to send the</li> </ul>	1	<p>This measure would ensure that the recipient is aware of the document to be served, although he/she is not physically present at his/her address. This would ensure the protection of his/her procedural rights.</p>

Member State for the relief in Article 19(4) has elapsed, the defendant cannot bring an application for relief under national law after the elapse of this time limit, even when national law provides for a longer time limit.

**Problem 4: Lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p>mail addresses and social media accounts through private communications. 4.2..3(b) Delete time-periods in Art. 19(4) to set aside a default judgment</p>	<p>allow the service of the document, although the addressee cannot be physically localised (e.g. when the addressee is away for a long period without access to his/her mailbox). This option thus has the potential to decrease the number of default judgements issues by the courts.</p> <ul style="list-style-type: none"> <li>The deletion of the time-periods could however put the procedural rights of the parties at stake. Without a reference to time-periods in the Regulation, each MS would apply its own national rules, leading to discrepancies and thus, unequal protection of the</li> </ul>	<p>and social media) would entail costs for the courts in terms of time and human resources, as a person would need to be dedicated to this task.</p> <ul style="list-style-type: none"> <li>There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<p>alert messages.</p> <ul style="list-style-type: none"> <li>Deleting time-periods is not proportionate as it would not bring clarity for the courts concerning the availability of the extraordinary review.</li> </ul>		<p>However, the deletion of time-periods would hamper the procedural rights, as each Member States would apply its own.</p>

<b>Problem 4: Lack of clarity in terms of due diligence to be carried out before issuing default judgment (Art. 19)</b>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	procedural rights.				
<b>Preferred policy measure</b>	The preferred policy measure is a combination of two options: 4.2.1 (a and b) and 4.2.2. This option would add most clarity concerning the due diligence to be carried out before issuing default judgements. There are some costs associated with the implementation of the policy measure (related to the drafting of the new legislative text, time-related costs, and raising awareness of / training legal professionals on the amendment) and it is proportionate.				

**Table 9: Assessment of options for problem 6 ” use of fictitious or alternative service methods in an inconsistent way among the Member States + Insufficient consideration for substituted/alternative service methods in the Regulation**

<b>Problem 5: Use of fictitious or alternative service methods in an inconsistent way among the Member States + Insufficient consideration for substituted/alternative service methods in the Regulation</b>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
5.2.1 Codifying the existing case law of the CJEU (Alder):  <ul style="list-style-type: none"> <li>fictitious methods of service may not be used as a sanction against parties to legal proceedings with a seat or residence in MS B who failed to appoint a representative in MS A for purposes of service on him/her</li> </ul>	<ul style="list-style-type: none"> <li>This option would contribute to a more complete protection of procedural rights in cross-border proceedings as fictitious methods would not be used as a sanction against those parties without a representative in the MS where the proceeding is taking place.</li> <li>This could, however, slow down the proceedings, as</li> </ul>	<p>Benefits</p> <ul style="list-style-type: none"> <li>The recipient would be the main beneficiary of this measure, as he/she would receive the document, despite not having a representative appointed in the Member State where the proceeding is conducted.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>If no fictitious method can be used, the document would need to be served according to the</li> </ul>	<ul style="list-style-type: none"> <li>This option is proportionate: the codification of the settled case law is a simple and necessary action to provide more legal certainty limiting the use of fictitious methods.</li> </ul>	1	This measure would ensure the procedural rights of the recipient, as he/she would be receiving the document (despite not having a representative in the Member State where the proceeding is having place). However, this would

***Problem 5: Use of fictitious or alternative service methods in an inconsistent way among the Member States + Insufficient consideration for substituted/alternative service methods in the Regulation***

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	the addressee would have to be located in another Member State.	provisions of the Regulation, and would thus entail the usual costs of a cross-border service of documents.			probably slow down the proceeding. The measure would not entail major costs, and is proportionate.
<p><b>5.2.2 Codifying the inverse of the Alder Case: the use of fictitious methods are allowed against foreign parties not appointing representatives for purposes of service in the MS of the proceedings.</b></p>	<ul style="list-style-type: none"> <li>• this solution would be efficient due to its contribution to procedural economy.</li> <li>• The solution reflects a well-established practice of the civil procedural codes of the Member States: it does not infringe the protection of the rights of the defence, since sanctions may only be applied after the document instituting the proceedings has been duly served to the defendant.</li> <li>• A disadvantage to foreign parties, though, lies in their unfamiliarity with the options to appoint a proxy for purposes of serving a document in the Member State of origin.</li> </ul>	<p>For the foreign party obliged to appoint a representative for purposes of serving the documents in course of the proceedings, the solution would require additional efforts and costs: to make arrangements and to comply with the order of the courts.</p>	<ul style="list-style-type: none"> <li>• The measure seems to be proportionate, since it only addresses cross-border service of documents</li> </ul>	1	

***Problem 5: Use of fictitious or alternative service methods in an inconsistent way among the Member States + Insufficient consideration for substituted/alternative service methods in the Regulation***

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>5.2.3 Transferring the content of recital 8 to the normative rules</b></p>	<ul style="list-style-type: none"> <li>Transferring recital 8 to the normative rules of the Regulation would a higher (than the current) protection of procedural rights. The recital 8 would be in this case legally binding. This would imply that the document would need to be served to the addressee and not to a representative party his/her in the Member State where the proceeding is taking place.</li> </ul>	<p>Benefits</p> <ul style="list-style-type: none"> <li>The recipient would be the main beneficiary of this measure, as he/she would receive the document, despite not having a representative appointed in the Member State where the proceeding is conducted.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>The usual costs incurred when a document is served in cross-border proceeding</li> </ul>	<ul style="list-style-type: none"> <li>This option is proportionate to achieving a harmonised use of the alternative service methods across the Member States.</li> </ul>	2.5	<p>This measure would ensure the protection of the procedural rights, limiting the use of fictitious methods to serve documents. The measure would not entail major costs, and would be proportionate.</p>
<ul style="list-style-type: none"> <li><b>5.2.4 Set the principle with regard to the use of fictitious and "alternative" (substituting) domestic service methods: as a default rule, service should be attempted through the ways of the Regulation, if the addressee has its seat/residence in</b></li> </ul>	<ul style="list-style-type: none"> <li>This option would contribute to the protection of procedural rights. It would set legal principles to limit the use of fictitious and alternative methods. For example, such kind of methods could be used as ultima ratio after previous attempts failed.</li> <li>This measure would also bring legal certainty as transmitting agencies would</li> </ul>	<p>Benefits:</p> <ul style="list-style-type: none"> <li>The main beneficiary of this measure would be the recipient, as the use of fictitious method would be limited.</li> <li>The agencies would also benefit from the legal certainty established by this measure.</li> </ul> <p>Costs:</p> <ul style="list-style-type: none"> <li>This option could entail higher costs, as it would reduce the</li> </ul>	<p>This option is proportionate as it provides a legal measure providing legal certainty and consistency with regard to the use of fictitious/alternative methods of service.</p>	2.5	<p>This legal measure would limit the use of fictitious and alternative service methods, ensuring the procedural rights and bringing legal certainty to the procedure (as the agencies would be</p>



***Problem 5: Use of fictitious or alternative service methods in an inconsistent way among the Member States + Insufficient consideration for substituted/alternative service methods in the Regulation***

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
another MS.	know when and how this type of methods could be used.	<p>number of occasions a document can be served through fictitious or alternative methods. Hence, in such cases the document would need to be served according to the provisions of the Regulation and would entail the usual costs of a cross-border service of documents.</p> <ul style="list-style-type: none"> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>			
Preferred policy measure	The preferred policy measure is a combination of options 5.2.2, 5.2.3 and 5.2.4. These measure would clearly set how and when fictitious or substituting/alternative service methods of national laws could be used instead of the Regulation, if the addressee has his/her residence in another Member State. This would, on the one hand, ensure the protection of the procedural rights, while bringing the necessary legal certainty to the proceeding. There are low costs associated with the implementation of the policy measure (related to the drafting of the new legislative text and raising awareness of / training legal professionals on the amendment) and it is proportionate.				

**Table 10: Assessment of options for problem 7 “varying practices relating to costs of serving documents (leading to both delays and inequalities in the market)”**

***Problem 6: Varying practices relating to costs of serving documents (leading to both delays and inequalities in the market)***

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p><b>6.1 Provision of information on the e-Justice portal on the approach to costs in the Member States i.e.:</b></p> <ul style="list-style-type: none"> <li>- <b>Clarifying whether a Member State charges for service by receiving agency</b></li> <li>- <b>Clarifying whether such payment is to be pre-paid and which means of payment are accepted</b></li> </ul>	<ul style="list-style-type: none"> <li>• This option would reduce delays caused by the lack of / conflicting information about the costs for service through receiving and transmitting agencies where a judicial officer or competent person is involved, thus reducing the burden for citizens and businesses involved in cross-border proceedings.</li> <li>• However, the option does not solve issues with inequalities in the market caused when the costs for service are too high for some citizens or businesses or when the disparity of costs affect competition.</li> </ul>	<ul style="list-style-type: none"> <li>• This option would reduce the likelihood of a delay in the beginning of the procedure with little intervention on behalf of the agencies/authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• This option does not produce a disproportionate effort or effect compared to the problem.</li> <li>• However, the problem is only partially addressed by this option.</li> </ul>	2	<p>This option would provide an effective measure for clarifying current confusion on the approach to costs in the different Member States, at little cost for authorities. However, the option does not seek to approximate the difference practices related to costs in the Member States.</p>
<p>6.2.1 Setting a maximum threshold for the eligible fees in cross-border service through judicial officers or competent persons</p>	<ul style="list-style-type: none"> <li>• This option would ensure that fees for service of documents do not vary disproportionately across the Member States. It would therefore positively</li> </ul>	<ul style="list-style-type: none"> <li>• To introduce this option, Member States may have to make some changes in terms of setting agreements with process servers or bailiffs to adjust the fee schedules for</li> </ul>	<ul style="list-style-type: none"> <li>• This option is disproportionate to the problem since it may involve changes to fee structures at the national level.</li> </ul>	1	<p>Although this option would ensure that fees are somewhat more transparent, it may produce unfair practices between</p>

<b>Problem 6: Varying practices relating to costs of serving documents (leading to both delays and inequalities in the market)</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<i>(the maximum threshold would be set in relative terms e.g. as a % of the claim or relative to the standard of living in each of the Member States)</i>	<p>contribute to the objective of improving access to justice for citizens and businesses.</p> <ul style="list-style-type: none"> <li>• It would also positively contribute to further reducing the cost burden for citizens and businesses involved in cross-border proceedings.</li> <li>• However, it is not clear how such a threshold would be agreed upon by Member States.</li> <li>• Importantly, it may also introduce another level of complication in understanding the fees across the Member States, as this option does not contain any provisions regarding information for applicants.</li> </ul>	<p>cross-border service of documents. This would entail some costs for Member State authorities, judicial officers, bailiffs and/or process servers.</p>	<ul style="list-style-type: none"> <li>• It may also encourage an uneven playing field for citizens and businesses involved in proceedings at the national level and cross-border if costs are set at varying rates for cases with a cross-border element.</li> <li>• Further, it does not address the issue of confusion over cost structures and consequent delays encountered.</li> </ul>		<p>domestic applicants and cross-border applicants. However, to reduce such inequality in accessing the service, it would be more appropriate to set thresholds in each Member State relative to the standard of living.</p>

<b>Problem 6: Varying practices relating to costs of serving documents (leading to both delays and inequalities in the market)</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
6.2.2 Deleting the possibility of Member States to maintain a flat rate fee in cases of service through bailiffs or other competent persons under the Regulation (thereby creating equality with those MS who do not charge fees at all)	<ul style="list-style-type: none"> <li>This option would contribute positively to all policy objectives since               <ul style="list-style-type: none"> <li>- no costs would be involved in the service of documents through a bailiff or other competent person,</li> <li>- no delays would be encountered due to confused or conflicting information about costs and modalities of payment,</li> <li>- access to justice would be ensured and</li> <li>- there would be no legal uncertainty as to the issue of costs under the Regulation.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>This option entails the largest costs for Member States since they would have to provide such services for free.</li> </ul>	<ul style="list-style-type: none"> <li>Given the significant loss of revenue required on behalf of Member States, this option is regarded as disproportionate to the issue at hand.</li> <li>It may also encourage an uneven playing field for citizens and businesses involved in proceedings at the national level and cross-border if costs are set at varying rates for cases with a cross-border element.</li> </ul>	1	This option is regarded as unrealistic in practice. In some Member States, direct service may be carried out by a bailiff or equivalent service provider. Thus, these legal bodies would be denied the possibility to charge fees for cross-border service of documents. Further, if fees are still charged for domestic service, this would produce a more uneven effect on competition in the market.
Preferred policy measure	The preferred policy measure is the non-legislative option 6.1..				

**Table 11: Assessment of options for problem 8 “Reliance on paper-based means of communication between transmitting & receiving agencies”**

**Problem 7: Reliance on paper-based means of communication between transmitting & receiving agencies**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<p>7.1 Sharing of best practices between Member States' designated authorities on e-communication<sup>79</sup></p>	<ul style="list-style-type: none"> <li>• This option would provide Member States with information on how they could adopt e-communication in practice.</li> <li>• However it contains two main downfalls: <ul style="list-style-type: none"> <li>- It does not fully ensure that e-communication best practices will actually be put into practice by Member States;</li> <li>- Efforts would still have to be made between the Member States if they would like to implement cross-border e-communication. The uptake of such initiatives are also uncertain as it is likely that Member States</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• This option entails very little cost for Member State authorities and the Commission.</li> <li>• However, it also has no direct effect on the achievement of the specific policy objectives. (i.e. to reduce legal uncertainty; to further improve the efficiency and speed of judicial proceedings; to improve access to justice and protecting the procedural rights of parties to the proceedings; to reduce the burden from undue costs and delays for citizens and business involved in cross-border proceedings).</li> </ul>	<ul style="list-style-type: none"> <li>• The choice of a non-legislative measure does not sufficiently address the problem at hand since it cannot be ensured that Member States will decide to adopt practices in e-communication.</li> </ul>	0.5	<p>Although this measure <i>could</i> encourage the uptake of e-communication practices between the Member States, it does not directly facilitate this. Even if initiative is taken by some Member States, it may take a considerable amount of time and bi-lateral agreements on e-communication could result in even more fragmentation across the EU.</p>

<sup>79</sup> For the purposes of the analysis, it is presumed that a series of best practice examples would be collected by the Commission and transformed into an online guide which would be shared among Member State authorities.

**Problem 7: Reliance on paper-based means of communication between transmitting & receiving agencies**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	with close working relationships would group together and agree on certain standards and practices, while others may not engage at all.				
<p>7.2.1 Codifying the principle of "digital by default"<sup>80</sup> for communications and transmission of documents between transmitting and receiving agencies</p> <p><i>(for the purposes of the analysis, it is presumed that the Regulation would oblige Member States to communicate through e-mail and</i></p>	<ul style="list-style-type: none"> <li>• This option would contribute to improving the efficiency and speed of cross-border proceedings and minimising the burden for citizens and businesses by reducing the time spent on transmission of documents between agencies.</li> <li>• However, the security of documents would not be ensured to the same extent across all Member States and relevant agencies as</li> </ul>	<ul style="list-style-type: none"> <li>• Member State agencies would incur some costs for the transition to electronic means of communication. This may involve setting up a secure document sharing system or email account, and ensuring sufficient security measures.</li> <li>• Further, in the pre-implementation stage, Member States would have to engage in a process where they could</li> </ul>	<ul style="list-style-type: none"> <li>• This option leaves too much scope for Member States to adopt their own national practices without ensuring that e-communication will be adopted to the same extent across all Member State and with the same levels of security.</li> </ul>	2	<p>Codifying the principle of digital by default would undoubtedly be a positive step towards reducing paper-based communication between agencies. However, with the option there is still significant scope left with the Member States on how they choose to implement such a principle which could result in more fragmentation across the EU. The option would also entail a significant amount</p>

<sup>80</sup> "Digital-by-default" means that digital means would be used at all times save for a number of exception. With the codification of this principle, there may be exceptions to the rule which would have to be set out in sufficient detail to ensure that email (and other e-methods) are used by default. Thus, there would still be scope for Member States to legitimately avoid using e-solutions.

**Problem 7: Reliance on paper-based means of communication between transmitting & receiving agencies**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
<i>secure document sharing solutions)</i>	different solutions would be expected to be used by different Member States.	agree on the standards and conditions of using e-communication which would entail additional time and costs. <ul style="list-style-type: none"> <li>• However, once implemented, the costs are not deemed to outweigh the benefits associated with the efficient transmission of documents.</li> </ul>			of preparation in terms of setting interoperable standards and security measures that agencies must agree on. This would essentially duplicate the efforts and disregard the success already achieved by Member States (through e-CODEX) in this area.
<b>72.2 Use of e-CODEX for e-communication and secure transmission of documents between the designated authorities and making its use mandatory<sup>81</sup></b>	<ul style="list-style-type: none"> <li>• This option would contribute to improving the efficiency and speed of cross-border proceedings and minimising the burden for citizens and businesses by reducing the time spent on transmission of documents between agencies.</li> <li>• The use of a common tool</li> </ul>	<ul style="list-style-type: none"> <li>• Member States that are not already connected to e-CODEX would incur some (moderate) costs for the setting up of connectors to the tool which may also involve some adjustments to the systems or practices at the national level.</li> <li>• However, the costs are</li> </ul>	<ul style="list-style-type: none"> <li>• Although the highest in cost, this option is regarded as proportionate for addressing the problem: the intervention is justified on the basis that the same benefits could not be achieved by Member States on</li> </ul>	3	Using e-CODEX for the service of documents is considered as the most appropriate intervention for the problem at hand. As e-CODEX is already set up in several Member States and used for communications in other areas (i.e. European Payment Order, Small Claims etc.), no additional

<sup>81</sup> For the purposes of the analysis, it is presumed that the Regulation would oblige mandatory use of the tool except in the case of its temporary technological unavailability issues making it impossible to use the tool.

**Problem 7: Reliance on paper-based means of communication between transmitting & receiving agencies**

Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	<p>would ensure that the same level of security is in place across the Member States.</p> <ul style="list-style-type: none"> <li>• Interoperability would be ensured with the use of a common tool and it would reduce the scope for Member States to use different channels to communicate.</li> <li>• Further, the tool would allow for tracking of documents and contributes also to more efficient case management for the agencies.</li> </ul>	<p>not deemed to outweigh the benefits associated with the efficient and secure transmission of documents.</p>	<p>their own.</p>		<p>efforts would be necessary for agreement on standards or security measures. It is also the most efficient means currently available at the EU level that allows for secure document sharing, tracking and case management.</p>
<p>Preferred policy measure</p>	<p>Option 7.2.2 is the preferred policy measure. The use of e-CODEX brings several benefits for service of documents under the Regulation including increased efficiency, less reliance on paper-based communication and case management functionalities. Although costs would be incurred for Member States to connect to the platform, the tool offers an immediate solution (compared to other options which would require preliminary work on standards, interoperability etc.) as it is already available and being used by Member States in several domains. The costs for its implementation though will have to be carefully considered and will be elaborated on as part of assessing the policy package.</p>				



**Table 12: Assessment of options for problem 9 “Direct electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured”**

<i>Problem 8: Direct electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured</i>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<p><b>8.2.1 Introduce cross-border electronic service as an accepted method of service under the Regulation, provided that this complies with some uniformly defined conditions:</b></p> <p><b>a) the document is transmitted electronically to an end-user who is a client of a qualified Electronic Registered Delivery Service (ERDS) (according to the</b></p>	<ul style="list-style-type: none"> <li>• This option would positively contribute to all policy objectives. The main advantages of this option are:                             <ul style="list-style-type: none"> <li>- The certainty that electronic service is recognised under the Regulation as a valid means of service;</li> <li>- Transmission of documents cross-border will be accelerated;</li> <li>- The security of documents is ensured through the use of eIDAS qualified services;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The efficiency of this option is moderate.</li> <li>• It entails no costs for Member States as they would not be obliged to adopt electronic delivery solutions but only to recognise them as valid means of service.</li> <li>• However, the full benefits of using e-service solutions are not ensured since their use would only be optional.</li> </ul>	<ul style="list-style-type: none"> <li>• This option is not disproportionate to the problem but it does not fully address it.</li> </ul>	2	<p>This option is considered as a fundamental amendment to the Regulation considering the digitalisation of communications across all domains in the EU. By including ERDS as a valid method of service, the Regulation would better reflect modern communication methods and initiatives in place domestically in the Member States, adding legal certainty that they are valid means for serving documents. However, the option does not necessarily promote the use of e-delivery solutions and thus the move away from paper-based service is not guaranteed.</p>

<b>Problem 8: Direct electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured</b>					
<b>Option</b>	<b>Effectiveness</b>	<b>Efficiency</b>	<b>Proportionality</b>	<b>Rating</b>	<b>Conclusion</b>
<p><b>standards of eIDAS Regulation<sup>82</sup>), OR</b></p> <p><b>b) the document is sent to another electronic mailbox or user account, if there is an express consent by the recipient in the individual case to use this account for purposes of serving on him/her.</b></p>	<p>- Parties to a cross-border proceeding can receive documents in any electronic form if they wish to do so. However, the option does not encourage or favour the use of e-service and thus its uptake cannot be ensured.</p>				
<p>8.2.2 Oblige Member States to ensure interoperability between their domestic e-delivery systems used in legal proceedings in civil and commercial matters, where such systems exist at the national level</p>	<ul style="list-style-type: none"> <li>This option would ensure a speedier transmission of documents between Member States that currently have e-delivery systems</li> </ul>	<ul style="list-style-type: none"> <li>This option would entail significant costs for Member States and the Commission in terms of planning interoperability solutions, set up costs, implementation costs, maintenance, etc.</li> </ul>	<ul style="list-style-type: none"> <li>This option entails disproportionate costs for its effects.</li> <li>It also does not fully address the problem at hand.</li> </ul>	<p>1</p>	<p>Although ensuring interoperability between the e-delivery systems in the member States is in theory an effective solution, its practical implementation and extent to which it e-delivery would be guaranteed across the EU is uncertain. This option entails significant efforts in</p>

<sup>82</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market.

<i>Problem 8: Direct electronic service of a document from MS A to recipient with physical residence in MS B is not explicitly allowed or favoured</i>					
Option	Effectiveness	Efficiency	Proportionality	Rating	Conclusion
	<p>in place.</p> <ul style="list-style-type: none"> <li>• At the same time, the effect of this option would be limited only to those Member States that have such systems in place.</li> <li>• Further, the option does not encourage or favour the use of e-service and thus increased uptake of e-solutions cannot be ensured.</li> </ul>	<ul style="list-style-type: none"> <li>• The benefits would be limited to Member States where such systems already exists although they may strengthen over time with increased uptake.</li> </ul>			the pre-implementation phase for agreement on technical interoperability and standards and is thus disproportionate to the problem.
Preferred policy measure option	<p>Option 9.2.1 is the preferred policy measure. By making ERDS a valid means of serving documents, the Regulation allows for interoperable and secure electronic service methods for the service of documents. The option further enhances the procedural rights of parties as they can opt for receipt of documents through any electronic means. In addition, although the option does not necessarily encourage the use of electronic service of documents in a proactive way, it entails no cost for Member States and it is the most proportionate measure available without obliging direct service as a default method. Also, we suggest that this measure is also accompanied with information to legal practitioners on the benefits of using ERDS for serving documents and practical information on where to find a service provider etc.</p>				

**Table 13: Assessment of options for problem 10 “Insufficient quality of service by post (Art 14) including via security risks, delays and insufficient filling out of acknowledgement of receipt”**

<i>Problem 9: Insufficient quality of service by post (Art 14) including via security risks, delays and insufficient filling out of acknowledgement of receipt</i>					
Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
<p>9.2.1 (a) Clarifying in a recital the uniform standard character of the existing conditions in Article 14 to postal service</p> <p>+</p> <p>9.2.1 (b) Obliging transmitting agencies to label envelopes containing documents to be served through which the postal operators and addressees are alerted to the official nature of the document</p>	<ul style="list-style-type: none"> <li>• The effectiveness of this option is limited.</li> <li>• It could be expected that the quality of service by post would be increased to some extent by additional care that may be taken both the postal operator and by addressees in good faith when alerted to official nature of the document.</li> <li>• However, postal operators would not be obliged to take additional care or to take any additional actions with regard to effecting service. Thus, it would not directly address issues with security, delays and properly completing the acknowledgment of</li> </ul>	<ul style="list-style-type: none"> <li>• This option would entail some additional costs for the Commission and Member States: <ul style="list-style-type: none"> <li>- Labels for envelopes containing juridical or extra judicial documents would have to be agreed upon, produced and disseminated.</li> <li>- The costs for purchasing the labels would also be borne by the transmitting agencies.</li> </ul> </li> </ul> <p>The benefits of the label are limited as it cannot be guaranteed that the quality of service by post would improve.</p>	<ul style="list-style-type: none"> <li>• The measure is regarded as proportionate to the problem and is in line with appropriate intervention by the EU.</li> </ul>	1	<p>The introduction of such labelling of documents could potentially improve the quality of service by post if it is accompanied by some guidelines for postal operators on how to interpret such labelling. It could further be complemented with a best practice guide on serving documents of an official nature.</p>

**Problem 9: Insufficient quality of service by post (Art 14) including via security risks, delays and insufficient filling out of acknowledgement of receipt**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
	<p>receipt.</p> <ul style="list-style-type: none"> <li>This option is also limited in that it only applies to documents that are served through transmitting and receiving agencies. Thus, the quality of postal services for persons sending documents through post as a direct method, would not be impacted.</li> </ul>				
<p><b>9.2.2 (a) Clarifying in a recital the uniform standard character of the existing conditions in Article 14 to postal service</b> + <b>9.2.2 (b) Introducing a specific uniform international return slip (acknowledgement of receipt) through which documents under the Regulation are served by post (postal operators</b></p>	<ul style="list-style-type: none"> <li>This option would contribute to enhancing legal certainty whereby common return slips would be recognised with the same value in all courts across the Member States. The return slip would also be designed in a way that specifically meets the information requirements for service of documents under the</li> </ul>	<ul style="list-style-type: none"> <li>This option would entail costs for postal operators with regard to adjustment of their procedures, training staff and cost of material (i.e. the slips).</li> <li>Irrespective of this, postal service providers in the majority of the Member States are anyway subject to specific rules of civil procedural law (different</li> </ul>	<ul style="list-style-type: none"> <li>This scope of this option proportionate. T It is coherent with the acquis on EU postal policy, which allows for sector specific regulation for postal operatives in the context of justice documents..</li> </ul>	1.5	<p>This option entails a major change to postal service rules and is regarded as disproportionate to the issue at hand.</p>

**Problem 9: Insufficient quality of service by post (Art 14) including via security risks, delays and insufficient filling out of acknowledgement of receipt**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
<b>have to follow specific rules in course of the delivery of such docs).</b>	Regulation. This option is efficient, since it addresses properly the problem identified.	from the rules based on the framework of the Universal Postal Union) when serving judicial documents. Such an obligation would not be uncommon, therefore. <ul style="list-style-type: none"> <li>• However, it would provide more legal certainty regarding the acceptance in court of the service by post as effective.</li> </ul>			
<b>9.2.3 (a) Create a uniform list of eligible alternative ("substituting") methods of service, once the document has to be served to another Member State. Acceptable methods constitute the ones e.g. included in Art. 13-14 of Reg. (EC) 805/2004<sup>83</sup> or Art.</b>	<ul style="list-style-type: none"> <li>• Setting a <i>numerus clausus</i> of possible alternative methods to be used, a possible hierarchy between them, as well as better indication in the Annex (so it reflects the eligible alternative</li> </ul>	Benefits: <ul style="list-style-type: none"> <li>• The final selection of fictitious methods selected might be less costly for the plaintiff than a regular cross-border service of documents, as the</li> </ul>	This option is proportionate as it is a simple form of action to satisfactorily achieve the objective of providing more legal certainty and consistency with regard to the possibility of using alternative methods of service. The uniform list	2	This legal measure would bring legal certainty to the proceeding as agencies would be aware of the fictitious/alternative methods they could use. IT would also ensure the protection of procedural rights.

<sup>83</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0805&from=EN>

<p><i>13-14 of Reg. (EC) 1896/2006<sup>84</sup></i> + <b>9.2.3 (b) Fine tune/upgrade the standard form in the Annex on the service of the document, so that it reflects in more detail the eligible alternative methods</b></p>	<p>methods) would enable to bring legal certainty to the process as the agencies would be aware of which methods can be applied.</p> <ul style="list-style-type: none"> <li>• It would also contribute to a more complete protection of the procedural rights, as only a certain number of this type of methods listed in the Regulation could be used. In addition, the adjustment of the Annex would enable to bring more information on such types of methods.</li> </ul>	<p>service of document is made “domestic” (no costs related to the cross-border dimension would apply).</p> <p>Costs:</p> <ul style="list-style-type: none"> <li>• Replace all the forms used by the agencies.</li> <li>• There would also be costs related to the drafting of the new legislative text and awareness raising / training of legal professionals on the amendment.</li> </ul>	<p>of eligible method should not be exhaustive and does not affect the situations where service of documents occurs domestically.</p>		<p>Nevertheless, the modification of the Anne would entail some costs. The measure is proportionate.</p>
<p>Preferred policy measure option</p>	<p>Although neither option is extremely effective at addressing the problem, the combination of 9.2.2 and 9.2.3 can be considered as the preferred policy measure option. it is expected that the required improvement would be seen in the quality of postal service.</p>				

<sup>84</sup> Council Regulation (EC) NO 1896/2006 of 12 December 2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1896&from=EN>; and Regulation (EU) 2015/2421 of the European parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2421&from=EN>





**Table 14: Assessment of options for problem 11 “Use of direct service (Article 15) is restricted or inaccessible”**

<i>Problem 10: Use of direct service (Article 15) is restricted or inaccessible.</i>					
Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
10.1 Information sheet for citizens and legal practitioners on the availability of direct service (Article 15) + Practice guide for the courts/ designated authorities on how to use Article 15 in the Regulation	<ul style="list-style-type: none"> <li>This option does not effectively respond to the issue at hand as it does not bring the method of direct service closer to citizens and businesses.</li> <li>It may however contribute to increasing the efficiency of judicial proceedings by clarifying confusion on the availability of the service in the various Member States that may have previously lead to undue delays in the process.</li> </ul>	<ul style="list-style-type: none"> <li>Minor costs for the Commission would be involved in the production of the information sheet.</li> <li>Member States may bear some very limited costs for the provision of information to the Commission.</li> <li>The benefit is that the information on direct service in the Member states and the conditions are available to citizens and legal practitioners.</li> </ul>	<ul style="list-style-type: none"> <li>This intervention is not deemed as the most appropriate one for addressing the problem. Although no major costs would be borne by Member States it would not have a straight effect on making direct service more accessible.</li> </ul>	0.5	Although additional information on the availability if the service would be helpful as it is still a point of confusion and delays for applicants. However, the most prominent issue is the availability of direct service which is not addressed by the option.
<b>10.2.1 Extending the scope of application of Article 15 so that also bodies, legal persons and</b>	<ul style="list-style-type: none"> <li>This option would effectively allow bodies and legal persons to use direct</li> </ul>	<ul style="list-style-type: none"> <li>This option would entail costs for amending the Regulation but no costs</li> </ul>	This option is a proportionate measure for the issue and is regarded as in line with appropriate action that the EU	1	This option has a clear benefit in that all bodies/legal persons would be able to use

**Problem 10: Use of direct service (Article 15) is restricted or inaccessible.**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
<b>bailiffs may use it</b>	<p>service under the Regulation.</p> <ul style="list-style-type: none"> <li>• It takes into account the different practices in the Member States with regard to who is responsible for serving documents under the domestic rules as opposed to the restrictive nature of the current wording in Art. 15.</li> <li>• However, this option does not address the issue of direct service not being allowed or is restricted by some Member States.</li> </ul>	<p>would be borne directly by Member States or citizens/businesses.</p> <ul style="list-style-type: none"> <li>• The costs are justified by the benefit that all that all bodies/legal persons would be able to use direct service to the extent that it is available.</li> </ul>	<p>can take.</p>		<p>direct service. However it should be complemented with a measure that also encourages more Member States to allow direct service.</p>
<b>102.2 Obliging Member States to ensure that foreign persons interested in legal proceedings may directly turn to competent persons or officials in</b>	<ul style="list-style-type: none"> <li>• This option would ensure that direct service would be available to all applicants across the EU</li> <li>• This option also</li> </ul>	<ul style="list-style-type: none"> <li>• The option would entail costs for amendment of the Regulation but little or no costs are expected for Member States, businesses or citizens.</li> </ul>	<ul style="list-style-type: none"> <li>• This option is proportionate to the problem and the costs involved.</li> <li>• Allowing access to these services, even in the territory of Member States where currently this is not a</li> </ul>	2	<p>This option is an appropriate measure to take to address the problem. Not only would it increase efficiency by allowing increased access to direct service, it</p>

**Problem 10: Use of direct service (Article 15) is restricted or inaccessible.**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
<p><b>their territory with a request to serve a document. This would imply that those Member States whose laws currently does not recognize such type of service should allocate this task to a particular branch of profession..</b></p>	<p>enhances mutual trust between judicial systems in the Member States and contributes to Internal Market principles.</p> <ul style="list-style-type: none"> <li>•</li> </ul>	<ul style="list-style-type: none"> <li>• The benefits of the option in terms of legal certainty, enhancing mutual trust and reinforcing Internal Market principles outweigh the costs.</li> </ul>	<p>possibility, will allow the choice for parties in a proceeding and also contributes to fair competition across the EU. This option may require adaptation in those Member States the procedural laws of which do not know the method of service of a document by a judicial officer, official or other competent person. But, it should be noted that only a minority of the Member States is affected.</p> <ul style="list-style-type: none"> <li>• In addition, any costs deriving by the introduction by and the adaptation to this new system could be compensated in a mid-term, if the national legislator allows that the competent persons charge a fee for their services.</li> <li>•</li> </ul>		<p>also produces more equality within the market.</p>

Preferred policy measure option	The preferred options are 10.2.1 and 10.2.2. These measures are complementary as they address the problem from both sides. On one side, by extending the scope of application of Article 15 so that also transmitting agencies may use it, direct service would be made more accessible and the amendment would also enhance legal certainty, with no costs for stakeholders. On the other side, 11.2 would ensure that these stakeholders can access direct service in all Member States. This would ensure a more even playing field in the market.
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**Table 15: Assessment of options for problem 12 “Non-compliance of receiving agencies with the timeframe set out in the Regulation”**

<i>Problem 11: Non-compliance of receiving agencies with the timeframe set out in the Regulation</i>					
Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
11.1 Provision of training on efficient communication practices	<ul style="list-style-type: none"> <li>• The effectiveness of this option is limited.</li> <li>• It could be expected that the efficiency of communication would be increased to some extent due to an ‘increased awareness of the issue’ through the trainings. However, the agencies would not be obliged to communicate according to such practices.</li> <li>• This option does not fully address the</li> </ul>	<ul style="list-style-type: none"> <li>• This option would create higher awareness of the issue (which may indirectly lead to better compliance with the timeframe, etc.)</li> <li>• However, there would be administrative costs for the Commission and/or Member States (in terms of time and human resources) for the provision of training.</li> </ul>	<ul style="list-style-type: none"> <li>• This option is a proportionate measure in terms of the action that can be achieved by the EU.</li> <li>• However costs for delivery of such trainings are disproportionate due to and the limited effectiveness on the policy options.</li> </ul>	1	The added value of this measure is not certain as it does not have any direct impact on the practices of agencies.

**Problem 11: Non-compliance of receiving agencies with the timeframe set out in the Regulation**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
	<p>problem (being the mere fact that agencies do not communicate efficiently and/or do not comply with the timeframe, more than a lack of know-how concerning “efficient practices of communication”).</p>				
<p>11.2.1 Promote Member States to actually notify several languages which their agencies and authorities are ready to use for purpose of communication under the Regulation</p>	<ul style="list-style-type: none"> <li>• This option would contribute to the speed and efficiency of the process: by promoting the agencies to accept communications in several languages, the option would ensure more instances where the transmitting and receiving agencies have a common language. This option would allow for more efficient communication and better compliance with the timeframe set out in the Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>• Member States would face costs in ensuring that they have the tools and staff available to communicate in languages other than their official language..</li> <li>• Also, the efficiency of this option is hampered by the risk that attempts to communicate are unsuccessful due to low quality of the language skill in the chosen alternative language on either side. It could still</li> </ul>	<ul style="list-style-type: none"> <li>• The option proposed a proportionate measure , The consistency with the EU principle of multilingualism may be questioned.</li> <li>•</li> </ul>	<p>1</p>	<p>Although this option would be an effective measure it is dependent on the foreign language skills of the staff at the agencies.</p>

**Problem 11: Non-compliance of receiving agencies with the timeframe set out in the Regulation**

Option	Effectiveness	Efficiency	Proportionality	Ranking	Conclusion
		produce some delays in the process.			
<p><b>11.2.2 Introduce a “digital-by-default” principle obliging Member States’ agencies and authorities to use, as a rule, electronic means of communications for their interactions with each other.</b></p>	<ul style="list-style-type: none"> <li>This option would improve the efficiency and speed of cross-border proceedings to some extent with the increased use of e-service methods. Consequently, the burden to citizens and business is reduced.</li> <li>Additionally, the procedural rights of parties would be better protected with more efficient transmission and service of documents.</li> <li>in</li> </ul>	<ul style="list-style-type: none"> <li>Member States that are not already connected to e-CODEX would incur some (moderate) costs for the setting up of connectors to the tool which may also involve some adjustments to the systems or practices at the national level.</li> <li>However, the costs are not deemed to outweigh the benefits associated with the efficient and secure transmission of documents.</li> <li>.</li> </ul>	<ul style="list-style-type: none"> <li>This option is considered as a proportionate measure that could be taken and in line with the EU’s digital strategy.</li> </ul>	2	<p>This option would encourage more timely service of documents in the Member States and oblige agencies to first consider the digital option available to them. However, it is dependent on the factors determining whether digital service is appropriate to reach the addressee or not.</p>
<p><b>Preferred policy measureoption</b></p>	<p>Option 1.2.2 is the preferred policy measure, which is in fact the same as the option, 7.2.2</p>				

### *Effectiveness*

The assessment of effectiveness is based on the impact of the baseline scenario on each of the specific objectives i.e. to

- further improve the efficiency and speed of judicial proceedings and thereby reduce the burden for citizens and businesses;
- improve access to justice and the protection of the procedural rights of parties to the proceedings;
- reduce legal uncertainty.

**The status quo is not highly effective at meeting the policy objectives. Although the Regulation would continue to have a limited positive effect on the efficiency and speed of judicial proceedings, delays based on uncertainties and practical challenges would persist. A major impact on the effectiveness of the Regulation going forward is the continued reliance on paper based means of communication and transmission of documents. In addition, cross-border proceedings are expected to grow up until 2030 and thus the application of the Regulation will become more common. Therefore, current legal uncertainties may become more widespread with the current issues on the access to justice not fully alleviated.**

As depicted in detail in section **Error! Reference source not found.**, it has been estimated that the number of cases in which the Regulation is applied will increase by around 23% until 2030.<sup>85</sup> This expected increase is mainly due to the following factors (which are interconnected):

- Increased cross-border activity of businesses and citizens; and
- Increased knowledge of the Regulation by legal professionals.

At the same time, the challenges identified in relation to the application of the Regulation are likely to continue to exist. On this basis, under the status quo problems for citizens and businesses will persist, which limits the achievement of the policy objectives. In particular, there will still be ambiguities leading to undue delays and costs as well as a reliance on paper-based communication and service of documents. Although digital forms of communication will increase gradually throughout the EU, the Regulation will not facilitate or encourage their uptake in its current form.

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<sup>85</sup> From 3 364 447 cases in 2017 up to around 4 383 931 in 2030.

Further improving the efficiency and speed of judicial proceedings and thereby reducing the burden for citizens and businesses

Under the baseline scenario, the Regulation would continue to have a limited positive effect on the efficiency and speed of judicial proceedings. Delays based on uncertainties and practical challenges would persist:

- Ambiguities in the Regulation with regard to
  - the meaning of extra-judicial documents;
  - the approach to costs in the Member States;
  - the provision of information on the right of refusal;
  - the assessment of language skills;
  - the use of fictitious and alternative service methods;
- Lack of clear guidance on locating an addressee;
- Low uptake of digital communication and service methods;
- Restricted access to direct service; and
- Low quality postal service.

Due to the increasing number of legal proceedings in which the Regulation is expected to be applied per year until 2030, these challenges are expected to affect an increasingly large amount of citizens and businesses. Thus, costs and delays associated with the application of the Regulation are expected to increase over time.

Currently, requests for service under the Regulation can take up to 2 months when no complications arise. When further information is sought or the request is unclear, requests for service can be delayed an additional 4 weeks. In the baseline, small improvements are possible under the status quo based on an increased number of cases in which the Regulation is expected to be applied. On this basis, it is possible that legal professionals gain more practice in applying the Regulation and thus can become more efficient in its application. This is supported by evaluation findings (Section 0), whereby stakeholders agreed that the Regulation functions more smoothly between neighbouring countries with many requests for service. The current varying practices in interpreting the Regulation are hence likely to become more streamlined overtime.

In addition, it is possible that electronic means for communication between transmitting and receiving agencies would slightly increase based on an increased overall use of electronic means for communication in Member States' public service. In addition, electronic service of documents may slightly increase as Member States across the EU adopt more eGovernment solutions (such as e-boxes for public authority communications). Indeed, as part of the evaluation, a number of planned or ongoing initiatives like these were identified at Member State level.

However, it is not clear to what extent new initiatives by the Member States would be interoperable across Member States in the future. Such further development is likely to occur very slowly and in a fragmented way (through e.g. bilateral agreements between neighbouring Member States).



Costs and benefits associated with the efficiency of judicial proceedings are elaborated on in the 'efficiency' section below.

#### Improving access to justice and the protection of the procedural rights of parties to the proceedings

Regarding access to justice and protection of the rights of the parties, the Regulation does not currently meet this objective to the full extent. Although the provisions on the right to refusal and default judgments contained in the Regulation are positive measures, issues still exist with regard to their interpretation and application in the Member States. In addition, the Regulation does not address fictitious or alternative methods of service, which can also impact on the rights of parties involved in cross-border proceedings.

Currently, issues exist under the Regulation regarding the application of the right of refusal both in terms of the protection offered to parties and the varying interpretations of the right across the Member States. Regarding the former, the Regulation does not completely protect an addressee living in a Member State without (sufficient) knowledge of the language of the place of service. Regarding the latter, the assessment of language skills is largely open to interpretation by the courts which results in different levels of protection of procedural rights across the EU. Going forward, there is only a slight chance that due to the expected increase in the number of cases applying the Regulation, courts' interpretation regarding the language skills of the addressee will gradually become more harmonised. Hence the baseline scenario will not significantly alleviate this problem.

The Regulation is currently striking a good balance between the rights of the applicant in proceedings with the case and the rights of the defence to a fair trial with regard to the issue of default judgments. Nevertheless, it is estimated that default judgments are likely to increase over time in the baseline scenario. As EU citizens become more mobile, it may become more difficult to contact them through the channels currently available in the Regulation and thus defendants may not enter an appearance within a sufficient amount of time. Thus, the procedural rights of parties may be more at risk in the future.

Another issue hampering the achievement of this objective under the baseline is the lack of guidance in the Regulation on the use of fictitious<sup>86</sup> and substituted service<sup>87</sup> which causes ambiguity and fragmentation concerning the rights of parties in the Member States. Going forward, although the application of the Regulation is likely to increase with the rise in the number of cross-border civil and commercial cases, the problems with fictitious and substituted service are also expected to exacerbate. In particular, the silence of the Regulation on the use of fictitious or alternative service methods is expected to

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<sup>86</sup> Fictitious service refers to where the applicant does not necessarily aim to inform the party, but just to ensure that there is an act considered as formal service so that the proceedings may be continued ("publication on the court board", placing the doc. to be served to the case file). It is almost certain that the defendant does not get the information.

<sup>87</sup> Substituted service refers to service of the document indirectly i.e. not on the addressee themselves but service at the place of work, a family member or a representative.

enhance the varying applications of these methods across the EU, producing an uneven approach to procedural rights of parties.

Finally, the absence of an electronic method for serving documents impairs this objective. Citizens and businesses have the right to access to justice and in this context, preferences for communication should be taken into account. As mentioned above, mobility is increasing in the EU and with that citizens and businesses interact more and more through electronic means. In the baseline scenario, the Regulation may be perceived as out-of-date and less-efficient in comparison to the realities of electronic communication in 2030.

### Reducing legal uncertainty

Legal certainty is a general principle of law at EU and international level. The principle of legal certainty stipulates that laws need to be precise, predictable and calculable in order to allow subjects to the law to regulate their conduct and foresee the consequences of their actions. Legal certainty hence requires that "*there be no doubt about the law applicable at a given time in a given area and, consequently, as to the lawful or unlawful nature of certain acts or conduct*"<sup>88</sup>.

In the current situation, the vagueness of certain provisions and legal uncertainty concerning various legal concepts foreseen in the Regulation is impeding its smooth application. This is particularly true for the ambiguity of various requirements revolving around the right of refusal (Article 8) or of the concept of ‘extra-judicial documents’ as well as the lack of clarity in terms of due diligence to be carried out locating the addressee of a document to be served.

In addition, legal uncertainty also arises due to different interpretations and practices across the Member States (as, for example, concerning the use of fictitious or alternative methods of service or varying practices relating to costs of serving documents) and a lack of information of those. This uncertainty is likely to evolve in the status quo due to more fragmented approaches being used.

Issues with legal uncertainty can lead to inefficient judicial proceedings and undue costs for citizens and businesses. In the baseline scenario, the achievement of this objective would continue to be limited by the lack of clarity identified in relation the application of the Regulation.

### *Efficiency*

**The efficiency of the status quo is limited. Although the assessment of efficiency in the evaluation did not indicate that the costs currently outweigh the benefits, going forward the current process of serving documents may become more cumbersome**

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<sup>88</sup> Case C-331/88 R v MAFF, ex parte Fedesa (1990) ECR I- 4023

**or incompatible with more modern processes at the domestic level, leading to more inefficiencies.**

**Delays and costs are expected to remain at an equal level per case but increase at an overall level in line with the overall increase of cases. Postal services and process services are expected to generate additional revenue also because of the increase in cases.**

According to the evaluation results and the problem assessment, the Regulation is not expected to be able to fully contribute to the overall efficiency of serving documents across borders. The problems identified in relation to the Regulation's efficiency are expected to remain important or even increase until 2030 and will affect an increasing number of citizens and businesses.

Although all problems discussed in the problem assessment ultimately have an impact on the efficiency of the Regulation, the main drivers of inefficiencies are:

- Reliance on paper based communication between Member State agencies;
- Non-compliance with the time limits in the Regulation;
- Limited or no access to direct and electronic means of serving documents.

These issues have impacts on costs for Member State public authorities, citizens and businesses.

#### Costs and benefits for public authorities

The Regulation currently offers a number of benefits for the courts in the Member States through the standardised approach to serving documents across borders, judicial cooperation and legal certainty through the mutual recognition of service through the relevant agencies. As explained in the evaluation (Section 5.2) these benefits are felt to a different extent in each of the Member States, nevertheless it is clear that the Regulation has improved the efficiency of serving documents across borders. In the status quo, it is expected that these benefits will increase due to an increased application of the Regulation and broadened familiarity with the provisions and application in the Member States. However, the costs will also increase.

The costs for Member States are also somewhat varied depending on the set-up of receiving and transmitting agencies (i.e. centralised or decentralised), their capacity to deal with requests under the Regulation and the compatibility with internal procedures. Nevertheless, a number of common costs can be identified for each Member State:

- Administrative costs, based on:
  - Processing requests under the Regulation;
  - Communications with transmitting/receiving agencies;
  - Serving documents through post or judicial officers;
- Costs for providing information to the e-justice portal.

The administration of requests under the Regulation tend to differ between the Member States depending on the set-up of the agency, related administrative processes and the method of service used. Naturally, where complications or issues arise, the costs vary

even more. However, for processing of a request, the estimated costs for a receiving/transmitting agency are about EUR 60-70. This cost takes into account the time spent by the staff member on processing the request (approx. 2 hours<sup>89</sup>) and sending it by post<sup>90</sup>.

The costs for the request are higher if the transmitting agency requests a particular method of service or if service through a bailiff is used by default by the receiving agency. Such costs are estimated to be around EUR 85 per request<sup>91</sup>.

In addition, the costs of materials such as paper, envelopes, stamps etc. are borne by the agencies for administration of the requests.

Under the status quo, administration costs are expected to increase heavily overtime with the higher number of cross-border cases and use of the Regulation.

Member States are also obliged to provide information to the Commission for publication on the e-Justice portal relevant for the functioning of the Regulation. They are regularly prompted to check whether the information contained on the portal is up-to-date and are encouraged to inform the Commission proactively if any information needs to be edited on the portal. The cost involved in complying with these requests is not deemed to be significantly burdensome for Member States and is not expected to increase over time in the baseline.

#### Costs and benefits for citizens and businesses

The benefits of the Regulation are clear from the evaluation. Although not fully meeting its objectives, the Regulation has provided a mechanism by which documents can be served in a consistent way across borders while offering some level of certainty and protection of procedural rights.

However, all types of legal proceedings – in one form or another – put a burden on the involved parties, such as:

- Time taken to conclude the case;
- Court fees;
- Costs for legal advice;
- Costs for service methods (i.e. bailiff fees, postage fees);

These are, however, specific to each legal proceeding and differ vastly between different types of cases, across Member States and over time. Therefore, it is not feasible to develop aggregate estimates in relation to the above aspects.<sup>92</sup>

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<sup>89</sup> Based on data provided in the online survey.

<sup>90</sup> Based on priority mail prices in the Member States, collated by single Market Scoreboard, European Commission, available: [http://ec.europa.eu/internal\\_market/scoreboard/\\_docs/2017/postal-services/2017-scoreboard-postal-services\\_en.pdf](http://ec.europa.eu/internal_market/scoreboard/_docs/2017/postal-services/2017-scoreboard-postal-services_en.pdf)

<sup>91</sup> See efficiency section of the evaluation – Section 5.2.2

In the baseline scenario however, up until 2030, it is expected that the costs related to the time taken to conclude the case, costs for legal and court fees and stress related to serving documents will increase. As mentioned previously, mobility in the EU will increase, thus making it possibly more difficult to locate addresses and reach them via traditional methods like post. In addition, as the digital single market becomes more developed over time, citizens and businesses will expect quicker and less costly practices to cross-border communication. It is likely then that although the process will not change dramatically in terms of efficiency, it may be perceived as less efficient in 2030 given the context.

For businesses involved in the service of documents (e.g. process servers, bailiffs), the revenue generated by service requested under the Regulation is expected to increase somewhat with the increased number of cross-border proceedings. A similar impact is expected for legal professionals dealing with cross-border civil and commercial matters.

### *Coherence*

**In the baseline scenario, the overall internal and external coherence of the Regulation is expected to be ensured to a certain extent with both national and EU measures. Digitisation is a crucial trend that will challenge the coherence of the Regulation with other EU instruments and policies.**

The Regulation is largely coherent internally, and also externally with other EU policies having similar objectives, as well as national law.

Under the baseline, the Regulation is expected to remain coherent internally to a great extent. Nevertheless, it should be noted that the small internal inconsistencies identified by the evaluation (e.g. regarding the information and requirements regarding the right to refusal) would persist under the status quo.

In case no action is taken, the Regulation will still be aligned with other EU legal instruments mentioned under Section 5.4, but only to a certain extent. Certain overlaps may still exist, such as the overlap concerning the tasks of the Central Bodies to serve documents under the Maintenance Regulation<sup>93</sup>.

Digitisation would, however, challenge the external coherence of the Regulation with other instruments. Digitisation is actually a key driver of the Digital Single Market<sup>94</sup>, and the Commission has developed several strategies and action plans in order to promote this trend and achieve its full potential. These include the EU eGovernment Action Plan

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<sup>92</sup> The evaluation, however, contains illustrative examples for these aspects.

<sup>93</sup> Council Regulation (EC) No 4/2009, *ibid*.

<sup>94</sup> European Commission, Communication on Digitising European Industry: Reaping the full benefits of a Digital Single Market, COM(2016)180 final, [http://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=15267](http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=15267).

2016-2020<sup>95</sup> and the e-Justice Strategy<sup>96</sup>. In the same line, the EU Member States and the EFTA countries signed the Tallinn Declaration<sup>97</sup> under the auspices of the Estonian Presidency of the Council. This declaration reaffirms the political commitment to achieve the vision outlined in the eGovernment Action Plan.

In more practical terms, the Commission together with the Member States is working on digital (pilot) projects such as e-CODEX in order to improve the efficiency of judicial procedures with the use of ICT. This project is already in place for two instruments: European Payment Order<sup>98</sup> and European Small Claims<sup>99</sup>. It is expected that the e-CODEX pilot would also be used in the future for other instruments, such as Regulation (EC) 1206/2001 on taking of evidence for example. In the baseline, the current Regulation would not be coherent with this approach, as it would continue to lack provisions on the electronic service of documents or the use of e-CODEX.

As for the data protection, the GDPR<sup>100</sup> will be applied as of May 2018. Nevertheless, no negative impacts are envisaged in the baseline as the current Regulation would still only apply when the address of the recipient is known.

### ***Impacts on fundamental rights***

**The baseline scenario still ensures access to justice and procedural rights. Nevertheless, some difficulties and confusions would still remain under the status quo, hampering the rights of the parties. In addition, the protection of personal data is not considered to be affected by the current Regulation.**

As described in the section on effectiveness above, the evaluation revealed that legal practitioners, citizens and businesses currently face legal uncertainties and delays in cross-border proceedings where the Regulation is applied. As a result, the current Regulation will have an impact on the principle of non-discrimination in cross-border proceedings. At the same time, it is not expected to exert an impact on the future protection of personal data.

First and foremost, non-discrimination and the protection of procedural rights are of vital interest to any person involved in cross-border judicial proceedings. This being said, some social groups might be more vulnerable (e.g. economically disadvantaged persons) than others to the problems identified for procedures under the Regulation.

<sup>95</sup> European Commission, Communication on an EU e-Government Action Plan 2016-2020. Accelerating the digital transformation of government, COM(2016)179 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0179&from=EN>.

<sup>96</sup> Strategy on European e-Justice 2014-2018, 21 December 2013 (2013/C 376/06).

<sup>97</sup> Tallinn Declaration on eGovernment at the ministerial meeting during Estonian Presidency of the Council of the EU on 6 October 2017,

<sup>98</sup> Regulation (EC) No 1896/2006, *ibid.*, and Regulation (EU) 2015/2421, *ibid.*

<sup>99</sup> Regulation (EC) No 861/2007, *ibid.*, Regulation (EU) 2015/2421, *ibid.*

<sup>100</sup> Regulation (EU) 2016/679, *ibid.*

In practice, procedures under the Regulation for the cross-border service of documents do not always provide fair access to justice for the parties involved. For instance, the procedure revolving around the right of refusal – being a fundamental procedural right of the addressee of a document to be served – remains unclear in large parts.

Under the baseline scenario, the abovementioned confusion due to legal uncertainty negatively affects the ability to choose an effective method of service. For example, diverging acceptance of methods (especially concerning the use of fictitious and ‘alternative’ service) in the different Member States causes ambiguity and fragmentation as well as an uneven approach to the procedural rights of the parties involved in cross-border proceedings. At the same time, access to justice may not be guaranteed to the fullest extent under the Regulation due to the lack of a legal provision allowing the choice of service by electronic means. In practice, these aspects may cause stress, costs and delays for citizens, businesses, and public administrations.

Under the baseline scenario, the protection of personal data is not considered to be affected by the current Regulation. External factors influencing data protection and privacy are the General Data Protection Regulation (GDPR) and the growing threats to cybersecurity (also affecting public authorities). After entering into force in May 2018, the GDPR is expected to increase awareness on the issue, prompt actions to ensure security and integrity of databases and swift reactions to breaches of privacy in the judiciary. However, data protection in the judiciary will continue to be largely determined by national decisions and the integrity of postal services or the agencies/authorities involved in the process of cross-border service under the Regulation. At the same time, the incidence of attempted attacks on public IT infrastructure is expected to increase until 2030. This will also affect the judiciary in the Member States, depending on the proliferation of electronic communication, court IT systems and the interconnectedness with other IT systems or databases.

Overall, the issues identified above are expected to remain and the likelihood of their occurrence to increase in line with the projected number of cross-border proceedings (applying the Regulation) until 2030.

### *Environmental impacts*

**In the baseline scenario, the environmental impacts of the Regulation are expected to increase due to the increasing number of cross-border proceedings, the service of documents via the service methods foreseen in its provisions, and continued paper-based communications between the designated authorities.**

Under the baseline scenario, the main environmental impacts of the Regulation concern the use of (non-)renewable resources due to paper-based communication and the transport of documents to be served on the one hand and persons (i.e. the receiving agencies) serving the documents on the other. The environmental impacts of both elements are expected to increase under the baseline scenario in line with the projected



increase of cross-border proceedings and ensuing instances in which the Regulation is applied.

As explained under Section 5.1.1, the receiving and transmitting agencies strongly rely on paper-based communication. Apart from the negative impacts in terms of costs for paper, toner or ink and postage on efficiency, paper-based communications also have implications for the environment. Presently, forms under the Regulation are often printed on paper whose production requires renewable resources (such as wood), consumes water and involves chemicals (e.g. brightening agents). Likewise, the production of toner requires (non-renewable) raw materials, e.g. plastic particles and other chemical products produced using mineral oil. Both paper and toner need to be packaged and shipped to end-users, leading to emissions from transport and handling. Both the production and use of these materials produce waste which may only be partially recycled (again requiring energy).

According to interviewed stakeholders, another important source of waste are (printing) errors due to confusions or lack of knowledge on how to correctly fill in the documents. There are no reliable estimates on how often these occur. Nevertheless, it does seem likely that this problem will remain or only slightly decrease under the baseline scenario. While individuals might learn from mistakes, no policy change will also not address the overall causes for confusion or technical mistakes.

Finally, the service of documents via postal services under the present Regulation, which:

- Require further material for processing (e.g. envelopes, wrapping);
- Consume additional resources for transport (e.g. fuel in transport); and
- Produce greenhouse gas emissions (e.g. in transport via trucks and delivery vehicles).

In order to assess the development of environmental impacts under the baseline scenario, estimating the “carbon footprint” helps to illustrate the development described above.

#### *Estimate: Carbon footprint under the baseline scenario*

The “carbon footprint” estimate is a concept used in consumption-based accounting. For a given service or product, the estimate includes all CO<sub>2</sub> emitted (e.g. in grams or kilograms) to produce the final product or deliver the service (including emissions from intermediate inputs and including emissions abroad).<sup>101</sup>

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<sup>101</sup> For instance, the carbon footprint of the EU-28 measures how much CO<sub>2</sub> was emitted due to EU-28's demand for products. For an explanation of the concept and exemplary summary statistics for the EU-28, see Eurostat (2018): Greenhouse gas emission statistics - carbon footprints, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Greenhouse\\_gas\\_emission\\_statistics\\_-\\_carbon\\_footprints](http://ec.europa.eu/eurostat/statistics-explained/index.php/Greenhouse_gas_emission_statistics_-_carbon_footprints)



According to estimates of the *International Post Cooperation*, a standard letter had a carbon footprint of 37.2g of CO<sub>2</sub> in 2015.<sup>102</sup> Assuming that a typical communication between the receiving and transmitting agencies under the Regulation using postal services involves at least three iterations, this would result in 111.6g of CO<sub>2</sub> for one cross-border proceeding.

Combining this estimate with the estimated case load (presented above along the economic model), the CO<sub>2</sub> emissions from postage alone could have amounted to 207t in 2017. In 2030, CO<sub>2</sub> emissions from postage under the Regulation could reach a value of 269t (an increase of 30%).

However, if errors occur and a document is rejected and/or rectified to be sent again, communication may involve more iterations. This could, in turn, increase the carbon footprint of communication under the baseline scenario considerably.

*Of course, these numbers only provide a very rough estimate, not accounting for recent environmental-friendly developments in postal delivery (e.g. projects for emission-reduction, climate-neutral postage options, or the uptake in eMobility).*

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<sup>102</sup> International Post Corporation (04.11.2016): Postal sector continues to lead in carbon emissions reduction efforts, Source: <https://www.ipc.be/en/news-portal/sustainability/2017/03/03/13/53/postal-sector-continues-to-lead-in-carbon-emissions-reduction-efforts>

## ANNEX 7: ASSESSMENT OF THE IMPACTS OF THE POLICY PACKAGE

### *Effectiveness*

The assessment of effectiveness is based on the impact of the policy package on each of the specific objectives i.e. to:

- further improve the efficiency and speed of judicial proceedings and thereby reduce the burden for citizens and businesses;
- improve access to justice and the protection of the procedural rights of parties to the proceedings;
- reduce legal uncertainty.

**Under the policy package, the effectiveness of the Regulation would be improved compared to the status quo. Mainly, the introduction of e-CODEX as a mandatory communication tool between the agencies and the facilitation of electronic and direct service will contribute to the efficiency and speed of proceedings, lowering the burden of citizens and businesses. The contribution of the package to access to justice and legal certainty are also high with the inclusion of measures to clarify ambiguities and locate an addressee.**

Further improving the efficiency and speed of judicial proceedings and thereby reducing the burden for citizens and businesses

The policy package will reduce undue delays for citizens and businesses involved in cross-border proceedings, chiefly with the **introduction of e-CODEX**<sup>103</sup> as a tool for communication between the authorities – but also through measures which will:

- **clarify ambiguities** in relation to the application of the Regulation;
- assist in **locating an addressee** and clarifying the address;
- facilitate the **uptake of electronic means** (of directly) serving documents;
- strengthening the **quality of postal service**; and
- **facilitate access to direct service** in the Member States.

### *Use of e-CODEX*

As explained in the problem assessment, undue delays and costs are associated with the lengthy and paper-based communication processes between transmitting and receiving agencies. The baseline scenario calculations estimate that the processing of one request for service can take up to 2 months when no complications arise. When further information is sought or the request is unclear, requests for service can be delayed an additional 4 weeks.

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<sup>103</sup> e-CODEX is a tool that supports the electronic communication between citizens and courts and between Member State administrations in civil cross-border proceedings.

With the use of e-CODEX, agencies will have access to direct communication and transmission of documents, thereby reducing the overall time for processing a request by about 3 – 9 days<sup>104</sup>. In addition, the system supports other measures in the policy package such as those that clarify ambiguities in the Regulation. For example, even if additional communications are necessary to clarify the request (despite measures in the policy package to clarify ambiguities), the process will still be quicker than in the baseline as communication is accelerated through e-CODEX. In addition, as a consequence of more efficient communication between the agencies and reliable judicial assistance, cross-border proceedings will be accelerated, and carried out with greater legal certainty, leading to less grounds for challenges and problems<sup>105</sup> at the later stage of enforcement.

**Overall, the use of e-CODEX for communications between agencies in the Regulation is expected to have a high positive impact on improving the efficiency and speed of judicial proceedings.**

### *Measures to clarify ambiguities relating to the application of the Regulation*

The measures to clarify ambiguities in the Regulation are either legislative or non-legislative measures. Legislative measures include codifying a definition for extra-judicial documents, indicators to help the assessment of language skills, introducing uniform principles (as minimum standard) for the use of fictitious and alternative service methods against an addressee with a residence or seat in another Member State and clarifying the uniform standard character of conditions for postal service (Article 14). As a non-legislative measure, the e-Justice portal will also include fields containing information on the approach to costs in the Member States.

As explained in the problem assessment, ambiguities in the Regulation often lead to undue costs and delays for citizens and businesses involved in cross-border proceedings. This is because requests that are sent due to different interpretations or applications of the Regulation can lead to confusion for both parties (and time spent trying to figure out the approach), requests being returned to applicants and additional litigation or disputes to clarify the meaning of provisions.

**Overall, the measures to clarify the ambiguities are expected to have a medium positive impact on the reduction of burdens for citizens businesses (and Member States) as documents can be served more efficiently across borders.**

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<sup>104</sup> Draft Commission Staff Working Document. Impact Assessment. Cross-border e-Justice in Europe. Accompanying the document: Regulation of the European Parliament and of the Council on the computerised cross-border communication in judicial proceedings (eCODEX) (unpublished – provided to the study team by the EC).

<sup>105</sup> E.g. because deficient service is invoked as a ground of refusal.

### *Assistance provided by the Member States in locating an addressee*

The policy package introduces a few new measures with regard to the problems associated with the situation where the physical address of the addressee is not known or proves to be incorrect or obsolete:

- Member States have to ensure that they provide assistance to persons interested in legal proceedings from other Member States in finding information about the physical whereabouts of their adversaries. In this flexible systems, Member States shall choose at least one of the following tools by which they provide this assistance:
  - Their courts or authorities shall provide judicial assistance upon the request of courts or transmitting agencies from other Member States to determine the current address of a person in their territory , or
  - Their national domicile registers shall accept applications from persons interested in legal proceedings in other Member States forwarded to these registers electronically, via the European e-Justice Portal, or
  - They have to provide detailed information (with appropriate hyperlinks) on the tools available for right seeking persons from other Member State for purposes of clarifying the physical address of a person in their territory;
- Obliging courts seised with legal proceedings in the Member State of origin to send, in the context of their duty under Article 19(1) and (2) of the Regulation, alert messages through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee.

In the first measure, the burden from undue costs and delays involved in cross-border proceedings is expected to decrease to some extent. Although it is impossible to assess the overall magnitude of this problem, in lack of available statistics, since the EU Regulation currently does not apply to situations where the address of the person to be served is not known, we may deduct indirectly from the high rate of default judgments<sup>106</sup>, that number of instances where the foreign defendants are actually not informed of the legal proceedings instituted against them abroad is significant. We may assume that frequency of the issue is expected to decrease. Currently, claimants in legal proceedings with no information about the address of their adversaries abroad (e.g. proceedings against private individuals based on non-contractual claims) are left without any help in locating their counterparts. With the alternative set of options outlined above, these claimants will receive effective assistance in those Member States which will opt for the alternatives under i. or ii., whereas they will receive a useful guidance from where they can move on in getting to the information needed in those Member States which will opt for the alternative iii. With the increase of the successful address enquiries, we may reduce the instances of failed service of documents, and thereby will contribute to the decrease of the number of default judgments which were rendered without the defendant having been actually informed. This latter element would also reduce the delays in cross-

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<sup>106</sup> See p. [40] of the Evaluation Report

border litigations which are caused by the remedies and reliefs applied by the defendants who did not appear.

The second measure is activated once the document has been returned to the receiving agency because the service is unsuccessful. In the status quo, the document would be returned to the transmitting agency with a certificate of non-service from the receiving agency. This leads to additional time spent on the communication back to the originating Member State and the service to be attempted again. Although the introduction of e-CODEX would already simplify this process, making the communication direct and electronic, the issue could be further remedied by the receiving agency undertaking some additional actions to reach out to the addressee. Although this is a somewhat uncharted area for the moment, some courts within and outside the EU have effectively used email and social media as alternative forms of service.

#### *Case examples using social media as a service method*

In the UK, the case of **Blaney v Persons Unknown** the High Court authorised a claimant to serve on an anonymous Twitter user by sending a direct message containing a link to the injunction against him. This is a situation where the exact whereabouts of the defendant were not known and the claimant was unable to locate the defendant in order to serve him through traditional means.

In the case of **GYH v Persons Unknown**<sup>107</sup>, the High Court granted an interim non-disclosure order to an addressee via Facebook. After ensuring that all practicable steps have been taken to identify the defendant, this remained the ultimate way to reach him.

Although the preferred option does not oblige agencies to attempt service of documents through social media, the above case examples point out the practical benefit of such an approach and demonstrate the shift of some judicial systems towards a more widespread use and acknowledgement of modern communication methods. The proposed measure in the preferred policy option only obliges the agencies in the Member States to look for other possible ways of alerting the addressee that service of a document has been attempted. In good faith, it is presumed that the addressee would present him/herself to the court for receipt of the document. For optimal impact, this measure should be a first step before considering alternative methods of service which may not actually be effective at providing notice to a person anyway. Thus, as a potentially more effective option to alternative service methods, the use of other channels to alert the addressee as to the existence of the document, undue costs and delays for citizens and businesses would be reduced.

**Overall, these measures are expected to have a medium positive impact on the issue of locating an addressee or effectively reaching out to them. These measures would facilitate access to justice of the parties, as the receiving authorities would be obliged to actively clarify the address, facilitating the efficient and speedy service of documents.**

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<sup>107</sup> *GYH v Persons Unknown (Responsible for the Publication of Webpages)* [2017] EWHC 3360. Royal Courts of Justice (UK) – 19.12.2017; <http://www.bailii.org/ew/cases/EWHC/QB/2017/3360.html>

### *Facilitate the uptake of electronic means of serving documents*

The policy package introduces two new measures to facilitate the uptake of electronic service of documents:

- Introduce cross-border electronic service as an accepted method of service under the Regulation, provided that this complies with some uniformly defined conditions:
  - a) the document is transmitted electronically to an end-user who is a client of a qualified Electronic Registered Delivery Service (ERDS), according to the standards of eIDAS Regulation, or
  - b) the document is sent to another electronic mailbox or user account, if there is an express consent by the recipient in the individual case to use this account for purposes of serving on him/her.;
- Introducing a “digital-by-default” principle for communications and transmission of documents between transmitting and receiving agencies under the Regulation.

These two measures effectively contribute to reducing the burden of undue costs and delays for citizens. The inclusion of ERDS as a valid method of service under the Regulation will as a minimum facilitate its use and recognition in cross-border proceedings. Although its expected take-up cannot be predicted, there is no uncertainty as to its recognition as a method of service in cross-border proceedings. Similarly, the legal condition of an express consent of the recipient, given in and for the individual legal proceedings, ensures that an electronic service of the document is valid even in the absence of the high technical standards of the ERDS, but still has full regard to the rights of the defence. In addition, the use of electronic service will be implicitly encouraged by the second measure, to the extent that such service is available in the receiving Member State. Currently, more than half of the Member States allow for electronic service of summons domestically<sup>108</sup>. The table below provides an overview of the status of electronic service in the Member States.

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<sup>108</sup> Council of Europe’s European Commission for the Efficiency of Justice (CEPEJ) Studies no. 24, European judicial systems Efficiency and quality of justice, Thematic report: Use of information technology in European courts, 2016, available: <https://www.coe.int/t/dghl/cooperation/cepej/evaluation/2016/publication/CEPEJ%20Study%2024%20-%20IT%20report%20EN%20web.pdf>

Table 16: Member States allowing electronic service domestically<sup>109</sup>

Member States where e-service is permitted	Member States where e-service is not permitted
AT, BG, CZ, DK, FI, EE, DE, HU, IE, IT, LT, LV, MT, PL, PT, SI, ES, SE, UK – Scotland.	BE, HR, CY, FR, EL, LU, NL, RO, SK, UK – England & Wales, UK – Northern Ireland.

Source: Council of Europe's European Commission for the Efficiency of Justice (CEPEJ)

Since Member States will not be obliged to consider using e-service methods for the delivery of the document to the addressee (the issue of the route of the document from the receiving agency to the addressee will be further on left entirely to the law of the receiving Member State), the extent to which this will occur in practice is impossible to estimate at this stage. We may, nevertheless, reasonably expect that receiving agencies will serve the documents which are transmitted to them in electronic form through electronic channels; insofar this is legally possible under their law.

It is also likely that more Member States will adopt electronic service methods over time which will help increase the speed of serving documents and thus reduce undue delays and costs for citizens and businesses (and authorities).

**Overall, these measures are expected to have a limited positive impact on the increased uptake of e-service methods. Because of the limited ambition of the proposal and because certain legislative proposals have to be made with regard to exceptions to the general principle, its uptake will remain moderate at the beginning.**

### *Strengthening quality of postal service*

Although the key measure of the policy package is to encourage the use of digital tools in the transmission of documents between Member State agencies and direct service through ERDS, service through post cannot be entirely disregarded. As demonstrated in the evaluation and problem assessment, service by post can be improved to some extent. The measure adopted for strengthening the quality of postal service involves the introduction of a specific uniform return slip (acknowledgment of receipt) through which documents under the Regulation has to be served by postal operatives. Accompanied with some specific procedural steps postal service operators should follow in course of the delivery of the documents, this measure is expected to have an impact on the number of instances where service is deficient due to incomplete acknowledgements of receipt or ambiguity as to who actually received the documents. In this regard, strengthening the quality of service by post will also expected to reduce undue costs and delays for citizens caused when service is regarded as deficient.

<sup>109</sup> Ibid, annex 1.



**Overall, these measures are expected to have a medium positive impact on the quality of service by post under the Regulation. From experiences of Member States where the postal service of judicial documents is carried out on the basis of a special regime (different from the rules based on the framework of the Universal Postal Union), we can expect an enhanced diligence from the postal service operators when delivering such documents.**

### *Facilitating access to direct service*

The policy package introduces two new measures to facilitate the access to direct service of documents:

- Extending the scope of application of Article 15 so that also transmitting agencies (bodies, legal persons and bailiffs) of the MS of origin may apply for it;
- Obliging all Member States to ensure that foreign persons interested in legal proceedings may directly turn to competent persons or officials in their territory with a request to serve a document.

The two measure above essentially open up the scope of application of direct service which is less prone to undue delays and costs than other service methods. As demonstrated in the evaluation<sup>110</sup>, direct service, where no complications arise can be 2 times quicker than service by post. Allowing access to these services, even in the territory of Member States where currently this is not a possibility, will allow the choice for parties in a proceeding and also contributes to fair competition across the EU.

**Overall, allowing direct service to be both accessible by transmitting agencies and in the territory of all Member States allows for access to more direct and speedy transmission of documents compared to the baseline.**

### *Improving access to justice and the protection of the procedural rights of parties to the proceedings*

In the baseline, the Regulation does not fully achieve the objective of increasing access to justice and, thus, the protection of the rights of the parties. Especially with regard to the remaining issues concerning application and interpretation of the right of refusal or the lack of provisions on fictitious or alternative methods of service, access to justice for parties involved in cross-border proceedings is impeded.

The amendment of provisions on the requirement regarding the **information on the right of refusal** as well as **clearer information on the legal consequences** of exercising this right in Annex II of the Regulation would increase access to justice through clear rules and allowing the addressee to be properly informed and exercise his procedural right. Adding **assessment criteria on the required language skills in a recital of the Regulation** would further protect an addressee living in a Member State from getting involved in proceedings without (sufficient) knowledge of language and, thus, increase their access to justice. In addition, the implementation of a uniform legal principle in the

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<sup>110</sup> See p. 11 of the Evaluation Report



Regulation to the use of fictitious and ‘alternative’ methods of domestic laws instead of the Regulation, when an addressee with residence or seat in another Member State has to be served, would **eliminate the current ambiguity and fragmentation** concerning the rights of parties in the Member States and the uneven approach to their procedural rights.

Better access to justice would also be achieved by the policy package measures **assisting the localization and clarification of addresses in cross-border cases**. In addition, the legal obligation of the courts seized with the proceedings to send alert messages through all means of communication to the foreign addressee if service fails or his physical address is unknown would facilitate the service of documents and lead to a better protection of the procedural rights of the parties.

Furthermore, the option of making **electronic service a valid direct method** of serving documents would highly increase access to justice of the parties as it implements the interaction through electronic means. It thus facilitates and accelerates cross-border communication, under due consideration of the parties’ preferences for communication.

However, also soft measures such as providing information on the e-Justice portal can improve access to justice for businesses and citizens, who in this case would be provided with the relevant knowledge on cross-border service and thus be enabled to launch proceedings.

**Overall, the assessment clearly illustrates that implementing the policy package can contribute positively to the achievement of an increased access to justice.**

#### Reducing legal uncertainty

Introducing new legal provisions and soft law measures within the context of the Service Regulation will have a positive impact on legal certainty.

With the amendment of provisions in the Regulation on the requirement to always provide the information on the right of refusal as well as the amendment of its Annex II for clearer information on the legal consequences of the exercise of this right, the **clarity and predictability of the procedure revolving around the right of refusal could be expected to increase**. The latter option in combination with the implementation of indicators in a recital of the Regulation helping to assess the addressee’s language skills when exercising their right would further provide clarity about the requirements regarding the translation of documents to be served.

Also contributing to reducing legal uncertainty is the legal obligation of the courts seized with the proceedings to send alert messages through all means of communication to the addressee if service fails or his physical address is unknown. This regulatory option, combined with others, would provide more clarity in terms of **due diligence to be carried out before issuing a default judgment** according to Article 19 of the Regulation. In general, it can be concluded that through detailed and unambiguous provisions, legal clarity, predictability and reliability would be ensured.

Legal clarifications are also provided through interpretations of the Court of Justice of the European Union (CJEU). Codifying the CJEU case law<sup>111</sup> such as by specifying in the Regulation a clearer definition on ‘extra-judicial documents’ would even increase legal certainty in terms of a clear reliability on which documents are within scope of the Regulation.

Introducing legal provisions in the Regulation as minimum standards clarifying the **preference of the Regulation to the use of fictitious and ‘alternative’** (substituting) domestic service methods, if the addressee is in another Member State, which would imply a coherent interpretation of the scope of application of the Regulation in practice in all Member States, would very likely improve legal certainty.

Similarly, defining at EU level **the eligible alternative (substituting) ways of the service of the documents by post under the Regulation**, once the document cannot be handed over to the addressee on person, would contribute to the legal certainty, since this would ensure that the validity of the delivery of the document under Article 14 is assessed according to the same standards in all Member States. In the case, there will be a greater clarity about the types of methods of service accepted and consistency of practice to rely on in all Member States.

It is inherent to the principle of legal certainty that its assessment especially focuses on those options of the policy package that propose legal changes and, thus, often itself already aim in particular at reducing uncertainties. Soft measure options, however – such as the provision of information on the e-Justice portal – may also increase legal certainty by improving the awareness and understanding of the functioning of the Regulation among citizens and legal practitioners.

Some of the options included in the policy package do not affect legal certainty at all. However, there is no option that would have a negative effect, which is why **the policy package can be considered as having a highly positive impact on legal certainty.**

### *Efficiency*

The assessment criterion efficiency relates to the *relationship between costs and benefits* – neither the absolute costs nor benefits. This means that efficiency concerns the extent to which the objectives of the Regulation are achieved at a *reasonable* cost.

**The policy package is expected to generate certain costs for Member States but significant benefits for citizens and businesses involved in cross-border proceedings. The main cost driver for Member States is associated with the implementation of e-CODEX as a mandatory tool for transmitting and receiving agencies. Nevertheless, on balance the costs do not outweigh the benefits.**

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<sup>111</sup> CJEU 25.06.2009 – C-14/08 - Roda Golf & Beach Resort SL; CJEU 11.11.2015 – C-223/14 – Tecom Mican SL

For the assessment, it is crucial to look into the costs and benefits for different types of stakeholders in both a qualitative and quantitative way.

The impacts on the following types of stakeholders are discussed within this section:

- Member States' public authorities, incl. impacts on national judicial systems;
- Legal professionals (in particular judges and lawyers);
- Businesses as service providers, e.g. in relation to postal services or IT consulting; and
- Citizens and businesses, as parties to legal proceedings.

An assessment of costs and benefits is provided below.

Costs and benefits for Member States' public authorities (incl. central bodies, courts)  
This section provides assessment of cost and benefits for Member States' public authorities.

### *Costs for public authorities*

Under the policy package, Member States' public authorities are expected to incur costs compared to the baseline scenario in relation to:

- The provision of additional information for the e-Justice portal, awareness raising and training activities;
- Development, implementation, and maintenance of:
  - a. e-CODEX as the default channel for electronic communication and document exchanges between transmitting and receiving agencies;
  - b. Costs for acquiring special acknowledgments of receipt for service of the documents by post;
- Administrative burden in relation to:
  - a. Conducting additional efforts to locate an addressee or clarify the address.

These are mostly costs that Member States' public authorities are not expected to incur under the baseline scenario. Although public authorities are also expected to incur costs with regard to administrative burden in the baseline scenario (due to paper-based communication, ambiguities etc.), the magnitude of the overall cost burden is expected to be higher under the policy package, mainly due to new measures and the introduction of e-CODEX. The costs are explained below.

- **The provision of additional information for the e-Justice portal, awareness raising and training activities**

The policy package contains a number of new fields of information to be contained on the e-Justice portal. The main addition to be provided on the portal is information on national approaches to costs: Member States will need to clarify whether agencies seek costs for the service of documents by post or direct service means. The following additional fields are suggested under the website heading "Article 11 – costs of service":

- The use of service by a judicial officer or to a person competent by receiving agencies amount to a cost of X;
- Inclusion of instructions of payment of fees per receiving agency including:
  - Whether payment is in advance or upon service;
  - Bank account number;
  - Communication on payment;
  - Provision of receipts or equivalent.

The costs for the provision and maintenance of these additional fields are not deemed to be very high as information is already being provided to the Commission for these purposes.

In addition, the policy package contains a number of clarifications and new legislative measures that will require some consultation by Member State authorities before interacting with the Regulation. In particular, agencies and central bodies will need to become acquainted with their obligations in assisting to identify the address of the recipient, using e-CODEX for communication with other agencies/bodies. In addition, they will have to ensure the documents being served under the Regulation comply with the codified definition of extra-judicial documents, alternative and fictitious service methods of domestic laws are preferred compared to the use of the Regulation only within the principles set and that information on the right to refusal is always provided in all EU languages.

These costs are, however, not specific to the specific policy package but could be incurred under any configuration of options compared to the baseline scenario. The costs are also not seen as actual cost increase for authorities but rather “business-as-usual” costs since it is required for their function.

As suggested under the policy package, the changes to the service of documents should be accompanied by some awareness raising (and possibly training materials). The costs for **awareness raising** activities are dependent on the exact scope, means and target groups of the activities. The costs would be shared between the Commission and the Member States, e.g. through co-financing, and spread across the next couple of years as awareness raising is expected to be a continuous effort.

- **One-off and recurring costs for connecting to e-CODEX**

Costs related to the development, implementation, and maintenance of e-CODEX as the default channel for electronic communication and document exchanges would be shared by the Commission and the Member States<sup>112</sup>, e.g. through co-financing, and spread across the next couple of years as awareness raising is expected to be a continuous effort.

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<sup>112</sup> For instance, costs could be split 50%/50%, or according to the responsibilities over the phases of the workflow (connecting access points to national gateway: Member States; interactions between the national gateways: EU).

It is expected that e-CODEX would necessitate both one-off capital expenditures (CAPEX), e.g. for the development and acquisition of respective technology, as well as recurring operational expenditures (OPEX) for its implementation and maintenance. The annual OPEX is expected to decrease incrementally over time due to public authorities gaining experience and expertise regarding e-Delivery. This means that public authorities are expected to become more efficient over time.

The e-CODEX draft Impact Assessment<sup>113</sup> indicates that acquisition costs for the e-CODEX hardware are marginal at one-off costs of approx. EUR 15 000 (CAPEX) and approx. EUR 2 000 (OPEX) annually for hardware maintenance. This cost concerns the deployment of the national connector and gateway which are the components of the e-CODEX enabling the interactions between the relevant national IT systems of the various Member States.

Of course, Member States have to ensure that all their national transmitting and receiving agencies (and central bodies) at local level will be connected to their national gateway, so that all of these local agencies serve as e-CODEX access points in the national system. In this regard, certain costs are to be expected associated with the modification of existing national systems to enable their linkage and interoperability with a national e-CODEX access point. Furthermore, those agencies, which do not currently have any national IT infrastructure allowing for the sending and receiving of cross-border requests, would have to establish such. The estimated costs in this regard are difficult to estimate, given the diverse national context, but the average cost in the case of a central, web-based solution is estimated to be in the 20.000 – 50.000 EUR range. We do not calculate hardware acquisition costs in the context of end-user hardware and software costs, because we assume that all agencies and bodies designated under the Regulation (courts, bailiffs, governmental authorities) have internet connection and, at least, one PC point.

In addition to the estimate above, the e-CODEX Impact Assessment mentions that costs related to installation, integration (into the national systems), and testing of the eCODEX infrastructure could add up to around 76 person days (relevant costs are mainly driven by the human resource cost of personnel needed).

It is to be noted that costs falling to a Member State under the proposed policy option may be more limited, since those Member States (and there are several of them) who have already deployed the necessary infrastructure in the context of the previous e-CODEX pilot projects may choose to reuse this infrastructure (national connector and gateway) for purposes of the communication system to be established under the Service Regulation.

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<sup>113</sup> Draft Commission Staff Working Document. Impact Assessment. Cross-border e-Justice in Europe. Accompanying the document: Regulation of the European Parliament and of the Council on the computerised cross-border communication in judicial proceedings (eCODEX) (unpublished – provided to the study team by the EC).

For the sake of completeness, it should be noted that the e-CODEX draft Impact Assessment also gives estimates on the costs needed for the implementation and maintenance of the entire e-CODEX community at EU level, the financing of which will be considered under other initiatives and from other resources, consequently these costs are not to be regarded in our assessment.

- **Costs for using a specific return slip for postal service**

Under the policy package, transmitting agencies transmitting agencies will be obliged to enclose to their applications for service by post under Article 14 of the Regulation a new type of acknowledgment of receipt, and possibly apply special labels to the documents sent for service through this method. The labels, could cost approximately EUR 0.70 per each label<sup>114</sup>. At the EU level, assuming that on average, documents are served in each case, the overall costs could amount to EUR 1 million per year across the EU<sup>115</sup>. The costs for individual Member States would naturally be different depending on the number of requests they send under the Regulation.

- **Administrative costs to conduct additional efforts to locate an addressee or clarify the address**

The policy package obliges Member States to choose from a set of different options, by which they are ready to help persons from other Member States interested in legal proceedings to determine the address of their counterparts in their territory. If the option chosen is the one on the provision of judicial assistance upon requests from the courts of other Member States, or the one on the acceptance of direct applications to national domicile registers via the e-Justice Portal, this will entail additional administrative costs for the judicial authorities or publicly financed registers. (Costs generated by the compliance with the third option on giving more detailed and structured information may be disregarded in this context, due to their marginal amount).

With regard to the first two options, it may be assumed with certainty that only those Member States will opt for either of them, for which these tools are anyway established in their legal system, and could consequently comply with the duties deriving from these options without the need of adaptation. With regard to the first option, relating to the provision of judicial assistance, it is to be noted that the commitment by States to execute requests for address enquiries in civil and commercial proceedings is a recurring element of mutual (bilateral) judicial assistance agreements of public international law. Such provisions have a history also in the agreements concluded between the Member States<sup>116</sup>. With regard to the second option, relating to the direct applications to domicile registers via the e-Justice Portal, Member States which have in places publicly accessible

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<sup>114</sup> Based on the costs of stickers from Vistaprint:  
<https://www.vistaprint.com/?GP=03%2f23%2f2018+13%3a15%3a21&GPS=4931816384&GNF=1>. Other providers may offer different prices.

<sup>115</sup> I.e. (the average number of cases using postal service per year (2 120 367) \* 4 documents to be served)\* price for one sticker (EUR 0.70).

<sup>116</sup> See MLA-s between the MS previously belonging to the “communist block”, or the Nordic Convention.

domicile registers have to ensure only that they extend this right to access to applications from other Member States and that they accept these request either via e-mails (the request submitted through the relevant web-service of the e-Justice Portal would be forwarded to the electronic account of the national register indicated by the Member State, and as of that moment of transmission the application will be treated in accordance with the relevant national rules in force there). Even if in this case, the domicile register of the Member State may expect the increase in the volume of applications, the additional workforce needed to address those extra applications could easily be compensated by the introduction of a reasonable fee corresponding the service (nothing in the EU Regulation would prevent a Member State to charge a fee for such a service).

On average we have assumed that to conduct one additional action for clarifying an address would consume, at a minimum, about 15 minutes of time for the competent judicial authority or public register. This action could be e.g. entering the address into a (publicly not accessible) database, such as tax registers, to which the requested judicial authority has direct access to or forwarding a search request corresponding to the original request of the foreign court to the authority owing an appropriate database. Where more advanced means are available for the clarification of an address, the costs will be higher. For example, if the requested judicial authority has to make a formal request to the owner of the information at national level for confirmation of the address. The time for such a request would depend on the specific register accessed in the Member State concerned.

In addition, the policy package also includes a measure that would oblige receiving agencies to send alert messages to the addressee through all means of communication which are known and reasonably likely to be accessible exclusively to the addressee, including e-mail addresses and social media accounts through private communications, in the case of a first unsuccessful service. Again, this is likely to consume at a minimum 10 – 20 minutes of time to locate a suitable channel and send a message (e.g. on social media).

### *Benefits for public authorities*

Under the policy package, due to implementation of a “digital-by-default” principle, Member States’ public authorities are expected to benefit from reduced costs compared to the baseline scenario in relation to:

- Postal services;
- Paper, envelopes, and printer cartridges;
- Shelves, archiving material (e.g. folders, clips), and space (i.e. office rent); and
- Administrative tasks, e.g. for paper based communication.



Thus, public authorities also benefit from time savings due to more efficient legal proceedings. This leads to a situation in which more legal proceedings can be handled within the same time, given constant staffing.<sup>117</sup>

Moreover, public authorities are expected to benefit from increased legal certainty when and how to apply the Regulation, as well as from increased mutual trust between Member States. This is expected to have a positive impact on Member States' national judicial systems.

With the implementation of e-CODEX, public authorities are expected to incur less costs with regard to **postal services** in the future. The eCODEX Impact Assessment, for instance, argues that the replacement of postal services with digital communication generates potential savings, between EUR 8 and EUR 21 per legal proceeding.

The estimates developed as part of this study show that it can be expected that the Regulation would be applied in around 3.7 million cases per year on average until 2030, this could amount to potential savings of approx. EUR 30 to 78 million per year across the entire EU.

In addition, public authorities are expected to save costs in relation to **paper, envelopes, and printer cartridges**. Based on the following assumptions, potential costs savings can be estimated to be approx. EUR 1.6 million across the EU per year.<sup>118</sup> Moreover, public authorities are also expected to incur less cost regarding **shelves, archiving material, and archiving space**. A German service provider<sup>119</sup>, for instance, charges the archiving of a running meter of folders (i.e. approx. 20 folders) with 25 Euro per meter as one-off cost, plus EUR 1.25 as monthly fee. Assuming that the postal communication (i.e. 4 documents on average) concerning each of the approx. 3.7 million legal proceedings per year is stored in a separate folder in two Member States for at least five years, this could amount up to EUR 60 million per year across all EU Member States of potential savings through the implementation of e-CODEX.<sup>120</sup> Since this estimate is based on the charges used by a German service provider, the actual cost savings are very likely to be lower across the EU.

Public authorities are also expected to benefit from decreasing administrative burden and thus **labour costs** regarding in particular communication, both in monetary (i.e. less staff costs) and temporal (i.e. less delays) terms. It can be assumed that each communication by post takes between 1 and 3 working days from the day the document is submitted until

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<sup>117</sup> Efficiency gains in legal proceedings could, however, also lead to budget and staff cuts in practice. This would then imply that the number of legal proceedings that can be handled within a given time would remain constant while the necessary staff would decrease.

<sup>118</sup> The formula for this is: (((3.7 million legal proceedings \* 4 documents) / 500 papers) \* 2 Euro) + (((3.7 million legal proceedings \* 4 documents) / 500 envelopes) \* 15 Euro) + (((3.7 million legal proceedings \* 4 documents) / 1,400 prints) \* 100 Euro) = 1 573 681.

<sup>119</sup> See: <http://www.aktenfarm.de/index.php?id=15>

<sup>120</sup> The formula for this is: (3.7 million legal proceedings \* 2 Member States \* 4 documents / 20 folders per meter \* 25 Euro) + (3.7 million legal proceedings \* 2 Member States \* 4 documents / 20 folders per meter \* 12 months \* 1.25 Euro).



it is delivered by post. This means, if authorities communicate four times with each other on average by post within a given legal proceeding, communication related delays can amount to 4 to 12 days (i.e. 8 days on average). Thus, if all 3.7 million legal proceedings are delayed by 8 days on average, the implementation of e-CODEX could potentially save up to 29.9 million working days per year across the EU from the overall length of all legal procedures.

The time and efficiency gained through this could be used to either handle:

- More legal proceedings within the given time by the same staff;
- The same number of legal proceedings within the given time by less staff; and
- The same number of legal proceedings with the given staff in less time.

These types of benefits are directly linked to other benefits for legal professionals, businesses and citizens.

Finally regarding increased legal certainty and enhanced judicial cooperation, the policy package introduces a higher level of speed and effectiveness of cross-border service of documents and has an overall positive impact on the judicial cooperation in the EU. In the current situation, the main failure of judicial cooperation with respect to the Regulation is the general insufficiency of mutual assistance on locating an addressee or clarifying an address due to the lack of information on the channels (if any) that are available within each Member State. The inclusion of a specific provision in the Regulation obliging Member States to provide in their territory at least one tool which effectively facilitates the clarification of the address for right seekers from other Member States in civil proceedings, would highly improve judicial cooperation between the authorities in that respect and, thus, contribute to the speed and effectiveness of service under the Regulation.

Furthermore, also obligations such as of the transmitting agencies to apply specific standardized international acknowledgment of receipts or to label envelopes for alert to the official nature of documents to be served or of the Member States to allow direct service from other Member States, would improve judicial cooperation in the EU by an increased convergence in these methods of service. They would contribute to a smooth, secure and more efficient process of service by post (Article 14) and of direct service (Article 15) between the Member States under the Regulation. The same counts for electronic service through the option expressly allowing and promoting this type of service under the Regulation.

Other options foreseen in the policy package, such as the mandatory use of e-CODEX for e-communication and secure transmission of documents between the designated authorities or the better provision of information on the e-Justice portal by the Member States, should have an additional positive impact on judicial cooperation. These instruments will improve the 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 procedure in cross-border service of documents.

#### Costs and benefits for legal professionals

This section provides assessment of cost and benefits for legal professionals in the Member States.

##### Costs for legal professionals

Legal professionals are expected to incur costs with regard to **understanding the new legislation and practices**.

For lawyers, especially those working independent of larger law firms, corporations, or legal networks, having to analyse and digest a new set of legislative rules can be time consuming (depending on the complexity of legislation), and thus factor in negatively on the revenue they are able to generate within a given time. An individual lawyer could, for instance, lose one hour of billable hours to check the legislation.

These costs are however not specific to this policy package but could be incurred under any configuration of options compared to the baseline scenario. The costs are also not seen as actual losses to lawyers but rather as investments they would have to make in order to generate new business or as business-as-usual costs.

##### Benefits for legal professionals

On the other hand, legal professionals also **benefit** from the implementation of the policy package. In line with the argumentation and estimates outlined above concerning the implementation of e-CODEX and Electronic Registered Delivery Service (ERDS), legal proceedings are expected to become **more efficient and less time consuming**. Lawyers, for instance, benefit from this development as it could be possible for them to handle more cases within the same time while simultaneously being able to decrease client fees in order to gain a competitive advantage vis-à-vis their peers (they would e.g. not have to forward fees for postal services, paper, envelopes, print outs etc. to their clients). Although this could lead to lower revenue on a case by case basis, it could be argued that lawyers' overall revenue could increase through competition – at least for the most efficient lawyers.

Moreover, lawyers are expected to benefit from increased **legal certainty** when and how to apply the Regulation, as well as **mutual trust** between Member States.

#### Costs and benefits for businesses as service providers

The implementation of the policy package is expected to have positive and negative economic impacts compared to the baseline scenario on service providing businesses in different industries.

Negative economic impacts are expected for the following types of businesses:

- Postal service providers;

- Bailiffs/private process servers;
- Paper and office supply providers; and
- Providers of archiving shelves.

Through the implementation of e-CODEX, as well as other distance communication means (ERDS) the revenue of the abovementioned types of businesses is expected to marginally decrease as firms' core businesses is not service provision related to judicial cooperation but is much wider than that.

With regard to postal service providers, the impacts are less concerning. As many postal service providers are increasingly incorporating secure electronic delivery solutions into their service offering, the reduction of registered post is likely to be balanced by gains on these services.

For bailiffs and private process servers, the impacts are likely to differ between Member States based on the competencies allocated to these types of businesses nationally. For example, in Member States where bailiffs are the only competent persons for the service of documents, they are expected to adapt to the legislation by adopting more digital service solutions. However, in Member States where legal persons offering direct service methods are working only as an alternative channel for service, negative impacts may be stronger.

In contrast, a small part of businesses' revenue would be shifted from the abovementioned to other types of businesses. The types of businesses that would benefit from the implementation of the policy package compared to the baseline scenario 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.

The revenue of these types of businesses is expected to increase marginally as firms' core businesses is not service provision related to judicial cooperation but is much wider than that.

As per the analysis contained in the e-CODEX Impact Assessment, IT consulting service providers could gain around EUR 1 million per year for the implementation of e-CODEX per public authority.

There is another element in the policy package which will clearly generate additional costs for postal service providers: the proposal that they should be obliged to use a new, specific international acknowledgment of receipt, which is designed for the service of judicial and extrajudicial documents (directly) by post under the Regulation. The aim of such a return slip would be 1) to ensure that information on the circumstances of the (attempt) of the delivery of the document to the addressee is reported back to the transmitting agencies in a more structured and detailed manner and 2) to immediately

alert, by its distinctive layout, the attention of the postal service providers to the importance of the consignment and, thereby, to ensure special care in course of the delivery.

Obviously, such a measure would generate additional costs for the postal service operators who are requested to carry out the delivery of the document under Article 14. While majority of these costs would in principle seem to be of one-off nature, mainly concerning the adaptation (installation of relevant procedures, training of personnel etc.), it is clear that these might be very varied among Member States due to the different use of letters in general and of such letters in particular as well as to the different financial position of operators and their different cost structure. However, it would appear that with time the additional costs generated by the use this special acknowledgment of receipt would fade out, on the basis of the assumption that those documents have to be delivered by the postal service providers anyway to the addressee, and the only difference to normal mail delivery service provided by these operators would be the different legal basis of their duty. Although, these additional costs of adaptation to the new obligations should not be overlooked, it is also important to note that in the vast majority of the Member States, postal service providers have to comply already now with specific rules of their national civil procedural law (supplementing the provisions for letter post of the Universal Postal Union Convention), when they are requested to deliver judicial documents in legal proceedings. According to the information contained in the e-Justice Portal, this is the case, among others, in Austria, Bulgaria, Croatia, Czech Republic, Germany, Hungary, Italy, Poland, Romania, Slovenia, Slovakia. In the number of Member States, the postal service providers are obliged not just to follow specific procedures when delivering, but they also have for example to use special acknowledgment of receipts (e.g Hungary) or special envelopes (e.g. Romania, Slovenia, Italy). Obviously, the adaptation of postal service providers in these Member States will be less cumbersome, since here they just have to change the already existing national regime to a European one.

#### Costs and benefits for citizens and businesses as parties to legal proceedings

Citizens and businesses as parties to legal proceedings are not expected to incur major costs through the implementation of the policy package compared to the baseline scenario.

The policy package is, however, expected to bring benefits compared to the baseline scenario such as:

- Time savings due to more efficient procedures; and
- Decreased legal fees paid to lawyers.

If public authorities communicate four times with each other on average by post within a given legal proceeding, communication related delays can amount to 4 to 12 days (i.e. 8 days on average). The implementation of e-CODEX could save this time for citizens and businesses.

This is of particular importance for businesses in the context of cross-border trade as the timely completion of a legal proceeding without undue delays can e.g. have implications in cases around financial claims. If legal proceedings are delayed, businesses may not be paid or supplied on time which could lead to detriment for clients.

Moreover, citizens and businesses are expected to benefit from decreased legal fees. Through the implementation of e-CODEX and increased uptake electronic methods of service, legal proceedings are expected to become more efficient. As most legal professionals charge by the amount of time spent dealing with a case, the legal fees are likely to decrease also. Individual decreases of fees are, however, expected to be marginal on a case by case basis but could, however, sum up to a considerable amount across all legal proceedings in the EU and over time.

Finally, the implementation of the policy package is expected to lead to less stressful legal proceedings compared to the baseline scenario. This is considered to be an important non-monetary benefit for citizens.

**Overall, the implementation of the policy package is considered to be more efficient than the baseline scenario:**

- The implementation of e-CODEX under the policy package is associated with comparatively moderate initial investments (i.e. capital investments, CAPEX) for public authorities that could be co-financed by the European Commission. Moreover, recurring operational expenditures (OPEX) are expected to be incurred by public authorities for the maintenance of the necessary hard- and software.
- The investment into technical infrastructure and processes is expected to make legal proceedings more efficient which is expected to decrease necessary labour costs. This could mean that more legal proceedings could be handled by the same staff within the given time. In addition, the necessary investments are balanced by decreased costs for postal service providers, paper and office supplies, as well as archiving costs that would have to be invested in the future under the baseline scenario.
- The implementation of the policy package is expected to be a benefit for legal professionals, in particular lawyers. Although they would incur costs in relation to understanding the legislation and checking the extent to which and how the legislation would apply to a specific legal case, it is outweighed by the legal certainty and clarity compared to the baseline scenario.
- Neither negative nor positive effects are expected in relation to the economy overall. It is, however, expected that positive economic effects of the policy package for specific types of businesses are negative effects for other types of businesses. For instance, the revenue generated for IT consulting service providers, as well as internet and telecom providers through the implementation of the policy package can also be regarded as a loss for postal service providers and office supply providers.

- Citizens and businesses are expected to benefit from the implementation of the policy package. In particular non-monetary benefits such as increased access to justice, freedom of choice, and decreased levels of stress within legal proceedings are important in this regard – especially in relation to vulnerable persons (see section below: ‘Impacts on diversity, non-discrimination and the protection of personal data’).

## *Coherence*

**Under the combined policy package, the coherence of the Service Regulation would be improved compared to the status quo. The amendments introduced by the policy package would positively contribute to both the internal and external coherence of the Regulation.**

The coherence of the Service Regulation to EU and national law would be improved compared to the baseline scenario.

The Regulation would continue to be largely coherent internally, as well as in relation to EU law, national law and bilateral agreements. In addition, the policy package would contribute positively to the coherence of the Regulation.

In terms of **internal coherence**, the provisions policy package targeting the right to refusal would enable to address the internal inconsistencies of the Regulation. On the one hand, the policy package would clarify the requirements regarding the information to be provided to the recipient concerning his/her right to refusal. On the other hand, the policy package would provide the necessary indicators to assess the language skills of the addressee as well as a clear explanation on the legal consequences of the refusal for the recipient. The policy package would enable the Regulation to be internally coherent concerning the right of refusal, reducing in the confusion and the diverging practices concerning the right to refusal.

As far as the **external coherence** is concerned, the policy package would oblige those Member States including the direct service in their national law to allow it in cross-border proceedings with the same conditions that are available domestically. This would ensure the removal of the barriers to the Internal Market. In this sense, the Regulation would be coherent with Article 26 TFEU as Member States that foresee direct service in their national legal frameworks would also have to accept such method in cross-border proceedings. Hence, businesses and citizens would benefit of such measure in any Member State (if the direct service were available). The coherence of the Regulation and the Treaties would be in this way improved.

The introduction of a tool for electronic communications using **e-CODEX** are in line with and support the current strategies of the Commission in the context of the Digital

Agenda and the e-Justice Strategy<sup>121</sup>. This amendment would also be in line with current projects ongoing in many Member States to increase the use of electronic communications in the area of justice.

The use of e-CODEX would also ensure the external coherence between the Service Regulation and other legal instruments already using e-CODEX, i.e. the **European Payment Order**<sup>122</sup> or **European Small Claims**<sup>123</sup>. With respect to the introduction of the tool for electronic communications, we note that it aims at building on existing standards and platforms and that it is planned to use e-CODEX for the Evidence Regulation<sup>124</sup>.

The policy package would amend the Regulation in order to introduce provisions enabling the **electronic service** to end users in qualified Electronic Registered Delivery Services (ERDS) (according to the standards of eIDAS Regulation), as a valid direct method of serving documents. This provision would increase the coherence between the Service Regulation and the **Small Claims Regulation**<sup>125</sup>, whose Article 13 (b) provides rules on the electronic service of document. In addition, both regulations would clearly state that the prior consent of the party is required to serve a document electronically.

Lastly, the policy package would introduce a “**digital-by-default**” principle in relation to the interactions between the designated authorities. Such principle would be aligned with the future legal instruments also including this approach. As explained in the eGovernment Action Plan, the Commission is planning to gradually introduce this principle when interacting with external stakeholders, using eIDAS services<sup>126</sup> (in 2018), eInvoicing<sup>127</sup> (in 2018) and eProcurement<sup>128</sup> (in 2019). The external coherence of the Service Regulation with these instruments would be ensured in this respect.

Overall, the external coherence of the Service Regulation would be improved under the policy package. Nevertheless, small overlaps identified in the evaluation would persist, regarding the overlap of tasks of the Central Bodies under the different legal instruments for the service of documents, such as the Maintenance Regulation<sup>129</sup>.

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<sup>121</sup> Strategy on European e-Justice 2014-2018, 21 December 2013 (2013/C 376/06).

<sup>122</sup> Regulation (EC) No 1896/2006, *ibid.*, and Regulation (EU) 2015/2421, *ibid.*

<sup>123</sup> Regulation (EC) No 861/2007, *ibid.*, Regulation (EU) 2015/2421, *ibid.*

<sup>124</sup> See the separate volume on the Evidence Regulation produced under this assignment.

<sup>125</sup> Regulation (EC) No 861/2007, *ibid.*, Regulation (EU) 2015/2421, *ibid.*

<sup>126</sup> Regulation (EU) No 010/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=EN>

<sup>127</sup> Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2016 on electronic invoicing in public procurement, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0055&from=EN>

<sup>128</sup> [http://ec.europa.eu/growth/single-market/public-procurement/e-procurement\\_en](http://ec.europa.eu/growth/single-market/public-procurement/e-procurement_en)

<sup>129</sup> Council Regulation (EC) No 4/2009, *ibid.*



## *Impacts on fundamental rights*

**The policy package would ensure access to justice and an equal protection of procedural rights, regardless of the Member State in question. Its provisions on the electronic service of documents and the electronic communications would be aligned with the data protection standards required.**

The policy package would address several issues which cause legal uncertainty and delays under the baseline scenario. At the same time, the policy package would increase access to justice by promoting the use of electronic methods of service of documents and a more effective protection of the parties' procedural rights. However, the effect of the policy package on data-protection will largely depend on the implementation at the Member State level.

First, the policy package promotes electronic service of documents valid under the Regulation, thus **contributing the fundamental right to an effective judicial remedy**. This way, diversity of needs and efficient methods of service are acknowledged, as the parties would be free to consent on accepting correspondence electronically in cross-border proceedings. This additional method of service together with the proposed 'digital by default' principle is expected to not only have a positive effect on access to justice, but also contribute to faster proceedings. Furthermore, it reduces costs or failures of service of documents experienced otherwise, where an inefficient method to effect service would have been chosen due to a lack of options under the baseline scenario.

Likewise, the clarification provided by the policy package on the definitions and concepts would reduce legal uncertainty and speed up procedures under the Regulation in practice. The policy package would contribute to more clarity and predictability of the procedure revolving around the right of refusal of addressees and a better protection of their procedural rights. The policy package would in addition state the criteria to assess the language skills of the addressee. Such amendment would further protect addressees ensuring they understand the content of the document they have been served on the one hand, and would safeguard the non-abuse of the right of refusal, thus equally protecting the plaintiff's rights on the other hand.

Second, the policy package would also have positive effects on **non-discrimination**. The policy package would contribute to a more equal access to justice as Member States will have to provide effective access for foreign persons to tools available in their territory for purposes of address enquiry. This would guarantee that the addressee actually receives the document. In addition, the policy package would include standardized legal principles on the use of fictitious and 'alternative' methods of national laws to the detriment of the application of the Regulation, eliminating the current ambiguity and fragmentation under the baseline scenario concerning the rights of parties in the Member States. Lastly, the policy package would also lay down a uniform time period for the availability to set aside a default judgment. These provisions would contribute to an equal protection of the procedural rights, regardless of the Member State.



However, it is noteworthy to mention that some aspects of the policy package could entail some risks. The inclusion of electronic service might increase the digital divide. Although this method would not be mandatory in the policy package, it might be used without taking into account the lack of access to ICT of some segments of the population.

Third, the proposed change towards using electronic communication through the use of e-CODEX for e-communication and secure transmission of documents and the CEF eDelivery is expected to exert effects on the **protection of personal data**.

Technical implementation and operation would be determined and controlled by Member States themselves, even if the infrastructure would be partially developed and financed at the EU-level. Since e-CODEX is a decentralised system, there will be no data storage or data processing by the entity entrusted with the maintenance of the e-CODEX software components, beyond what is necessary to maintain contacts with the entities operating e-CODEX access points. Considering that those entities that are responsible for setting up and operating the different e-CODEX networks, they will be solely responsible for the personal data transiting via the access points. Data protection requirements would therefore apply exclusively at national level for the different procedures where e-CODEX would be implemented. Depending on whether an access point is operated at EU or national level, either GDPR or Regulation (EC) No 45/2001<sup>130</sup> will apply.

The entity which is entrusted with the operational management of the e-CODEX components at EU level would, as is already the case, have to abide by Regulation (EC) No 45/2001 when processing personal data, and will have to abide starting with May 2018 the new GDPR. The GDPR would increase awareness on the issue, prompt actions to ensure security and integrity of databases and swift reactions to breaches of privacy in the judiciary. Lastly, important external factors with regard to the protection of personal data that would affect the proposed policy package would be also the persistent threats to cybersecurity in the public sector. The incidence of attempted attacks on public IT infrastructure would be expected to increase with their proliferation until 2030. These would be expected to also affect the judiciary in the Member States, and their impact could be potentially be aggravated because of the growing interconnectedness of IT systems (nationally and at the EU-level).

### *Environmental impacts*

**In the policy package is expected to decrease to a great extent the environmental impacts of the Regulation as it would introduce electronic provisions, such as the electronic service of documents and the use of electronic means to replace the paper-based communications between the designates authorities.**

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<sup>130</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, *OJ L 8, 12.1.2001, p. 1–22*.

Compared to the baseline, the policy package would be expected to have a number of potential positive and very few negative impacts on the environment. This impact is driven by three elements in particular, namely:

- The obligation for transmitting agencies to use specific forms of acknowledgment of receipt or to label envelopes containing documents to be served;
- The introduction of electronic service of documents;
- The plan to replace paper-based communication by electronic means using CEF eDelivery (eCODEX).

The policy package would oblige transmitting agency to use a specific standardized acknowledgment of receipt for postal service under Article 14 of the Regulation. However, the forms containing the new “return slips” would need to be printed and distributed to the relevant agencies, having a negative impact on the environment.

As part of the policy package, the **electronic service of documents** would be included in the Regulation as a possible method to serve documents. This method would enable to reduce the impacts on the environment as:

- The document would not need to be printed for its cross-border transmission and (in case national law in the receiving Member States allows for electronic service to the addressee) for its service ;
- The document would not be sent via postal services;
- No physical displacements of the relevant agency would be needed to serve the document.

The policy package would thus reduce the displacements of the receiving agencies to serve the document, and affecting to some extent the pollution and/or carbon emissions. This being said, this policy package would also require technology to be put into place in order to enable the electronic service of documents. As a result, the final impact of the policy package depends to a large extent on the IT solutions and equipment required for its implementation.

The intended replacement of paper-based communication with **electronic communication via CEF eDelivery** is also expected to have a positive environmental impact. As a paperless system, CEF eDelivery would reduce the use of resources (e.g. water and wood used for paper production), environmental impacts of their production (e.g. from the use of chemicals in paper production) and transporting paper to the buyer. In addition, the use of toner and ink is expected to be reduced.<sup>131</sup>

According to interviewed stakeholders, one important source of waste are printing errors or duplicate prints due to confusions about which forms have to be used. Electronic communication through the CEF eDelivery platform could address this cause of waste by implementing checks and guidance on how to fill in forms directly on the user interface.

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<sup>131</sup> While this impact may not affect production and the supply chain for both goods presently, reductions in demand are likely to have an impact on production and transport these products in the long run.

This way, even if a paperless administration within a competent court is not yet feasible (or desirable), waste of paper and toner could be reduced.

Finally, electronic communication is expected to reduce the emissions from transport in postal services. Overall, it is reasonable to assume that modernisation of the judiciary in the EU Member States will increase the amount of hardware and server infrastructure used on a daily basis until 2030 – independently of any amendments to the Service Regulation. Thus, overall energy consumption of IT infrastructure is expected to increase regardless of the policy package. Additional electronic communication is expected to have an impact on energy consumption (due to increased network traffic). Compared to paper-based communication, however, the carbon footprint is expected smaller under the proposed changes in the policy packages (illustrated in the text box below).

*Estimate: Carbon footprint reduction under the policy package*

Again, the “carbon footprint”<sup>132</sup> concept is used to provide an illustrative examples for the estimated environmental impact.<sup>133</sup>

As explained for the assessment of the baseline, a standard letter had a carbon footprint of 37.2 g of CO<sub>2</sub> in 2015.<sup>134</sup> Based on a widely cited estimate by Tim Berners-Lee from 2010, a regular email produces 4g of CO<sub>2</sub> whereas an email with a long attachment may have a carbon footprint between 19g to 50g (including instances where emails are forwarded). We assume again, that a typical communication under the Regulation between the receiving and transmitting agencies involves at least three iterations.

Based on the estimated development of the case load under the Regulation (presented in the economic model above), the CO<sub>2</sub> emissions from postage alone could have amounted to 207t in 2017. Using email, the carbon footprint would have amounted to 93t of CO<sub>2</sub> if competent the relevant authorities would have served the documents electronically. In 2030, CO<sub>2</sub> emissions from postage under the Regulation could reach a value of 269t (an increase of 30%). Replacing paper-based methods of service of documents with the electronic service would result in emissions of 121t of CO<sub>2</sub>. Based on this simplified calculation, emission under electronic communication would be reduced by 148t in 2030 (compared to the baseline scenario).

Of course, these numbers only provide a very rough estimate and recent improvements in server infrastructure and increased share of renewable energies sources used to power servers (but also postal delivery, e.g. using e-Fuels) may have changed the situation to the better. However, the emission of CO<sub>2</sub> is expected to decrease slightly under the policy package.<sup>135</sup>

<sup>132</sup> For a given service or product, the estimate includes all CO<sub>2</sub> emitted (e.g. in grams or kilograms) to produce the final product or deliver the service (including emissions from intermediate inputs and including emissions abroad).

<sup>133</sup> For an explanation of the concept and exemplary summary statistics for the EU28, see Eurostat (2018): Greenhouse gas emission statistics - carbon footprints, [http://ec.europa.eu/eurostat/statistics-explained/index.php/Greenhouse\\_gas\\_emission\\_statistics\\_-\\_carbon\\_footprints](http://ec.europa.eu/eurostat/statistics-explained/index.php/Greenhouse_gas_emission_statistics_-_carbon_footprints)

<sup>134</sup> International Post Corporation (04.11.2016): Postal sector continues to lead in carbon emissions reduction efforts, Source: <https://www.ipc.be/en/news-portal/sustainability/2017/03/03/13/53/postal-sector-continues-to-lead-in-carbon-emissions-reduction-efforts>

<sup>135</sup> This assessment depends on two assumptions. First, is we assume that the size of documents transmitted will be comparably small in most instances (amounting to several kilobytes for text and forms to several megabytes per image or other documents). Second, we assume that new technological

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developments will not dramatically decrease emissions from producing office supplies (paper, toner, etc.) or transport of freight (letters and parcels) until 2030.

## **ANNEX 8: EVALUATION REPORT**



Brussels, **XXX**  
[...](2018) **XXX** draft

**COMMISSION STAFF WORKING DOCUMENT**

**EVALUATION**

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

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## 1. INTRODUCTION

The objective of this evaluation is to carry out an ex-post evaluation of 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)<sup>136</sup> and its practical application.

Regulation (EC) No 1393/2007 aims to provide for expeditious channels and clear rules for transmitting documents from one Member State to another, thereby establishing a fundamental component of judicial cooperation. The Regulation includes certain minimum standards with regard to the protection of the rights of defence (e.g. Articles 8 and 19), and sets uniform legal conditions for serving a document by post directly across borders. Although the Regulation appears to address technical procedural matters, its impact on the everyday lives of EU citizens is substantial. In cases in which at least one party resides in another Member State than the one where the proceedings takes place, courts apply the Regulation, in most cases even several times in course of the proceedings (since often further documents have to be served formally, in addition to the document instituting the proceedings, such as the decisions closing the proceedings). However, the application of the Regulation is not restricted to proceedings before the civil tribunals, because its scope covers also "extra-judicial" documents, the service of which may arise in various out-of-court proceedings (e.g. in succession cases before a notary public, or in family law cases before a public authority), or even in the absence of any underlying judicial proceedings<sup>137</sup>. The proper functioning of the Regulation in these concrete cases is indispensable for ensuring access to justice and a fair trial for the parties to the proceedings as evidenced by the fact that the lack of proper service of the document initiating proceedings is by far the most often used ground for refusing the recognition and enforcement of judgments<sup>138</sup>.

The Commission assessed the practical operation of the Regulation on service of documents in 2013<sup>139</sup>. It concluded that the Regulation has been applied satisfactorily by the Member States' authorities in general but that the increasing judicial integration of Member States, where the abolition of *exequatur* (intermediate procedure) has become a general rule, has brought to light the limits of its current rules. The report has encouraged a broad public debate on the role of the Regulation in the Union's civil justice area and how in particular the service of documents may be further improved. The legislation on judicial cooperation has undergone detailed assessments over the past few years on its implementation in studies, in reports by the Commission and discussions in the European Judicial Network (see detailed list under chapter 4 on the methodology). To be able to provide relevant and up-to date

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<sup>136</sup> OJ L 324, 10.12.2007, p. 79–120

<sup>137</sup> CJEU Plumex reference

<sup>138</sup> An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (carried out by a consortium led by MPI Luxembourg), final report, June 2017, available at <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>, pp.60-61. Hereinafter referred to as the "2017 MPI Study".

<sup>139</sup> Commission Report COM(2013) 858 final of 4.12.2013.

conclusions on all key evaluation criteria, in 2017 the Commission contracted a Study to support the preparation of the evaluation and impact assessment for the modernization of the judicial cooperation in civil and commercial matters.<sup>140</sup>

In line with the Better Regulation guidelines, the evaluation will examine the 5 key mandatory evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value, in order to examine issues which have already been identified in the Inception Impact Assessment<sup>141</sup>. The evaluation's findings will feed into an impact assessment of the policy options which could address the problems identified. Regarding the temporal scope, the evaluation covers the entire period of application of Regulation (EC) 1393/2007, which goes back to 13 November 2008, which is the date on which the new Regulation on service of documents replaced the old one (Regulation (EC) 1348/2000). As concerns the geographical scope, all EU Member States are covered.

## **2. BACKGROUND TO THE INTERVENTION**

### **2.1. Objectives and Intervention Logic of the Regulation**

Parties involved in legal proceedings will have to *send and receive various documents to and from the other party*. The correct and reliable service of documents from one Member State to another is essential in judicial cross-border proceedings. An unsuccessfully executed service of documents can prevent cross-border judicial proceedings from being lawfully processed and resolved and can later on hinder the recognition of judgments.

Therefore, the core objective of the Regulation is to improve and expedite the transmission of judicial and extrajudicial documents between the Member States of the EU.

The Regulation applies in all civil and commercial matters where a judicial or extrajudicial document has to be transmitted for service between Member States. The Regulation is directly applicable in all Member States, including Denmark<sup>142</sup>.

In order to create a clear point of reference for the evaluation and impact assessment, it is necessary to carry out an analysis of the policy objectives and to establish the baseline against which the achievement of these objectives can be evaluated.<sup>143</sup> Below we present the Intervention Logic for the Regulation, which includes information on the needs, objectives (including general and specific objectives), inputs/activities implemented to achieve the objectives, expected results of the current rules and expected impacts relating to the current rules.

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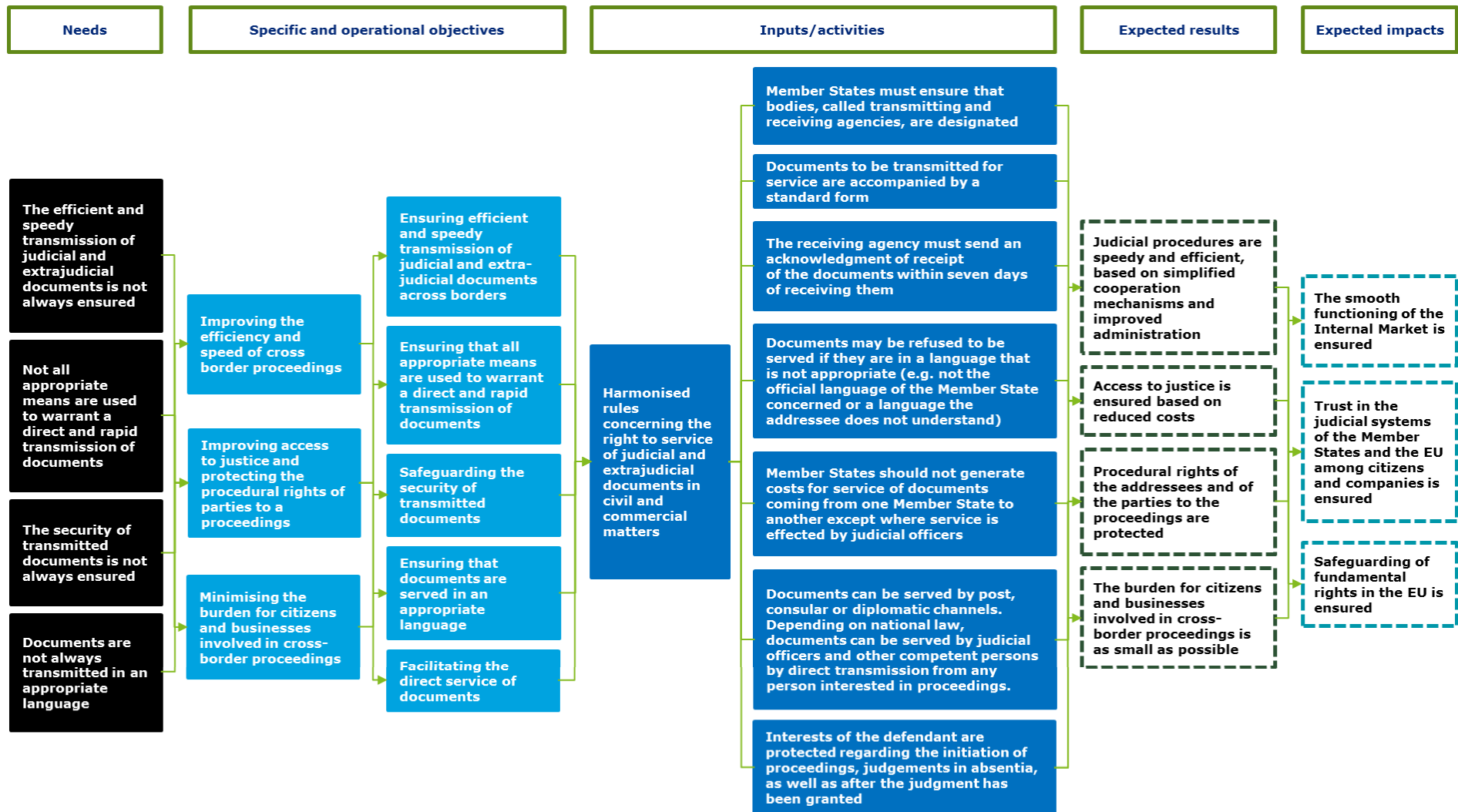
<sup>140</sup> JUST/2017/JCOO/FW/CIVI/0087 (2017/07) by Deloitte – hereinafter referred to as the "economic study".

<sup>141</sup> 2017/JUST/013

<sup>142</sup> Denmark does not take part in the adoption and application of EU actions taken under Article 81 of the TFEU. Irrespective of this, the Regulation on service of documents is applicable in the territory of Denmark, based on a parallel agreement concluded with the European Community in 2005 (see 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, 17.11.2005, p. 55).

<sup>143</sup> Cf. pp. 57-58 of the *Better Regulation Guidelines*.

Figure 1: Regulation –Intervention Logic

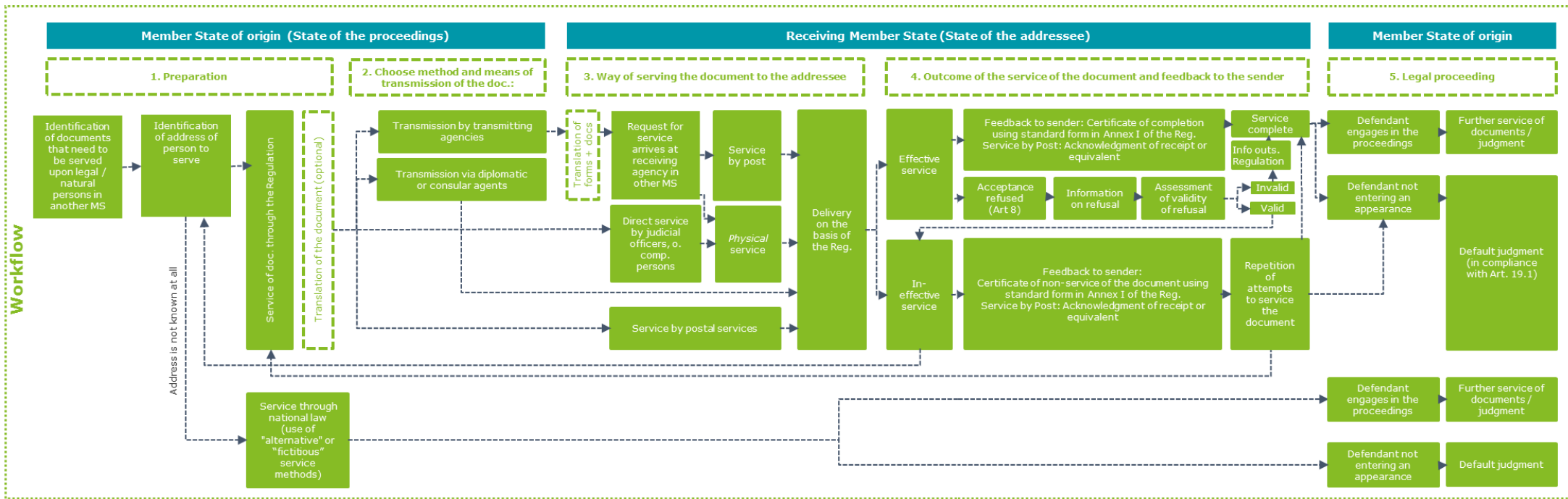


Source: Deloitte

## **2.2. Functioning of the Regulation**

This section provides an overview of the main provisions of the Regulation and how it is meant to function in practice. Based on the basic steps involved in the service of documents under the Regulation, the figure below sets out the workflow.

Figure 4: Workflow of the Regulation



Source: Deloitte elaboration

### *2.2.1. Designation of specific bodies*

The Regulation requires the Member States to designate agencies competent for the (a) transmission and (b) receipt of documents. As a general rule, and in line with the objective of the Regulation to speed up cross-border service of documents, Member States allocate the tasks of the "transmitting" or "receiving" agencies in a decentralized manner to local officers, authorities or other competent persons. Nevertheless, as an exception, the Regulation allows that a Member State only designates one transmitting and one receiving agency; in this case, the designation needs to be renewed every five years.<sup>144</sup>

Furthermore, the Member States have to designate a central body, which supplies information to the transmitting agencies and seeks solution in disputes connected with the transmission of documents (Art. 3).

### *2.2.2. Transmission: means, acceptance, receipt and refusal of requests and documents*

The main channel of transmission of the documents to another Member State for purposes of service is the traditional way of judicial assistance. In this case, the document will be sent by the transmitting agency (located in the original Member State) to the receiving agency (located in the Member State where the document is to be served). To ensure a rapid transmission of documents, Art. 4 stipulates that all appropriate means are permitted as long as certain requirements for legibility and reliability are met, but finally it depends on the communication of the Member States, which are the means of communication through which they are ready to accept the documents (Art. 2(4)(c)). The document must be accompanied by a standard form contained in the Annex of the Regulation, filled out in one of the languages the receiving country has decided upon in advance. Possible costs for translation are to be covered by the applicant (Art. 5).

To ensure speedy handling, the receiving agency is obliged to send an acknowledgement of receipt to the transmitting agency within seven days, again using a standard form (Art. 6). It must further seek contact with the transmitting agency as soon as possible if the documents received are incomplete or important information is missing. In an event of improper service, the documents must be returned immediately upon receipt. This includes cases that are not covered by the Regulation or if the formalities are not complied with.

It is up to the receiving agency to serve the document itself or have it served. Art. 7 establishes that the document in question must be served according to the law of the receiving Member State or in the specific method requested by the transmitting agency, unless such a method is not compatible with the law of that Member State. If the receiving agency has not

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<sup>144</sup> Art. 2(3).

been able to effect the service within one month, it must inform the transmitting agency via a standard form<sup>145</sup>.

According to Art. 8, the recipient may refuse to accept the document if it is not written in or translated into either a language he/she understands or the official language of the Member State where it is served. The addressee must be informed of these rights when the document is served, based on Annex II of the Regulation.<sup>146</sup> The refusal must be communicated immediately when the document is served or by returning the document to the competent authority within a week.

After (the attempt of) serving the document on the addressee, the receiving agency returns to the transmitting agency a certificate of service or non-service of the document<sup>147</sup> indicating the steps undertaken and the result of the delivery (Art.10).

In addition to the procedure described above, the Regulation provides rules on alternative procedures for the serving of documents.

Member States may transmit documents using consular or diplomatic channels or agents (Arts. 12 and 13). In addition, they may serve documents using registered post with acknowledgement of receipt or equivalent (Art. 14) or by direct means of service (Art. 15). Direct service means that a plaintiff, or the plaintiff's lawyer, can send the documents directly to a judicial officer in another Member State without having to contact a transmitting agency. However, this is only possible if the law of the Member States in question permits this approach.

### *2.2.3. Costs of transmission*

According to Art. 11, the costs linked to service of documents may not be charged or reimbursed between the Member States concerned. Exempted from this rule are cases in which the service was carried out by a judicial officer or by another competent person who is responsible for the service under the law of the receiving country. If the service is carried out by such a person, a fee may be charged for the intervention, in the form of a single fixed fee communicated to the Commission in advance by the Member State addressed. This lump sum must be proportionate and non-discriminatory.

### *2.2.4. Protection of the defendant*

Article 8 of the Regulation aims to guarantee the procedural rights of the addressee, who is allowed to refuse to accept 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. The provision

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<sup>145</sup> This standard form can be found in Annex I of the Regulation.

<sup>146</sup> A refusal is illegitimate if only the document's annex is not translated in the appropriate language and if these annexes are not relevant for the understanding of the subject's matter.

<sup>147</sup> For the certificate of completion, the prescribed form in Annex I is to be used.

determines certain elements of how the defendant should be informed about this right and addresses some procedural aspects of how this right should be exercised.

Article 19 of the Regulation contains provisions on the consequences of a defendant not entering an appearance. The provision limits the possibility for the court to give judgment against a defendant who has not appeared and who was to be served abroad. Paragraph 4 enables the judge to free the defendant from the effects of the expiry of the time for appeal against a default judgment. This provision thus provides a safeguard to make sure that the defendant's procedural rights have been taken into account. It is complemented by the possibility to refuse recognition of a judgment on the ground that the defendant was not served with the document which instituted the proceedings or an equivalent document correctly, as stipulated in the Brussels Ia Regulation (Art. 45(1)(b)).

### **2.3. Baseline and points of comparison**

Before the Regulation and its predecessor (Regulation (EC) 1348/2000) entered into force, the cross-border service of judicial and extrajudicial documents in civil and commercial matters was regulated by a various set of international conventions or bilateral mutual agreements between the Member States. There were two major global conventions elaborated in the Hague Conference on Private International Law, at least one of which each Member State was a party to, but these global conventions allowed for the use of bilateral agreements or arrangements if these further facilitated the cross-border service of documents. Consequently, there was a hugely fragmented legal landscape as to the applicable legal basis.

The legal sources in place before the Regulation (EC) 1348/2000 provided for a cumbersome and slow transmission and service of the documents. Mainly based on the traditional diplomatic or consular channels, or as the 1965 Hague Convention on the intervention of Central Authorities, they included several intermediary steps until the document reached the local authority (court or judicial officer) in the State addressed, who was responsible for the actual service of the document to the addressee. The average timeline for serving a single document was between 6 and 9 months, which was visibly reduced with the introduction of the EU Regulation (2 months on average).

Another feature of the baseline scenario was the high costs of the cross-border service, since the previous legal sources of the international law always required the translation of the documents to be served in the official language of the Member State addressed for a formal delivery of the document. The EU Regulation constituted a paradigm shift in this regard, since here the translation of the document is not an inevitable precondition of the service of the document, but an element for the protection of the rights of the defence, which becomes only necessary, if the original language of the documents is not understandable to the addressee.



### 3. IMPLEMENTATION / STATE OF PLAY

#### 3.1. Description of the current situation

The main findings of the quantification exercise carried out by the economic contractor are as follows:

- Basic assumption concerning the application of the Regulation:
  - Based on the feedback received during the interviews carried out as part of this study, it is expected that the Regulation was applied in 95% to 100% of all cross-border legal proceedings in civil and commercial matters between 2000 and 2017. It is thus used across the board save in a marginal number of exceptional cases.
- Number of legal proceedings in which the Regulation was applied:
  - In year 2000, it can be estimated that there were up to 2.8 million legal proceedings across all EU Member States in which the Regulation was applied;
  - Until 2017, this number is estimated to have increased to up to 3.2 million per annum (i.e. +16%)<sup>148</sup>;
- As concerns the type of cases in which the Regulation was applied, in the timeframe 2000-2017:
  - Approx. half of the cases in which the Regulation was applied related to legal proceedings concerning contractual obligations in the B2B / B2C context (e.g. payments and claims, product liability, conformity with contract, contract terms);
  - Cross-border compensation for damages relate to about 16% of the legal proceedings, successions and wills (13%) and property transactions (11%) come after;
  - Legal proceedings concerning divorces, legal separations as well as administrative cases account for approx. 4% of the overall case load
  - About 2% of all legal proceedings in which the Regulation was applied concerned insolvencies of businesses or were cases of parental responsibility.

The estimates above show that, overall, the number of legal proceedings in which the Regulation was applied increased from 2.8 million in 2000 to around 3.2 million in 2017 (+16%).

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<sup>148</sup> These figures are based on the data delivered by Deloitte in the economic study, decreased with the amount of administrative cases, to which the Regulation does not apply.

## 4. METHOD

### 4.1. Short description of methodology

#### 4.1.1. *The economic study*

This evaluation is based on a study to support the preparation of an evaluation and impact assessment for the modernisation of the judicial cooperation in civil and commercial matters prepared by Deloitte.<sup>149</sup> This study in particular takes into account the answers to a broad scale on-line public consultation conducted by the Commission which received 131 replies.<sup>150</sup>

For this economic study, the following other data collection tools were used:

- Desk research
- Strategic interviews
- Online surveys
- Fieldwork in 10 Member States
  - Telephone interviews in 5 Member States
  - Face-to-face interviews in 5 Member States.

Strategic interviews were conducted with staff at several European Commission's DGs, as well as EU-level organisations and fora representing judicial professionals.

The online surveys carried out by the contractor were distributed among the following stakeholder groups:

- Central bodies: E.g. ministries at the federal (where relevant) and state levels;
- Requested courts and other public bodies under the Regulation;
- Personnel directly involved in the cases: Judges, prosecutors, clerks, diplomatic or consular agents, lawyers, legal counsels/aids, bailiffs (and their professional organisations).

In total, 33 answers were received to the surveys, spread over these stakeholder groups and 13 Member States. More than one third of the responses, however, came from Germany whereas no other Member State exceeded three individual responses (apart from Portugal with five). Responses were received from stakeholders in the following Member States: Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, the Netherlands, Portugal, Romania, and Sweden. Feedback was obtained from Central Bodies, competent courts, and legal professionals in rather equal proportions.

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<sup>149</sup> JUST/2017/JCOO/FW/CIVI/0087 (2017/07).

<sup>150</sup> [https://ec.europa.eu/info/consultations/public-consultation-modernisation-judicial-cooperation-civil-and-commercial-matters-eu\\_en](https://ec.europa.eu/info/consultations/public-consultation-modernisation-judicial-cooperation-civil-and-commercial-matters-eu_en)

Fieldwork was carried out in the following ten Member States: Belgium, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Romania and Sweden.<sup>151</sup> In these countries, interviews with central bodies, judicial staff (including bailiffs), lawyers and ICT entities were conducted. In total, 65 interviews were carried out.

Stakeholder consultations focused on the collection of new data. Data collected in course of preceding activities on the assessment of the practical application of the Regulation were also used. Based on the limited timeframe and in order not to overburden the stakeholders involved, individual stakeholders were only interviewed once: i.e. they were asked to provide information relating to both the evaluation and the impact assessment at the same time. An ongoing gap analysis was carried out towards our Analytical Framework and impact assessment methodology, so as to ensure that mitigation action could be taken in time and where needed.

The preparation of the evaluation involved:

- Gathering evidence on the implementation of the Regulation;
- Assessing the performance of the entire Regulation.

As concerns the first point, in line with the Better Regulation Guidelines<sup>152</sup>, the starting point was to examine the status quo, including how the intervention has been implemented, which serves as a background to the evaluation. In this context, implementing legislation adopted by the Member States, Member States' notifications on how the Regulation is applied (including e.g. the designation of relevant bodies) as well as which technological tools are permitted and used by the Member States in relation to the Regulation were considered.

For the purpose of the assessment of the performance of the Regulation and in order to provide a comprehensive picture of the situation, the evaluation took a broad view. This included among others looking at the changes the Regulation has brought about, whether these changes were those intended, and whether in relation to related initiatives, the Regulation met its objectives and if these are still relevant.

#### *4.1.2. The On-line Public Consultation*

This Evaluation report also includes the findings of a broad open public consultation which was carried out between 8 December 2017 and 6 March 2018. There were 131 replies altogether, answers were received from all EU Member States, but also from Switzerland,

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<sup>151</sup> The Member States were selected based on the following criteria: Legal traditions in the Member States; no. of estimated incoming civil and commercial cases; no of judgements concerning the Regulation in the Unalex database; differences in relation to the national organisational and procedural set-ups, e.g. in relation to which types of stakeholders are able to serve documents under national law; Take-up of ICT / availability of electronic means in courts according to the 2017 EU Justice Scoreboard; Geographical balance; and Economic representativeness in terms of the EU's overall GDP, number of businesses (especially SMEs), and population.

<sup>152</sup> See p. 59.

Norway and Iceland. The results show that almost three quarters of all respondents have been involved in cross-border judicial proceedings on a professional level. This illustrates the importance of judicial cooperation in civil and commercial matters and the need for efficient tools such as the Regulations on the Service of Documents and the Taking of Evidence. It is to be noted, that 51 of the 131 replies came from various Polish courts.

#### *4.1.3. Preceding evaluative exercises*

The Regulation has undergone the following assessments over the past few years in studies, in reports by the Commission and discussions in the European Judicial Network in civil and commercial matters (EJN):

2012:

- Study on the application of Council Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in civil and commercial matters (launched by the Commission, carried out by Mainstrat and the University of the Basque Country) – final report adopted in June 2012;

2013:

- Report of the Commission 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) – COM(2013) 858 final;
- 20 November 2013: meeting of the EJN dedicated to the evaluation of the application of the Regulation on taking of evidence;

2014:

- 15-16 May 2014: meeting of the EJN dedicated to the evaluation of the application of the Regulation on service of documents;
- 2 October 2014: continuation of the discussion on the application of the Regulation on service of document in the EJN;

2016:

- Study containing a comparative legal analysis of laws and practices of the Member States on service of document (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI) – published in November 2016<sup>153</sup>;
- 14-15 November 2016: dedicated meeting of the EJN addressing practical problems and possible improvements of the two EU Regulations;

2017:

- An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law (launched by the

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<sup>153</sup> Available at [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf).

Commission, carried out by a consortium led by MPI Luxembourg) – final report delivered in June 2017<sup>154</sup>.

- 30 November – 1 December 2017: dedicated meeting of the EJM addressing practical problems and possible improvements of the two EU Regulations.

This list of evaluative activities can be complemented by the research and work carried out by the other institutions of the EU, as well as by external actors. An own-initiative report was adopted by the European Parliament on 4 July 2017 on common minimum standards of civil procedure in the EU which contains provisions related to the acceptance of modern communication technology both for service of documents and for taking of evidence. On the other hand, the Council Working Party on E-Law set up an expert group assessing issues of electronic service under the existing legal framework. It is also worth mentioning the ongoing ELI (European Law Institute) and Unidroit (International Institute for the Unification of Private Law) project "From Transnational Principles to European Rules of Civil Procedure" which involves specific work on service of documents and taking of evidence.

## 5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

This section presents the answers to the evaluation questions, i.e. effectiveness, efficiency, relevance, coherence and EU added value of the Regulation

### 5.1. Effectiveness

**Overall, the implementation of the Regulation has resulted in some clear improvements concerning the efficacy of cross-border service of documents. This said, according to the evidence gathered, the practical application of the Regulation still results in some delays and confusion for the parties involved and it has not fully achieved its general, specific and operational objectives.**

The assessment of effectiveness looks at the extent to which the Regulation has succeeded in meeting its objectives. It is important to first understand the hierarchy of objectives set out in the Regulation (as outlined in the Intervention Logic in Section **Error! Reference source not found.**) and the ways in which these are measured in the ensuing analysis:

- **Operational objectives** are defined in terms of the actions of an intervention and are measured through the output of the Regulation. In this regard, indicators measuring the quantity/quality of what has been produced by the Regulation are assessed (e.g. the efficiency of service across borders, use of rapid means for service and security levels of service methods).

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<sup>154</sup> Available at <https://publications.europa.eu/en/publication-detail/-/publication/531ef49a-9768-11e7-b92d-01aa75ed71a1/language-en>.

- **Specific objectives** are defined in terms of the concrete achievements of the intervention within the specific policy domain and are measured in terms of outcome indicators. In this regard, indicators measuring the outcome of the Regulation in terms of the impact on cross-border civil and commercial proceedings are assessed.
- **General objectives** are Treaty-based goals which the policy aims to contribute to and looks at “the bigger picture”. To assess the achievement of these goals impact indicators are used (e.g. extent to which the Regulation contributes to the Internal Market objectives, trust across EU in judicial systems and fundamental rights in the EU).

The table below summarises the main findings concerning the effectiveness of the Regulation in achieving each of the three types of objectives. An explanation of the main reasons why they have been achieved or not (including unexpected or unintended effects) is also provided.<sup>155</sup> The detailed findings from the data collection activities are presented in the ensuing sections.

*Table 17: Summary of the assessment of effectiveness by objective*

Level	Objective	Overall Assessment
<b>General</b>	To ensure trust in the judicial systems of the Member States and the EU	The Regulation has had a notably positive impact on ensuring the smooth functioning of the area of freedom, security and justice.
	To ensure the smooth functioning of the Internal Market	Regarding ensuring the smooth functioning of the Internal Market, the restriction of access to direct service (Article 15 of the Regulation) in some of the Member States was found to be contrary to internal market principles.
<b>Specific</b>	To further improve the efficiency and speed of judicial procedures	Overall, the Regulation has contributed to improving the efficiency and speed of cross-border proceedings. Despite delays in the process of serving documents, stakeholders generally agree that the situation has improved with the use of the Regulation. Nevertheless, the Regulation did not exploit the potential provided by the technological development and digitalization.
	To improve access to justice and protection of the procedural rights of parties to cross-border proceedings	The Regulation has contributed to improving access to justice and protection of procedural rights of the parties involved in cross-border proceedings, but not yet to the full extent. Although the provisions on the right to refusal and default judgments contained in the Regulation are welcomed by stakeholders, issues

<sup>155</sup> BRG – 2015 – 57

Level	Objective	Overall Assessment
		<p>still exist with regard to their interpretation and application in the Member States. In addition, the Regulation does not address its relationship to the use of fictitious or alternative methods of service of documents, provided by national laws, if the addressee has a residence or seat in another Member State. This shortcoming can also impact of the rights of parties involved in cross-border proceedings.</p>
	<p>To reduce the burden for citizens and businesses involved in cross-border proceedings</p>	<p>Although the Regulation has contributed to reducing the costs for citizens and businesses involved in cross-border proceedings, their burdens have not been minimised as much as appears possible, in particular through technological innovations.</p>
<p><b>Operational</b></p>	<p>Ensuring efficient and speedy transmission of judicial and extra-judicial documents across borders</p>	<p>The Regulation has in general improved the efficiency of transmission of judicial and extra judicial documents across borders but there is still room for improvement. In particular the potential in the use of electronic means of communication remains unexploited.</p>
	<p>Ensuring that all appropriate means are used to warrant a direct and rapid transmission of documents</p>	<p>The Regulation has not adequately ensured that all appropriate means are used to warrant a direct and rapid transmission of documents. In particular the restricted application of direct service (Article 15) among the Member States and the varying costs associated with the same service acts as a barrier to achievement of this objective.</p>
	<p>Safeguarding the security of transmitted documents</p>	<p>Consulted stakeholders did not express concerns over the security of transmitted documents nor did they provide examples of cases where the security of documents was put at risk.</p>
	<p>Ensuring that documents are served in an appropriate language</p>	<p>To a large extent, the Regulation has met this objective. Most courts consulted in the fieldwork interviews by the economic contractor agreed that refusals on the basis of the inappropriate language of the document to be served (Article 8 of the Regulation) do not arise very frequently, this only occurs approximately in 10% of the cases. Nevertheless, in those cases, where the addressee has to rely on this right and invokes the refusal of acceptance, various problems arise due to the ambiguities in relation to the interpretation and implementation of this provision..</p>

Level	Objective	Overall Assessment
	Promoting the use of direct methods of service of documents (Art. 14 and 15 of the Regulation)	Direct service (Article 15) is regarded as an efficient method of service under the Regulation but its enhanced use is being hindered by its restricted application since less than half the Member States are applying this provision and some apply it in a restrictive manner. Secondly, the disparity in fees charged for this type of service across the Member States implies that the method is not equally accessible to the applicants from all Member States. As to the method of service by post (Art. 14), this seems to be one of the most preferred means of service of documents under the Regulation, mainly due to its low cost and speediness. Irrespective of this, problems of quality in the delivery of the documents, especially regarding the use of the postal return slips, affect the efficiency of this method in a negative sense..

*Source: Deloitte*

The remainder of this chapter presents the detailed findings of the evaluation of the effectiveness of the Regulation in several steps. First, the achievement of the operational objectives is assessed through the functioning of the workflow of the Regulation (i.e. through the practical steps involved in the service of documents across borders). The assessment of the achievement of the specific objectives and general objectives follows.

#### *5.1.1. Achievement of the operational objectives*

The operational objectives set out in the Intervention Logic are:

- Ensuring efficient and speedy transmission of judicial and extra-judicial documents across borders;
- Ensuring that all appropriate means are used to warrant a direct and rapid transmission of documents;
- Safeguarding the security of transmitted documents;
- Ensuring that documents are served in an appropriate language;
- Promoting the use of direct methods of service of documents (Art. 14 and 15 of the Regulation).

**The operational objectives of the Regulation have been achieved to a large extent but some improvements would still need to be made in order to fully meet the objectives. In particular, the objectives of "ensuring that all appropriate means are used to warrant a direct and rapid transmission of documents" and "promoting the use of direct methods of service of documents" have not yet been achieved to the full extent.**



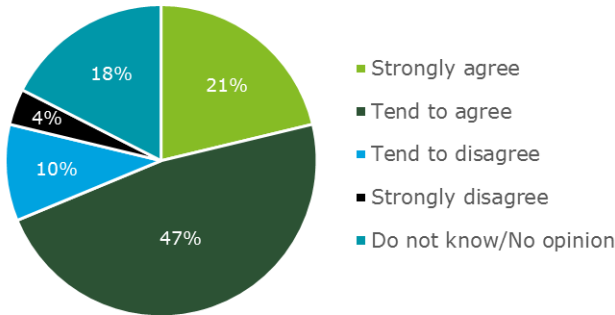
To demonstrate the extent to which the objectives have been met an overview of the overall efficiency of serving documents under the Regulation is first provided. This is followed by an analysis of the functioning of the Regulation in terms of the basic steps involved in the Regulation workflow<sup>156</sup>.

5.1.1.1. Overall efficiency of service of documents under the Regulation

There is much evidence that the Regulation has allowed for an efficient transmission of judicial and extra judicial documents across borders. This is mainly due to the new structure of the transmission channels, such as the direct communication between the transmitting and receiving agencies, and the enhanced availability of the direct methods of service of documents. Many stakeholders noted that transmission has improved with the introduction of the Regulation and continues to increase in efficiency every year. As noted by a number of interviewees, awareness of the Regulation and knowledge of how it works is increasing within the legal community. The figure below shows that 70% of respondents to the online public consultation (either “strongly” or “tend to”) agreed that the service of documents under the Regulation has been carried out efficiently.

Figure 2: Efficiency of serving documents across borders (public consultation results, 80 respondents)<sup>157</sup>

In response to: The service of the document to an addressee in another Member State was carried out in an efficient way



Source: European Commission’s Open Public Consultation

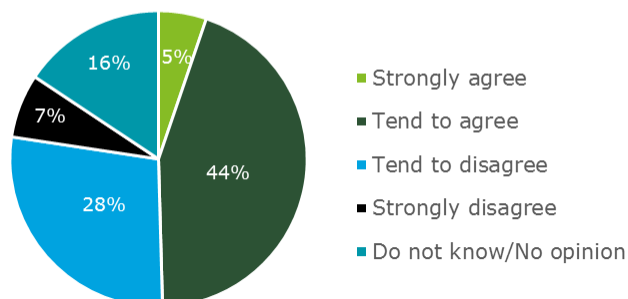
However, this positive result of the public consultation should be viewed somewhat more critically in light of the in-depth interviews with stakeholders carried out by the economic contractor in the fieldwork Member States. These indicate that although the procedures set out in the Regulation are appreciated and have improved transmission of documents, the procedure is still taking a long time and delays can be encountered at any stage of the process. In fact, less than half of the respondents to the public consultation found that the time taken to serve a document was adequate (Figure 5).

<sup>156</sup> See section 2.2

<sup>157</sup> 47 respondents to the public consultation did not answer this question.

Figure 5: Time used for serving documents across borders (public consultation results, 115 respondents)<sup>158</sup>

In response to: The time used for the service of a document in another Member State was adequate, there were no delays compared to the deadlines foreseen by the two Regulations.



Source: European Commission's Open Public Consultation

The data collected in the Member States also highlights the extent of delays for service of documents across borders. Based on input from national interviewees, the economic contractor estimated that it takes on average about 3.3 months to serve a document in another Member State through the methods under the Regulation. This estimate is well above the time-frame of one month set out in the Regulation for service through transmitting and receiving agencies. The reasons for such delays are associated with the internal procedures of Member States which can be quite different, leading to insufficient communication among agencies and non-compliance with the timeframe for serving documents set in the Regulation. In addition, interviewees in the Member States indicated that the application of the Regulation can differ significantly depending on the Member State involved. Even within the same Member State, differences can be encountered due to varying levels of knowledge and experience of the Regulation between regional authorities.

The different methods of service have been analysed below indicating the main issues affecting the efficient and speedy transmission of documents between the Member States.

#### 5.1.1.2. Preparation of the request and choosing the method of service

Before the service is carried out there are some initial steps that the applicant must conduct. Generally, there are four steps that are involved in the preparation of the request:

1. Identifying the types of documents to be served;
2. Identifying the address of the person to be served;
3. Assessing whether translation is necessary; and
4. Choosing the method of service.

<sup>158</sup> 12 respondents to the public consultation did not answer this question.

### Identifying the types of documents to be served

Article 1(1) stipulates that the Regulation applies to both judicial and extrajudicial documents. Whereas judicial documents are those having a close connection to court proceedings, there is some uncertainty as to what constitutes an “extrajudicial” document<sup>159</sup> and which extrajudicial documents fall within the scope of the Regulation.

The CJEU tends to favour a broad understanding of extrajudicial documents. It has decided that the Regulation extends to the service of such documents even where there is no underlying legal proceedings in the context of which the formal service of the document would become necessary. In addition, the Court also extended the scope of this concept to purely private documents (i.e. document which do not emanate from a public authorities) if their service is needed for the assertion or safeguarding of rights.<sup>160</sup>

The broad interpretation of the Court contributed to the ambiguity of this concept, since in a lot of the legal systems there is a clear distinction between the mail delivery for private reasons and the legal concept of service of documents, whereby the latter is only conceivable in the context of legal proceedings. This ambiguity is certainly acknowledged by the national interviewees in the economic study, still it was not found as a problem which would directly affect the daily application of the Regulation (receiving agencies informed the economic contractor that in most cases they just comply with the incoming requests for service without strictly reviewing the nature of the documents to be served). The ambiguity around this concept of "extrajudicial documents" in the Regulation, the fragmented interpretation of its content relying on the diverging views of the national procedural laws, is against the stated intention of the EU legislator to have this notion as an autonomous concept of EU law<sup>161</sup>.

### Identifying the address of the person to be served

It is clearly stated in the Regulation that it does not apply where the address of the person to be served is not known (Art. 1 (2)). However, as also highlighted in the Commission’s 2016 comparative legal analysis of the relevant laws and practices of the Member States regarding the service of documents<sup>162</sup>, in practice this provision causes significant problems for transmitting and receiving agencies.

Firstly, it is difficult to establish when an address is known or unknown. For example in some Member States it is sufficient to address a document to the last known address of the person to be served (e.g. in France). However in others, the sender may first have to verify the address before transmitting the document. In some cases, documents are transmitted to national

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<sup>159</sup> More than half of the respondents to the online survey of Deloitte indicated that the meaning of “extrajudicial documents” under the Regulation was not clear.

<sup>160</sup> CJEU 25.06.2009 - C-14/08 - *Roda Golf & Beach Resort SL*, unalex EU-179

<sup>161</sup> See CJEU judgment in Case C-14/08, *Roda Golf & Beach Resort*, paragraphs 49 and 50. Already anticipating this interpretation the EU legislator deleted from the current version of the Regulation (which was adopted in 2007) the obligation to draw up a "glossary" with the list of documents which Member States considered as falling under the "scope" of the Regulation.

<sup>162</sup> [http://ec.europa.eu/justice/civil/files/report\\_service\\_documents\\_en.pdf](http://ec.europa.eu/justice/civil/files/report_service_documents_en.pdf) pg. 7.

central bodies or receiving agencies with the expectation that they would assist in locating the addressee. In fact, Member States have different understandings on who is responsible for locating the addressee. In about half of the Member States, this responsibility lies exclusively with the party that wants a document to be served<sup>163</sup>, while in the others, although the party may still be required to specify an address for the addressee, the court seized, the court officer or the bailiff have a duty to take certain measures in order to trace the whereabouts of the addressee<sup>164</sup>. Despite the Member States' official positions on who is responsible for locating the addressee, the contractor was informed that in practice some Member States would willingly take some action to assist the requesting authority on clarifying an address. Conversely, some Member States are very strict with small mistakes in addresses and immediately send the request back to the transmitting agency. Other central bodies and agencies in the Member States do not even have the competence nationally to investigate private addresses. Furthermore, interviewees note the lack of clear information on the channels (if any) that are available within each Member State for assistance on locating an addressee. This diversity in approaches in the Member State stands in clear contrast with the demand of the stakeholders expressed in the online public consultation for a broader toolset provided for finding the whereabouts of addressees who are residing in the territory of other Member States<sup>165</sup>.

#### Assessing whether translation is necessary

According to Art. 8 (1) the document to be served should be written in, or accompanied by a translation into either of the following languages:

- 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.

At this stage of the process, i.e. before requesting service of the document, the lawyer or authority involved has to establish whether translation of the documents is necessary. Most lawyers and transmitting agencies consulted by the economic contractor in the fieldwork Member States stated that they would provide a translation of documents to avoid unnecessary delays caused by an eventual refusal by the addressee to accept the document. This preventive action is sometimes even further supported by first asking, whenever possible, the lawyer of the addressee which language their client understands. This finding corresponds to the information of the 2017 MPI Study, according to which transmitting agencies in some Member States require or encourage claimants to provide a “precautionary” translation of the relevant documents before accepting them to be sent to the requested

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<sup>163</sup> [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf), pg. 122.

<sup>164</sup> Ibid.

<sup>165</sup> 51 % of those who responded strongly agreed, while 35 % tended to agree, with the proposal that the Regulation should ensure greater transparency in terms of finding the whereabouts of addressees who are residing in the territory of other Member States.

Member State – e.g., Denmark, Germany, Romania or Spain<sup>166</sup>. Such practices are contrary to the objective of the Regulation to reduce costs and time of cross-border service through minimizing the instances where translations are actually required.

Key issues at this stage of the process are deciding to which extent the documents are translated and the quality of such translation. As reported in 25 out of 114 cases analysed on the Unalex database, the main obstacle in relation to Article 8 of the Regulation is the ambiguity of both the required (parts of) documents to be translated<sup>167</sup> as well as the quality of the translation to be provided<sup>168</sup>. This finding is supported also by interviews in the Member States. However, some interviewed lawyers also mentioned that the quality of translations is recognised as a potential problem for the proceedings and thus preventive action is taken by providing a sworn or certified translation to avoid issues with quality.

#### *Case law: Questions over the appropriate language*

There have been court cases concerning the lack of clarity with regard to the application of Article 8 of the Regulation, for example, on whether in the case of service on a legal person, the relevant standard of language skills must be drawn only from the specific recipient's linguistic knowledge or rather in accordance with the language competences in the company<sup>169</sup>, or whether an agreement on the use of a certain language for correspondence and the performance of contract justifies the presumption of the addressee's familiarity with the agreed language.<sup>170</sup>

It is, in the end, for the national court to determine with regard to objective criteria, whether the defendant commands sufficient language skills and whether the content of the document is sufficient to guarantee the defendant his rights or whether further translation of (parts of) documents is required.<sup>171</sup> Nevertheless, the criteria for determining whether the language of the documents is appropriate is not clear in the Regulation.

Overall, to a large extent the Regulation has succeeded in ensuring that documents are served in a language that is either understood by the addressee or in an official language of the Member State of residence of the addressee. Most courts consulted in the fieldwork interviews by the economic contractor agreed that refusals on the basis of the inappropriate language of the document to be served do not arise very frequently (*Contractor estimated that it occurs in about 10% of cases*)<sup>172</sup>.

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<sup>166</sup> 2017 MPI Study, p. 55.

<sup>167</sup> e.g. BGH (DE) 21.12.2006 - VII ZR 164/05, *unalex DE-1787*

<sup>168</sup> e.g. OLG Düsseldorf (DE) 15.07.2005 - II-3 UF 285/04, *unalex DE-1736*

<sup>169</sup> e.g. LG München I (DE) 30.11.2009 - 7 O 861/09, *unalex DE-3198* ; LG Düsseldorf (DE) 10.03.2016 - 14c O 58/15, *unalex DE-3408*.

<sup>170</sup> e.g. **LG Bonn (DE) 30.11.2010 - 10 O 502/09, *unalex DE-3197* ; BGH (DE) 21.12.2006 - VII ZR 164/05, *unalex DE-1787*.**

<sup>171</sup> LG Düsseldorf (DE) 12.01.2010 - 4b O 286/08, *unalex DE-3199*; CJEU 08.05.2008 - C-14/07 - Ingenieurbüro Michael Weiss und Partner GbR ./I. Industrie- und Handelskammer Berlin, *unalex EU-157*; CJEU 08.05.2008 - C-14/07 - Ingenieurbüro Michael Weiss und Partner GbR ./I. Industrie- und Handelskammer Berlin, *unalex EU-157*; similar conclusion by CJEU in the Order of the Court of 28 April 2016 taken in Case C-384/14, *Alta Realitat S.L.*, ECLI:EU:C:2016:316.

<sup>172</sup> See sections 3.3. and 4.2. of the 2018 Deloitte Study on service of documents.

### Choosing the method of service

There are five ways in which documents can be served under the Regulation:

- Through transmitting and receiving agencies (Art. 4);
- By post through registered letter with acknowledgement of receipt or equivalent (Art. 14);
- Through “Direct Service” i.e. by judicial officers, officials or other competent persons of the Member State addressed, where permitted (Art. 15);
- Through transmission by diplomatic or consular channels (Art. 12).
- By diplomatic or consular agents (Art. 13)

The Regulation allows for restrictions in application in two of these methods of service. The table below presents how these two methods are accepted in the Member States:

*Figure 6: Overview of methods of service in the Member States*

Member State permitting the method	Service by consular or diplomatic agents (Art 13)	Direct Service (Art 15)
Austria	X	
Belgium	(x)	x
Bulgaria	(x)	
Croatia	(x)	
Cyprus	X	x
Czech Republic	X	
Denmark	X	x
Estonia	(x)*	
Finland	X	x
France	(x)	x
Germany	(x)	(x)**
Greece	(x)	x
Hungary	(x)	X
Ireland	X	
Italy	(x)	X
Latvia	(x)	
Lithuania	(x)	
Luxembourg	(x)	X
Malta	(x)	X
Netherlands	X	X

Member State permitting the method	Service by consular or diplomatic agents (Art 13)	Direct Service (Art 15)
Poland	(x)	
Portugal	(x)	
Romania	(x)	
Slovakia	(x)	
Slovenia	(x)	
Spain	n/a	n/a
Sweden	X	(x)
United Kingdom	X	(x)
<b>Total</b>	<b>27 / (18)</b>	<b>14 / (3)</b>

Source: e-Justice portal,

*\*The parentheses with regard to the service by diplomatic officers or consular agents indicates the restriction of the Member States concerned to allowing the use of this service method only on persons who are nationals of the sender State of the diplomatic officer.*

*\*\* The parentheses with regard to the direct service mean restrictions by the law of the Member States concerned in relation to the applicability of this type of service in their territory.*

Although no major issues were noted with regard to choosing the method of service of a document under the Regulation, a number of factors come into play when deciding the method. The benefits and costs of each method are well recognised by stakeholders and are often balanced with the relative facts or needs of the case at hand. For example stakeholders mentioned that direct service would not be considered by some transmitting agencies if the proceedings are non-litigious. Other factors include the urgency of the case and the willingness of clients to bear costs of more expeditious methods. Stakeholders of two Member States also highlighted the common practice of using two methods of service in parallel (e.g. postal and direct service) to ensure the effective service of the document. It is also commonplace that service through registered post is first attempted and, if unsuccessful, direct service is applied.

The functioning of these different methods of service are assessed in the ensuing paragraphs. The use of service through diplomatic or consular channels was found to be extremely low and this it is not assessed in detail below.

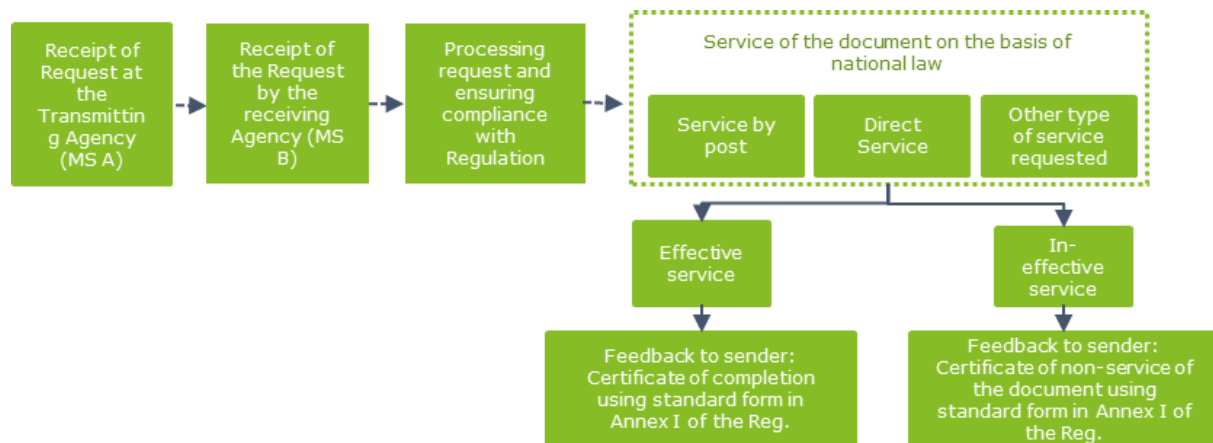
#### 5.1.1.3. Service by transmitting and receiving agencies

**Service of documents by transmitting and receiving agencies is generally considered sufficient but not overly efficient. The predominant reliance on paper-based and**



**formalised methods of communication between agencies can add additional delays to the process and hinder the objective of providing speedy and efficient service of documents. In addition, despite this method being the regulated in most detail within the Regulation, different procedures in the Member States affect its common application.**

*Figure 7: Standard process of service through transmitting and receiving agencies*



*Source: Deloitte elaboration based on the Regulation*

The service of documents through transmitting and receiving agencies (Art. 4 to 11) is an important method in practice: the frequency of its use equals to that of the use of the direct methods accepted in the Regulation (in the online public consultation 53 % of those who expressed an opinion preferred serving through the designated agencies; whereas 47% preferred the use of the direct methods).

There are some issues that limit the potential of the Regulation to fully reach its objective of efficient transmission. The analysis carried out by the economic contractor shows that delays are a significant issue with regard to service of documents through transmitting and receiving agencies. Results from the interviews indicate that the documents are not served within one month of the request being received by the receiving agency and this is further supported with findings from the online survey. The main issues in terms of the main steps in serving a document through transmitting and receiving agencies are the following:

#### Step 1: Locating the relevant agencies and sending the request

Before actually setting in motion the process of serving documents through the transmitting and receiving agencies, the claimant has to first locate the relevant authority in his/her Member State and, similarly, the transmitting agency has to locate the relevant transmitting agent in the Member State addressed.

Although the majority of respondents to the online public consultation (75%) agreed that it is easy to identify the agency or the competent authority in another Member State, some difficulties were highlighted in the interviews. For example, the Central Body in one Member State pointed out that almost all incoming requests are directed to them despite the regional



courts being identified on the e-Justice portal as the relevant receiving agencies. Other receiving agencies mentioned that they sometimes receive requests that are outside their jurisdiction. Thus, from the transmitting point of view, it may be easy to find an agency in the Member State to receive the documents but this may not necessarily be the agency with jurisdiction to handle the request. Interviewees noted that this is because information on the e-Justice portal, although it is available for almost all Member States, is not always up to date. The transfer of the request and the documents from the wrong agency to the correct one can cause a delay of several days.

Some lawyers and courts were also critical of the involvement of transmitting agencies in the Member State of origin, stating that it adds another unnecessary intermediary into the process, thus leading to additional delays. A number of lawyers in one Member State questioned the added value of involving a transmitting agency in the Member State of origin if all relevant contact details of receiving agencies are available online.

Another issue identified during this step is the contrasting approaches regarding costs for service. In some Member States, the costs for service through a judicial officer or bailiff is sought upfront, but only after the request has been transmitted to the receiving agency. Because information is not always clearly provided (e.g. on the e-Justice portal) on this, it can lead to delays in proceeding with the request as the information has to first be communicated to the transmitting agency and then payment has to be processed. If the transmitting agency is aware of this condition upfront, it can send payment with the request which would allow for much speedier service.

#### Step 2: Transmission of documents between transmitting and receiving agencies (and subsequent communications)

The procedure of service through transmitting and receiving agencies is functioning satisfactorily in principle but one main barrier to efficient and speedy transmission of documents is the strong reliance of Member States' authorities on paper communication. This is also exacerbated by the use of various different standard forms for the communication between the agencies.

The table below provides an overview of the means of receipt of documents by receiving agencies in the Member States.

*Table 18: Overview of accepted means of receipt of documents and of communication by receiving agencies*

Member State	Postal service	Fax	Email	Telephone	Other
Austria	x	X			x
Belgium	x	x	X	x	
Bulgaria	x				
Croatia	x				
Cyprus	x	x	X		
Czech Republic	x	x	X		
Denmark	x	x	X		
Estonia	x	x			x
Finland	x	x	X		
France	x				
Germany	x	x	(x)	(x)	x
Greece	x				
Hungary	x	x	X		
Ireland	x	(x)		(x)	x
Italy	x				
Latvia	x				(x)
Lithuania	x	x			
Luxembourg	x	x	X	x	
Malta	x	(x)	(x)		
Netherlands	x	(x)	(x)		
Poland	x				
Portugal	x				
Romania	x	x			
Slovakia	x				(x)
Slovenia	n/a				
Spain	n/a				
Sweden	x	x		(x)	(x)
United Kingdom	x	x			
<b>Total</b>	<b>26</b>	<b>17 / (3)</b>	<b>10 / (3)</b>	<b>5 / (3)</b>	<b>7 (3)</b>

Source: e-Justice portal<sup>173</sup>

In fieldwork interviews the economic contractor found that almost all communication between transmitting and receiving agencies is conducted through regular post. Even in cases where no particular issues arise, the use of regular post means that a certain amount of time is spent on communication even before any attempts to serve the document. Where issues arise or clarifications are needed with regard to the request (e.g. clarification of address or method of service) communicating this through post can significantly delay the process. The results of

<sup>173</sup> [https://e-Justice.europa.eu/content\\_serving\\_documents-373-be-en.do?member=1](https://e-Justice.europa.eu/content_serving_documents-373-be-en.do?member=1)

the online survey indicate that email is never or rarely used, even in Member States where this was communicated as an accepted means of communication. Two main reasons can be identified for the low uptake of email communication between the agencies:

- Transmitting and receiving agencies in the Member States explained that the method of working with paper documents on the one hand is most practical for them since it is in line with their regular working practice. On the other hand, it is recognised that it may not be the most efficient way of working. Practically speaking, although a request may have been received by the mail department, it may take some days for the relevant staff to process it and to send an acknowledgement of receipt to the transmitting agency. The majority of respondents to the survey indicated that they either occasionally or (very) frequently have difficulty in sending the acknowledgement of receipt within the 7 days required under the Regulation. This is also supported by the national interviews carried out by the contractor, on the basis of which the contractor estimated that in approximately 30% of cases, an acknowledgement of receipt is not received by the transmitting agency.
- Security concerns were identified as another reason for the low uptake of electronic means of communication. However, there are some contradictions with this finding. Stakeholders noted that security of documents may also be at risk with postal service because there is the possibility that documents get lost (when agencies use regular post for transmission between themselves) or it is delivered to the wrong addressee. Some interviewees also highlighted the potential security risks that accompany simple email as a means of transmitting documents. This is likely because public bodies are not sure of the IT security measures of their counterparts in other Member States and the hosting provider of their email systems.

### Step 3: Service of the document by the receiving agency

An important modification in the rules on serving documents in the EU introduced with the current Regulation is the 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.<sup>174</sup>

In general, although most stakeholders consulted during the study agreed that the Regulation has improved the efficiency of serving documents across borders, reservations were expressed regarding the burden and length of the process for service through transmitting and receiving agencies. It was highlighted by some stakeholders that this type of service is not reliable in cases where timing is crucial (e.g. in insolvency<sup>175</sup> or enforcement cases). The time limits

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<sup>174</sup> 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) COM/2013/0858 final.

<sup>175</sup> The Regulation (EU) 2015/848 on insolvency proceedings anticipated this circumstance by expressly stating in recital (64): "It is essential that creditors which have their habitual residence, domicile or registered office

contained in the Regulation are mostly not adhered to by the agencies and are thus regarded as unrealistic by interviewees. This result corresponds to the outcome of the online-public consultation, in which almost 42% of those who expressed an opinion were of the view that there were delays compared to the time limits set by the Regulation.

A main argument in favor of using receiving agencies for the purposes of cross-border service of documents was the guarantee that an acknowledgement of receipt will be received. Indeed, lawyers in Member States that are not obliged to serve documents through court officials (e.g. bailiffs) cited the assurances that come with service through transmitting and receiving agencies as one of the main benefits. Despite service by registered post being available in all Member States, lawyers appreciate the guarantee of service if it is completed by an agency and that it will not be questioned in the court of origin.

In addition, although not a regular or a consistent occurrence in the Member States, the involvement of transmitting and receiving agencies can assist in locating the addressee or clarifying the address on the document. For example, one transmitting agency signalled that when an address is clearly wrong or has been spelled phonetically, they would directly modify the address to ensure that it reaches the correct person without recourse to the transmitting agency. The fact that receiving agencies have knowledge on the procedures in their Member States was also regarded as a key advantage of this method of service.

#### Step 4: Returning the certificate of completion or non-completion of service

The final step in the service of documents through receiving and transmitting agencies is filling out of the annex form regarding the service or non-service of documents. No general issues were reported with this step. However, again, delays in the transmission of such form was highlighted.

#### 5.1.1.4. Service by postal services

**Overall, the inclusion of postal services within the Regulation as an alternative means to service through transmitting and receiving agencies is positive. Stakeholders generally appreciate the low cost of the service and the fact that when filled in correctly, the acknowledgment of receipt is mutually recognised by courts in the EU. Difficulties arise however when the quality of the service is insufficient including where the acknowledgement of receipt is filled in incorrectly and cannot be used as an actual proof of service or non-service.**

Due to the low cost and expeditiousness of service by post, it is the most used form of service of documents and is the preferred method of service<sup>176</sup> in cross-border cases. Different from

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in the Union be informed about the opening of insolvency proceedings relating to their debtor's assets. In order to ensure a swift transmission of information to creditors, Regulation (EC) No 1393/2007 of the European Parliament and of the Council (6) should not apply where this Regulation refers to the obligation to inform creditors."

<sup>176</sup> All respondents to the survey carried out by the economic contractor indicated that registered post is their preferred method. See also Report COM/2013/0858 final, p. 13.

the Hague Convention on service abroad, no Member State may prohibit the direct service by postal services. The main advantage of this method of service is the reduction of costs compared to other methods of transmission. Interviewees also noted that where the acknowledgement of receipt is filled in properly and returned, it provides a satisfactory level of legal certainty.<sup>177</sup> Legally speaking, the fact that service by registered post in another Member State is expressly recognised in the Regulation, provides guarantees to lawyers and judicial officers that this service will be recognised in any court in the EU.

However, there are still some issues communicated by the interviewees of the economic study regarding the quality and reliability of postal services for the purposes of cross-border service of documents. Although 63% of respondents to the public consultation indicated that the Regulation contains clear rules on service by post in another Member State, 55% indicated that they have experienced problems with service by post.

The biggest issue seems to be the different levels of quality of postal services in the Member States.<sup>178</sup> Some interviewees pointed out that post is unreliable since they do not know if the postal services will deliver in time or to the right person. The origin of this practical problem lies in the fact that the Regulation does not harmonize the conditions relating to the eligible substituting recipients (i.e. who are the persons under the address whom the document can be handed over if the addressee is not present at the time of the delivery), and does not regulate the consequences of an unclaimed delivery (i.e. when the document is left uncollected and is returned to the sender by the postal operator). Courts are aware that postal services may unintentionally provide the document to a family member or other person/staff member at the premises (i.e. substituted service) unaware of the legal implications of such act.<sup>179</sup> In all Member States, the risk with registered post is that the addressee is not at the address at the time the mail carrier comes. As a notice is normally left at the premises to inform the addressee that a package is available at the post office for collection, the addressees may not take proper notice of the note or will not go the post office to collect it (because of time constraints or on purpose to avoid the reception of the document). The length of time which the document remains at the post office for collection is also different depending on the Member State and service provider.

Another crucial issue regarding service through post is varying approaches to filling out the acknowledgement of receipt. Many interviews mentioned that the quality of the acknowledgment of receipts is often not sufficient to prove that service was effective. For example the date of receipt may not be properly filled in or the signature is illegible or not supplied. In addition, some interviewees highlighted the fact that it is unclear whether digital versions of acknowledgment are regarded as “equivalent” to original versions.

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<sup>177</sup> Supported also by 63% of respondents to the public consultation who indicated that ‘The Regulation contains clear rules on service by post of a judicial or extrajudicial document in another Member State, it provides a satisfactory level of legal certainty in this regard’.

<sup>178</sup> This issue has appeared in 19 out of 114 cases analysed on the Unalex database.

<sup>179</sup> For an example see: **OLG (DE) 26.07.2005 - 16 U 59/05, unalex DE-1822**

In addition, interviewees noted that the approach to the treatment of official documents by postal services in the Member States is different. In some Member States for example (Hungary, Slovenia, Italy) official documents are clearly identifiable to the postal services and are treated in a different way to regular registered post. It was noted that once a registered letter goes across border, the postal services in other Member States may not recognise the official nature of the document. Even if the official nature of the document is recognised, the Member State may not have any specific procedure in place for prioritising the delivery of the document.

5.1.1.5. Direct Service

**Stakeholders have indicated that direct service is an efficient method of serving documents. This is because the sender is assured that appropriate efforts will be made to locate the addressee and information on the right to refusal is provided. However, the fact that direct service is only available in 12 Member States ultimately hinders the ability of applicants to transmit documents in this efficient and speedy way. Further, some Member States have very strict rules on the way that direct service can be used under Art. 15 of the Regulation, which may differ from the domestic rules in their Member State. This may cause confusion and additional burdens to senders attempting service from other Member States.**

The direct service of documents under the Regulation is officially available in 12 jurisdictions (11 + Scotland). Some lawyers informed the contractor that if they are unsure of the procedure in another Member State, they would send the document for direct service in the Member State addressed to a lawyer or process server/bailiff in that Member State. This tends to happen more in Member States where service is conducted more by lawyers as opposed to judicial officers and between neighboring Member States (since their legal cultures are more likely or are presumed to be more similar).

*Table 19: Availability of Direct Service in the Member States*

Member States allowing direct service of documents	BE, DK, EL, FR, HU <sup>180</sup> , IT, CY, LU, MT, NL, FI, SCT <sup>181</sup>
Member States not allowing direct service of documents	BG, CZ, EE, IE, HR, LV, LT, HU, AT, PL, PT, RO, SI, SK, EN&WAL <sup>182</sup> , NI <sup>183</sup>
Limited application (i.e. with conditions/exceptions)	DE, SE

Source: e-Justice Portal l<sup>184</sup>

<sup>180</sup> Information not yet updated on the e-Justice portal: As of 1 Jan 2018, the Hungarian Chamber of Judicial Officers is also a receiving agency. Article 15 is not used for outgoing requests by HU.”  
<sup>181</sup> Scotland  
<sup>182</sup> England and Wales  
<sup>183</sup> Northern Ireland

No evidence was found of major issues associated with direct service under Article 15. On the contrary, when used, direct service appears to be an efficient and effective service whereby the sender is sure that appropriate efforts will be made to locate the addressee and information on the right to refusal is provided. The issues with direct service are the different levels of availability across the Member States and the costs associated with it (see section 5.1.1.4 above).

On assessing whether the Regulation has succeeded in meeting the objective of facilitating direct service, several factors are relevant. On the one hand, positive efforts to meet this objective are acknowledged i.e.:

1. The option for Member States to apply the provision is available in the Regulation;
2. Mutual recognition of service through this method is ensured where Member States are applying it;
3. Flat rate fees, fixed in advance by the Member States concerned, and published on the e-Justice portal.

On the other hand, the full realisation of the objective is being hindered by two main barriers. The first barrier is the fact that less than half of the Member States are applying this provision. Despite direct service being available in more than 12 Member States for domestic proceedings, it is not fully available for applicants from other Member States.

Secondly, the disparity in fees for direct service across the Member States is another barrier to the increased uptake of the method. Although Member States should indicate fixed fees for direct service in their Member State, the extent to which these fees are applied in practice is questionable. Based on data provided by interviewees costs for direct service may range from EUR 35 to EUR 135. Thus, the direct service method is one which can cause significant uncertainty to the parties involved because of its limited availability, certain conditions applied under the Regulation that are not consistent with the national law of the receiving Member State and the disparity of costs.

#### *5.1.2. Achievement of the specific objectives*

The specific objectives as set out in the Intervention Logic are:

- Improving the efficiency and speed of cross-border proceedings;
- Improving access to justice and protecting the procedural rights of parties to a proceedings;
- Minimising the burden for citizens and businesses involved in cross-border proceedings.

**It was found that the Regulation has impacted positively on all specific objectives. Overall, while the Regulation has improved the efficiency and speed of judicial**

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<sup>184</sup> [https://e-Justice.europa.eu/content\\_serving\\_documents-373-en.do](https://e-Justice.europa.eu/content_serving_documents-373-en.do)

**proceedings and thereby also contributes to ensuring the right to access to justice and the protection of the rights of the parties, there is still room for improvement. Regarding minimising the burden for citizens and businesses involved in cross-border proceedings, although the Regulation has improved the situation, it does not exploit all possible opportunities for further minimising burdens under the Regulation. The most notable defect in this regard is the non-recognition or promotion of faster and direct means of digital communication.**

#### 5.1.2.1. Improving the efficiency and speed of cross-border proceedings

**Overall, the Regulation has contributed to improving the efficiency and speed of cross-border proceedings. Despite delays in the process of serving documents, stakeholders generally agree that the situation has improved with the use of the Regulation.**

According to 76% of respondents to the online survey, the Regulation has contributed to improving the efficiency and speed of cross-border proceedings. These findings are supported by the majority of interviewees in the Member States.

The factors contributing to the achievement of this objective include:

- The direct communication between the transmitting and receiving agencies in the Member States (no intermediary body included, such as the Central Authorities in the workflow of the 1965 Hague Convention) and the decentralization of the "end points" of the communication channel;
- Standardised forms of communication between agencies;
- The general acceptance of certain direct method of service of documents (service by registered post and the "direct service");
- Provision of information on service on documents on the e-Justice portal.

However, as described also under Section 5.1.1, the Regulation still has some limitations in terms of achieving the objective of improving the efficiency and speed of cross-border proceedings with more rapid and direct means of communication between agencies. This is magnified by the lack of electronic communication and the high administrative burden associated with paper-based communication.

#### 5.1.2.2. Improving access to justice and the protection of the procedural rights of parties involved in cross-border proceedings

**The Regulation has contributed to improving access to justice and protection of procedural rights of the parties involved in cross-border proceedings, but not yet to the full extent. Although the provisions on the right to refusal and default judgments contained in the Regulation are welcomed by stakeholders, issues still exist with regard to their interpretation and application in the Member States. In addition, the Regulation does not address its relationship to the use at domestic level of fictitious or alternative methods of service on addressees with a residence or seat in another Member State, which can also impact of the rights of parties involved in cross-border**



## proceedings.

For the analysis of the Regulation's contribution to protecting the procedural rights of parties to a proceeding, it is important to look at the two main provisions of the Regulation related to protecting the procedural rights of parties to a proceeding:

- The right to refusal of documents served (Art. 8);
- Protection against default judgments (Art. 19).

Issues affecting the rights of parties that are omitted from the Regulation are also presented subsequently.

### The right to refusal of documents

Under the Regulation, the addressee has the right to refuse documents if they are not written in or accompanied by a translation into, either of the following languages:

- A language which the addressee understands; or
- One of the official languages of the place of service.

This right ultimately protects the parties against a case being brought against them which they do not understand. As identified above in Section 5.1.1.2, the provision of documents in a language not in compliance with Article 8 is a rare occurrence. Interviewees further stated that even where a document is not provided in the appropriate language, this is easily remedied and it does not ultimately affect the rights of the addressee.

This provision introduced by the original Regulation of 2000, which based the language requirement on the subjective language knowledge of the addressee is an improvement over the solution of the 1965 Hague Convention on the service of documents and made formal service possible even in cases where the documents were not translated in the language of the receiving State<sup>185</sup> where this is in line with the legitimate procedural interests of the parties to the proceedings: as a general rule, translation of the document is not necessary, but the rights of the defence of the recipient is adequately protected by the possibility of refusing the service of the document.

The new solution enabled cheaper and speedier service of documents between Member States, but it generated an extra difficulty in the context of the assessment of the validity of the refusal. Whereas the assessment of the objective criterion of having a translation into the language of the receiving State is easy; getting convinced on the language knowledge of the recipient is more complex, and requires the thorough assessment of several various objective

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<sup>185</sup> Pursuant to paragraphs (2) and (3) of Article 5 of the 1965 Hague Convention, a document without translation into the official language of the State addressed may be served to an addressee only if he/she accepts it voluntarily (= 'informal service').

factors that hint only indirectly to the existence of the subjective requirement (language skills of the recipient). This situation, in lack of clear indicators or guidance in the Regulation, generates problems in course of the practical application.<sup>186</sup> On the other hand, there is a potential for abuse: transmitting agencies have indicated that it is not clear whether a citizen who speaks the language of the Member State where the action is being brought can abuse the system by refusing to accept the document if it is not translated into the language of his/her place of residence.

In addition, information on the right to refusal must be provided to the addressee through the standard form in Annex II of the Regulation. The provision of information on the right to refusal appears in 20 out of 114 cases analysed on the Unalex database. In these cases, in general it was an issue before the court that the information on the right of refusal according to Article 8 of the Regulation had been misleading or not given. Examining this issue in more detail, it was found that as a general rule, the competent agencies do enclose the annex form to the documents to be served. Some instances were reported, however, where the receiving agency did not provide the form because it deemed that the documents were already in compliance with the language requirements and that the addressee did not have the right to refuse in any case<sup>187</sup>. It was also found that some Member States go beyond the requirement of just providing the annex form to the addressee but also explain the right to refusal personally (where process servers/bailiffs are involved<sup>188</sup>) when serving the documents.

Overall, interviews with stakeholders found that the right to refusal based on language competences is an important provision. However, the Regulation lacks clarity in terms of rights of addressees who do not understand the official language of the place of service and to the provision of information to addressees on the right to refusal and where it is clear that the addressee understands the language of the document.

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<sup>186</sup> E.g. in the Case C-14/07, *Weiss* the CJEU gave certain guidance on how to conclude on the existence of the language skills of the addressee under the Regulation. The Court was asked to decide on the relevance in the context of Article 8 of the Regulation 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 *per se* 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. The proposal drafted in the ELI-UNIDROIT project "From Transnational Principles to European Rules of Civil Procedure" also found necessary to clarify certain indicators helping the assessment of the actual language skill of the defendant.

<sup>187</sup> Such an activism was denied by the CJEU to the receiving authorities under the Regulation: in C-519/13, *Alpha Bank Cyprus* the Court held that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to the Regulation.

<sup>188</sup> E.g. in France, Belgium.

## Default judgments based on a failure to respond

Interviews in the fieldwork Member States found that default judgments are quite common in cases falling under the Regulation. Interviewees in Estonia and Belgium estimated that this occurs in approximately 70% of cases.

Despite default judgments being passed quite frequently, the economic study reports that courts generally apply a rigorous assessment on whether all available means for the service of documents have been exploited (in line with or even beyond conditions set out in Article 19(1)-(2)). But, in fact, this does not mean that the interests of the defence are in all instances properly protected, since Article 19(2) of the Regulation allows, led by the reasons of procedural economy, for a continuation of the proceedings even if the court could not establish that the foreign defendant was actually informed. The 2017 MPI Study found that the court of origin will often not be able to establish whether or not service in another Member State has been effected on the defendant or whether the defendant has at least received the relevant document because a court will often not be in a position to investigate the details of the service process in another Member State.<sup>189</sup> Furthermore, the latter Study concludes that the reservation, which has been notified by more than half of the Member States, which allows for the continuation of the proceedings after six months have elapsed, does result in fictitious service on the defendant that will not only undermine the defendant's protection but is also contrary to the idea of mutual trust. "The mere fact that a period of six months has already expired is no indication whatsoever that service has actually taken place. Therefore the legislator accepts obvious violations of the respondents' right to be heard here. This is obviously inconsistent with the principle of mutual trust."<sup>190</sup>

Another weakness of the system in the protection of the right of the defence is detected in the uneven level and lack of transparency of the available legal remedies after a default judgment has been issued. Although the economic contractor noted the view of several interviewees that even when a default judgment has passed, normally the appeal system works well if a defendant appears acknowledging late knowledge of the proceeding.. Article 19(4) provides a special, autonomous provision by which default judgments brought in the absence of the defendant may be set aside on the basis that the latter was not properly informed about the institution of the foreign proceedings brought against him/her. The problem with this autonomous extraordinary relief of the EU law is that its accessibility may be limited in time by the Member States (a majority of them communicated to the Commission that they will not entertain a request for the relief once one year has passed from the issuance of the default judgment). Another problem of this autonomous extraordinary relief is its relationship to further extraordinary reliefs in national law. In connection with this issue, the CJEU has held in *C-70/15, Lebek*, that Article 19(4) excludes the application of provisions of national law which contain more generous time limits for relief, once the period for filing such

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<sup>189</sup> 2017 MPI Study, p. 170.

<sup>190</sup> 2017 MPI Study, p. 171.

applications, as specified in the communication of a Member State to which that provision refers, has expired.<sup>191</sup>

#### Issues affecting the rights of parties that are omitted from the Regulation

A problem affecting the rights of the defence follows from the vague precondition determining the scope of application of the Regulation, according to which it should apply only when a document has to be transmitted from one Member State to another. This precondition enables courts to keep the service of a document in a "domestic" context and to use national methods of substituted or fictitious service of documents also in cases where the addressee has his/her residence or seat in another Member State. This constitutes a clear disadvantage for foreign addressees, since when the Regulation is not used, the uniform standards therein protecting the rights of the defence (such as Art. 8 or Art. 19) do not apply. The frequency of this problem can be demonstrated by the fact, that in total, 19 out of 114 cases analysed on the Unalex database involve considering service valid in Member State A by the use of fictitious or alternative methods, irrespective of whether the defendant in Member State B was informed.

In general, interviews with stakeholders found that fictitious service is quite common in cross-border proceedings but again, the methods for appeal seem satisfactory in these cases. Nevertheless the lack of guidance of the Regulation on the use at domestic level of fictitious<sup>192</sup> and substituted service<sup>193</sup> on addressees with a residence or seat in another Member State causes ambiguity and fragmentation concerning the rights of parties in the Member States.

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<sup>191</sup> In the concrete case at hand, the CJEU has finally protected the interests of the defendant against the inappropriate recognition and enforcement of a foreign default judgment, which was taken in a proceeding about which he was not informed. The Polish defendant was informed about the existence of a default judgment issued in France against him only, when the recognition of that judgment was sought in Poland, 15 months after the judgment has been rendered by the French court. Since France communicated under Article 19(4) of the Regulation that it will not entertain an application for the extraordinary relief if it is not filed within one year counted from the issuance of the judgment, the defendant in the case could not anymore rely on the extraordinary relief in Article 19(4) of the Regulation. The claimant, however, stated that the defendant could still have challenged the default judgment on the basis of an extraordinary relief provided by the French national law (Article 540 of the French Code of Civil Procedure). The conclusion of the CJEU finally helped the defendant in this case: since the extraordinary relief in Article 19(4) was not anymore available to the defendant, the additional possibility under national law was excluded by the CJEU, and so the defendant could rightly invoke the refusal ground in Article 34(2) of Brussels I, because the national relief under Art. 540 CCP could not be considered as a "proceedings to challenge the judgment"

<sup>192</sup> Fictitious service refers to where the applicant does not necessarily aim to inform the party, but just to ensure that there is an act considered as formal service so that the proceedings may be continued ("publication on the court board", placing the doc. to be served to the case file). It is almost certain that the defendant does not get the information.

<sup>193</sup> Substituted service refers to service of the document indirectly i.e. not on the addressee themselves but service at the place of work, a family member or a representative.

### 5.1.2.3. Minimising the burden for citizens and businesses involved in cross-border proceedings

**Although the Regulation has contributed to reducing the costs for citizens and businesses involved in cross-border proceedings the burdens have not been minimised. Ambiguities in the Regulation cause additional costs for citizens and rapid and technological opportunities that could further reduce burdens are not fully exploited by the Regulation.**

The main sources of burden for businesses and citizens involved in legal proceedings are:

- Time taken to conclude the case;
- Court fees;
- Costs for legal advice;
- Costs for the translation of requests and/or documents;
- Stress related to prolonged proceedings (i.e. based on delays of service).

Based on the above analysis on the functioning of the different methods of service of the Regulation, it can be seen that the burdens have generally been reduced by the Regulation since delays for service of documents have been reduced. However some limitations have been observed.

As concerns the time taken to conclude a case, the Regulation has contributed to facilitating efficient service of documents in cross-border cases to some degree (Section 5.1.2.2). Nevertheless, some delays still exist, due to the inefficient and non-direct means of communication between transmitting and receiving agencies, delays through postal service, mistakes or insufficient filling out of annex forms of acknowledgement of receipts etc. For citizens and businesses, this means that the judicial proceedings they are involved in may take longer than necessary, potentially also leading to additional costs (e.g. more need for legal representation).

As explored more under *efficiency* below, some ambiguities in the Regulation are a cause for legal uncertainty and additional delays to the service of documents. For example, understanding which language is most appropriate for the documents, the types of alternative methods of service available or the channels (if any) available to applicants where the address of the intended recipient is unknown or unclear.

In addition, the Regulation is limited in its facilitation of more rapid means of service of documents which could help reduce the burden for citizens. As explained above direct service is only available in 12 Member States and is even applied by some Member States with more restrictions compared to direct service domestically. Further, technological opportunities are not exploited by the Regulation and it contains no clear provision on the service of documents through electronic means.

### 5.1.3. *Achievement of the general objectives*

The general objectives as set out in the Intervention Logic are:

1. Ensure the smooth functioning of the area of freedom, security and justice, including by:
  - a. Strengthening the trust in the in the judicial systems of the Member States and the EU;
  - b. Safeguarding fundamental rights in the EU.
2. Ensuring the smooth functioning of the internal market.

**The Regulation has impacted positively to some extent on both general objectives. Overall, the Regulation has had a notably positive impact on ensuring the smooth functioning of the area of freedom, security and justice. Regarding ensuring the smooth functioning of the Internal Market, the Regulation was found to neither significantly generate negative or positive impacts.**

The results of the assessment on the operational and specific objectives are described below in terms of the overall impact on these higher level objectives.

#### 5.1.3.1. Ensure the smooth functioning of the area of freedom, security and justice

The Regulation has certainly succeeded in ensuring greater trust between the judicial systems of the Member States. This is mostly achieved through the mutual recognition of service methods in the Regulation and the legal certainty provided with service through designated receiving agencies. Although there is still room for improvement in terms of delays, interviewees in the fieldwork Member States noted the increase in fluidity of communication and cooperation between judicial authorities.

In addition, it was found that the Regulation has improved the protection for the procedural rights of parties involved in cross-border proceedings through inclusion of provisions on e.g. the right to refusal of documents and defendant not entering an appearance. However, remaining ambiguities in the application of these provisions generate a certain level of uncertainty for stakeholders.

#### 5.1.3.2. Ensuring the smooth functioning of the Internal Market

The evidence collected as part of this study and presented in the previous sections shows that, while there is still room for improvement, the Regulation does contribute to an area of freedom, security and justice and a smooth functioning of the internal market.

It does so by introducing useful methods for the service of documents in cross-border cases. It helps to make communication between courts more streamlined and if carried out smoothly, it also helps to increase mutual trust between courts, as courts communicate more directly and work together. In addition, trust by citizens and businesses in the legal systems of the Member

States may be improved if they have positive experiences with cross-border service of documents.

This way, the functioning of cross-border proceedings is improved, which has positive effects on the area of freedom, security and justice, including because access to justice and the protection of the rights of the parties are improved.

However, evidence is weak regarding the claim that the costs and delays associated with cross-border proceedings have been greatly reduced by the Regulation. Although stakeholders agree that some notable improvements have been made in comparison to the situation before the Regulation, the main method of service under the Regulation i.e. through the transmitting and receiving agencies is found to be bureaucratic and time consuming. The Regulation has attempted to restrict delays in the timing for service of documents through timeframes for formal documents to be completed. However, it was found that the timeframes are mostly not adhered to and even regarded by some stakeholder as unrealistic in the current system.

Regarding potential negative impacts on the Internal Market, no evidence was found to suggest that the issues concerning service of documents in cross-border proceedings would inhibit EU businesses or citizens from engaging in cross-border transactions.

As mentioned in section 0, the only issue that could be considered as contrary to Internal Market principles is the restrictions applied to direct service in the Member States. As explained above, direct service is available under the Regulation in only 12 Member States yet it is available within the domestic procedures of more than 12. Thus, the Regulation is hindering the access of parties involved in a cross-border proceeding to services that are available in the Member States.

## **5.2. Efficiency**

The assessment of efficiency considers the relationship between the resources exhausted by the intervention and the achievements of the intervention. Thus, this section focuses on the costs and benefits in terms of compliance with the Regulation. The following sub-sections analyse the: 1. Compliance costs for Member States; 2. Costs for citizens and businesses; and balances them with regard to the effects of the Regulation.

**Overall, the effects of the Regulation have been achieved at a reasonable cost. The costs for Member States to comply with the Regulation consists of allocating administrative tasks to relevant bodies and providing information for the e-Justice portal. Relatively speaking, this is not a significant burden when compared with the positive effects of the Regulation i.e. that a common process among competent agencies exists for serving a document in the EU; that there is a common set of alternative ways for direct transmission and service of the documents in another Member State; and that information is available online for the execution of service. Nevertheless, there is scope for simplifying the administrative burden for judicial**



**authorities in terms of the communication through forms annexed in the Regulation. The Regulation has not imposed any unnecessary or additional costs on citizens or businesses involved in cross-border litigation. The concrete cost-factors for citizens and businesses involved in the service of documents under the Regulation are mainly the translation costs, costs stemming from the delays the cross-border nature of the delivery process brings with it, and in some Member States the costs for the intervention of agents who are responsible for serving judicial and extrajudicial documents. There is no evidence that the Regulation has increased these costs, rather the opposite: certain elements of the Regulation (reduction of the need for translations, direct communication between agencies and flat rate fees for the intervention of a judicial officer) contributed to the mitigation of these costs. In addition, the availability and recognition of service of documents by post under the Regulation is regarded as a highly positive intervention and reduces the costs compared with using direct service (under Article 15). However, the non-exploitation of electronic means of communication and service of documents is a major barrier to a more efficient functioning of the Regulation. Furthermore, it is unclear for stakeholders whether email or other IT solutions could be used for purposes of serving directly an addressee in another Member State, as no provision is provided in the Regulation for this.**

#### *5.2.1. Compliance costs for Member States*

Member States are faced with the following costs under the Regulation:

- Setting up of a central body, transmitting and receiving agencies;
- Costs for the service of documents;
- Provision of information for the e-Justice portal.

As part of the Regulation, Member States are obliged to designate bodies responsible for the receipt and transmission of documents and central bodies. An important change to the preceding model of judicial cooperation under the 1965 Hague Convention was that the Regulation, by default, decentralized the task of the provision of judicial assistance, and established a direct communication and cooperation obligation between these decentralized agencies. In this system, there is not much left for the Central Bodies: the economic study found that the time spent by these central bodies on dealing with requests under the Regulation is not extensive. As for the transmitting and receiving agencies, due to the vast procedural differences between the Member States, an estimate on the resources exhausted is not feasible. However, for example, an agency in a Member State receiving an average of 2 000 requests for service per year, one full-time equivalent (FTE) staff member is employed for the day-to-day administration.<sup>194</sup> The transmitting agency in question however noted that the administrative burden of 2 000 requests per year for 1 FTE is already quite strenuous since many requests involve follow-up and communication with the relevant authorities. In addition, the costs for service by the receiving agency must be borne by the Member State

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<sup>194</sup> Based on the fieldwork interviews carried out by Deloitte and subsequent data provided by the agency.



unless they use a particular method of service or service is effected by a judicial officer or competent person (Article 11 – this rule on sharing of the costs generated by the judicial assistance between the States involved in the procedure and allowing reimbursement only for the intervention of the judicial officer follows the traditional principle of international law).

In most cases, receiving agencies use registered post for the delivery of the documents to the addressees and therefore bear the costs of postage which we estimate at approximately EUR 10 per consignment, but this depends largely on the size and weight of the package.

It should be noted also that there are significant differences among Member States regarding the costs. In particular, in Member States where judicial officers are not generally involved in the service of documents (e.g. in Ireland) the burden for compliance with the Regulation is felt to be higher. This is because the processing and arrangement of serving documents is not seen as a typical “court” function and additional resources have to be mobilised to become acquainted with this service and to administer the requests.

The consultation with stakeholders indicated that administrative formalities for transmitting and receiving agencies are felt to be heavy and quite bureaucratic. This is because of the rigid use of the long and complex standard forms in the Annex for communication between the agencies and the heavy reliance on paper-based procedures and postal service.

Member States are also obliged to provide information to the Commission for publication on the e-Justice portal relevant for the functioning of the Regulation. Member states are regularly prompted to check whether the information contained on the portal is up-to-date and are encouraged to inform the Commission proactively if any information needs to be edited on the portal. The cost involved in complying with these requests is not deemed to be significantly burdensome for Member States. Depending on the changes in internal law affecting the communications under the Regulation to the e-Justice Portal, certain working hours per year should be allocated to the responsible national content manager to upload or update the content. Despite indications that the portal is not always up-to-date of the information on the portal, the majority of stakeholders agree that the information contained on the portal is useful (i.e. as supported by 93% of respondents to our survey<sup>195</sup>). On balance, it is found that the cost for providing information on the e-Justice portal is justified by the benefits it brings.

### *5.2.2. Costs for citizens and businesses*

The costs for citizens and business can be estimated according to:

- Translation costs;
- Costs of method of service (i.e. transmitting agency vs other methods);
- Time taken to serve a document in cross-border proceedings.

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<sup>195</sup> Out of 30 respondents.

### 5.2.2.1. Translation Costs

The Regulation does not actually oblige the sender of documents to translate them into the languages prescribed under Article 8. However as can be seen in the assessment of effectiveness, in order to avoid refusals of documents based on language, a majority of the lawyers and courts recommend the parties concerned to furnish the documents with translations into the appropriate language, so that delays caused by an eventual refusal by the addressee could be preempted. This practice is unfortunate and goes against the intention of the EU legislator which, as stated, was to create a system, where translation of the documents is not needed, as a default rule. This is therefore a relevant cost to take into consideration when assessing the efficiency of the Regulation.

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>196</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 delays onto the already quite burdensome process.

### 5.2.2.2. Costs of method of service

The average costs for service of documents through each of the available methods is estimated below:

*Table 20: Average costs per service method*

Method of service	Costs
Transmitting/receiving agency (Article 4)	Free, unless the Member State designated judicial officers as receiving authorities (in this latter case the cost is the same as under direct service)
Diplomatic or consular channels (Article 13)	Free
Registered post (Article 14)	EUR 10
Direct service (Article 15)	EUR 85

*Source: Deloitte, desk research and fieldwork interviews*

With regard to transmitting and receiving agencies, as per Article 11, no fee should be charged for the services of the receiving agency in the Member State addressed unless a particular method of service is requested or they serve the documents through a judicial officer or competent person. The majority of receiving agencies serve documents through registered post, but these costs may not be charged on the applicant, due to the system relating

<sup>196</sup> <http://cdt.europa.eu/en/documentation-type/budget>

to costs in the Regulation. In some Member States e.g. Belgium and France, where always the bailiffs serve the documents, the fees correspond to that of direct service.

For registered post, the fees can vary significantly across the Member States and are largely based on the size and weight of the package transmitted. Based on data gathered from fieldwork interviews however, the average cost for sending via registered post is approximately EUR 10.

Similarly, direct service costs are quite different across the EU and can range from EUR 35 to EUR 135 in some Member States (e.g. Belgium). The Regulation stipulates that Member States should lay down a single fixed fee for service of documents through judicial officers or other competent persons<sup>197</sup>. However, there is still some uncertainty regarding the costs for direct service, e.g. it was not always clear if a communication given by a Member State indicates the net or the gross eligible amount.

Costs for the service of documents may also be enlarged due to numerous attempts of service of the same document. As explained through the hypothetical cases below, complications in the process may result in the service being rendered ineffective or refused by the addressee. Additional attempts must be made to then effect service and often to make up for the delay of the unsuccessful attempt of service, more expeditious methods are used (e.g. direct service) which are normally more costly. In addition, as explained by some transmitting agencies, sometimes two methods of service are attempted in parallel to ensure that service can be made within the required time. This again increases the costs for citizens and businesses.

#### 5.2.2.3. Time for serving a document across borders

The time for serving a document across borders can differ from Member State to Member State and depends on the speed and quality of the method for service used. Examples of two instances of successful service have thus been elaborated below while demonstrating the time differences and delays that can be associated with one method over the other.

**Hypothetical case 1: Successful but delayed delivery through transmitting and receiving agencies (both the transmission between the agencies, and the delivery from the receiving agency to the addressee is carried out by post)**  
**(Article 4)**

A lawyer in Member State A (MS A) wishes to serve a writ of summons for his/her client on an addressee resident in Member State B (MS B).

Day 1 – 21: the documents are being translated in the official language of the Member State addressed by a professional translation company

Day 22: lawyer presents the relevant documents to the transmitting agency, a local court.

Day 23: The court processes the request and searches for the relevant receiving agency in MS B but can only find contact details for the Central Body. The court completes the

<sup>197</sup> “The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of service as long as they respect these principles” (Recital 16).

request for service form and sends the package to the mail department for sending to MS B.  
 Day 24 – 31: The request is being transmitted by regular post to the Central Body in MS B.  
 Day 32: The request is received by the mail department of the Central Body.  
 Day 36: The request is processed by the administrative staff responsible for requests under the Regulation and posted to the relevant receiving agency which has jurisdiction to deal with the request. The staff member completes the ‘Notice of retransmission of request and document to the appropriate receiving agency’ and sends it via regular post to the transmitting agency in MS A. At the same time the Central Body in MS B forwards the request and the document to the appropriate receiving agency in its State.  
 Day 39: The request is received by the mail department of the receiving agency.  
 Day 41: The request is processed by the administrative staff responsible for requests under the Regulation. The staff member completes the ‘Notice of receipt by the appropriate transmitting agency having territorial jurisdiction to the transmitting agency’ and sends it by post to the transmitting agency in MS A. The staff member also sends the documents to be served by registered post to the addressee.  
 Day 42: The mail carrier attempts to deliver the post but the addressee is not at home. A notice is left for the addressee informing them that a delivery was attempted and that it would be attempted again the following day.  
 Day 43: The second attempt at service was not successful. A notice is left for the addressee informing them that a delivery was attempted and that the letter would be available for collection in the nearest post office for a period of 1 month.  
 Day 58: The document is collected by the addressee on the 15<sup>th</sup> day after the mail carriers second visit.  
 Day 68: The receiving agency checks the online tracking system and sees that service has been successful. The receiving agency sends the Annex Form ‘Certificate of Service or Non-Service of Documents’ to the transmitting agency with a copy of the documents served.  
 Day 68 – 78: The confirmation of receipt is being transmitted to MS A, by post.  
 Day 78: The confirmation of receipt is received by the transmitting agency.

**Result:**

Successful service but total time of 78 days to effect service, whereby the recommended time period of one month as of the receipt of the documents by the receiving agency is met, but the process altogether took two and a half months.

As shown above, the service was successful but it involved a lot of communication through post between the relevant authorities. If the service had not been successful, i.e. if the addressee failed to go to the post office to pick up the document, then the transmitting agency would have to attempt the cycle all over again either through post or through another method. It can also be seen from above that the delay is largely due to the paper-based communication and that agencies rely on postal services for communication rather than other more rapid means (e.g. email).

**Hypothetical case 2: Successful service by a bailiff  
 (Article 15, direct service)**

A lawyer in Member State A (MS A), entrusted by the national law with the duty to serve the document in legal proceedings, wishes to serve a writ of summons for their client on an

addressee resident in Member State B (MS B – a State which accepts direct service under Art. 15).

Day 1 – 21: the documents are being translated in the official language of the Member State addressed by a professional translation company

Day 22: The lawyer prepares the 'request for service' form, identifies the competent judicial officer in MS B on the e-Justice Portal, and sends the package to the bailiff in MS B through registered post.

Day 23- 30: the document is on its way to MS B.

Day 30: the document is received by the bailiff and an 'Acknowledgment of Receipt' is sent to the MS A transmitting agency. He indicates the bank account number to which he expects the payment by the applicant of the flat rate fee for his intervention.

Day 33: The costs of the service of the judicial officer arrive on the bank account

Day 34: The document is served personally by the bailiff and service is accepted.

Day 35: A certificate of service is sent by the MS B bailiff to the lawyer (as applicant) transmitting agency with a copy of the served document.

**Result:**

Successful service which required much less time than the use case 1, but which cost more to the applicant.

The examples demonstrate the effect that different methods of service (and also the national set-up) have on the outcome of the delivery. In the second example the bailiff was able to deal much more efficiently with the request compared with the central body and receiving agency in the first example because he is specialized in service of documents, carries out his work under strict liability rules and in exchange for a fee contributing to his private undertaking. On the other hand, courts have a much larger organisation and administrative processes to get through and by the time the document is reached by the relevant administrative staff a couple of days may have passed already.

Whereas the above examples illustrated the (near) best case scenario for two methods of service, many costs are experienced due to complications in the process. A number of practical examples of delays due to complications in the Regulation are described below.

**Illustration of delays when complication arise in the hypothetical cases (1 and 2)**

**Address unknown:** In the best case scenario, the address of the intended recipient of the document to be served is known upfront. However, this is not always the case, or even when there is information on the address at the disposal of the applicant, this information may be proven incorrect or obsolete. When this occurs, the sender is unsure of any channels available for clarifying the address of the person in the Member State addressed. This can play out differently in the two hypothetical described above:

- In hypothetical case 1, the request may be sent to the receiving agency with the expectation that some efforts may be undertaken on their side to verify the address. However, the receiving agency may simply regard this request as being outside the Regulation (or in case of an erroneous address as not deliverable) and return the request to the transmitting agency without guidance on the potential

ways the address could be sought. By the time the communication is received by the transmitting Member State, a number of weeks may have passed due to the use of regular mail. Additional time is consumed on first trying to establish whether any channels exist for clarifying the address and then for any subsequent requests (e.g. to a domicile registry).

- In hypothetical case 2, the bailiff receiving the request may regard that it is his/her obligation to verify the address of the recipient. In this case, although the bailiff may spend some time conducting the necessary research, the delays are less than if the same research would have been attempted by the transmitting agency since the bailiff has knowledge of the procedures and channels in their own Member State. Additional costs are also avoided with less communication between the agencies.

**Language requirements:** In the best case scenario, the language of the document to be served is clearly understood by the addressee, is written in an official language of the place of service or is accompanied by similar translations and such translations are not challenged by the recipient as to the extent to which they are provided or their quality. Difficulties associated with language affect both hypothetical cases in the same way. In other words, the method of service does not prevent the potential refusal of the document by the addressee on the basis that the language is not appropriate.

When a document is refused, the addressee must indicate the language that they understand on the refusal form. Although this issue is easily remedied by provision of the document in the indicated language, it can cause significant delays since the service procedure is attempted again. As illustrated by hypothetical case 1, service of the document through registered post can take up to 70 days or more to complete.

**Insufficient filling out of the acknowledgment of receipt:** Apart from the two methods of service explained in hypothetical cases above, the service of documents can also be performed directly by registered post (Article 14 of the Regulation). In practical terms, the time frame for such service would be expected to be similar to that of hypothetical case 2. In postal services, the annex forms are not used and the quality of the acknowledgement of receipt of the document may differ depending on the postal service provider. In the worst case scenario, the service of post is rendered ineffective because the information contained in the acknowledgment of receipt is not sufficient to establish that service has been made or under which circumstances. The mail carrier for example may not provide the date of service clearly or the identity, the signature of the recipient or his/her relationship to the addressee is unclear. In this case, the service of the document would have to be attempted again, resulting in potentially a time delay of up to 2 months.

Overall, the typical time taken for serving a document through the Regulation is difficult to estimate. Some interviewed stakeholders informed the economic contractor that in some Member States it may take just days while in others it can take months. Interviewees also noted the efficiency of service with neighbouring countries compared with countries that are further away geographically. It was also highlighted that the efficiency of service seems to be improving year-by-year with the increased use of the Regulation and understanding of the different Member State procedures.



It was noted by many stakeholders (and confirmed under the evaluation of Relevance below), that the time and costs for service of documents are ultimately hindered by the non-exploitation of opportunities provided by developments in information technology (IT). As it currently stands, the Regulation does not contain any provisions which recognize or facilitate the use of (direct) cross-border electronic service of documents, whereas the transmission of the documents through electronic channels between the designated agencies is allowed by the Regulation, but is not applied in the practice. It is thus unclear for stakeholders whether email or other IT solutions could be used for the service of documents in cross-border proceedings.

### 5.3. Relevance

**Evidence suggests that the Regulation adopted in 2007 is relevant to the stakeholders needs and is still relevant today. However, key emerging trends, such as digitisation, pose challenges to the relevance of the Regulation, which could no longer be regarded future-proof.**

The objective of a “relevance analysis” is to verify if there is any mismatch between the objectives of the intervention and the (current) needs or problems. Therefore, to discuss the relevance of the Regulation, one should examine distinct aspects:

- To what extent the Regulation corresponds to real life stakeholders’ needs;
- To what extent the Regulation in force is still relevant in 2018, 11 years after its adoption and based on possible evolution of stakeholders’ needs in the meantime.

As far as the needs of the stakeholders are concerned, there are two groups: citizens and businesses on the one hand; and legal practitioners (i.e. transmitting and receiving agencies, lawyers, courts) on the other hand.

Legal practitioners pointed out during our national interviews that they require a streamlined process where the efficient and speedy transmission of judicial and extrajudicial documents is ensured. The service of documents needs, in addition, to present the necessary level of legal certainty. Lastly, legal practitioners need fluent communication between the Member States in order to ensure a smooth judicial cooperation and, hence, a successful cross-border service of documents. Without the Regulation, legal practitioners had to rely on bilateral or multilateral agreements (i.e. the Hague Conventions<sup>198</sup>). The situation was therefore fragmented as the service of documents to another Member State varied from one Member States to another<sup>199</sup>.

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<sup>199</sup> Austria and Malta until recently were not yet members to the 1965 Hague Convention (see Council Decision (EU) 2016/414 of 10 March 2016 authorising the Republic of Austria to sign and ratify, and Malta to accede to, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, in the interest of the European Union).

Two different kinds of problem can arise when the needs of legal practitioners previously explained are not properly addressed. First, the unsuccessfully executed service of documents can create delays, making the parties incurring undue costs. Second, the rights of the parties (in particular of the defence) might not be duly protected. This is particularly true regarding the expectation of the citizens and businesses that they are served in legal proceedings with documents drafted in a language they sufficiently understand.

The needs and problems described above were the rationale for the establishment of rules on service of documents in EU cross-border proceedings and hence the adoption of the Regulation in force as an EU legislative intervention. Overall, stakeholders' needs have not changed significantly over the past years of implementation of the Regulation. On the contrary, some of these needs have been even strengthened. For example, legal practitioners interviewed by the economic contractor have highlighted the need to increase the speed of the service of documents by making the electronic service of documents mandatory.

Concerning the needs of businesses and citizens, lawyers communicated to the contractor that their clients' main concern is still the protection of their rights. On one hand, the defendant's rights seem to be properly ensured by the Regulation. According to the results of the online public consultation, the right of refusal under Article 8 functions properly according to 56% of the respondents to that question (out of 78 respondents). This standard of satisfaction should, however, be contrasted with the results of the 2017 MPI Study<sup>200</sup>, which measured during its data collection that the lack of or the error in the service of the documents instituting the proceedings is still the most frequently invoked refusal ground under the "Brussels I" Regulation against the cross-border recognition and enforcement of a judgment issued in another Member State<sup>201</sup>. Furthermore, there is evidence pointing at the practical problems relating to the provisions of the Regulation protecting the rights of the defence (Articles 8 and 19). E.g. the MPI Study reported about the diverging practice in the Member States relating to the language of the documents to be sent: the transmitting agencies in some Member States apparently require or encourage claimants to provide a sort of "precautionary" translation of the relevant documents, in order to prevent the defendant from the possibility to invoke Article 8.<sup>202</sup> Although it might seem practical in terms of avoiding unnecessary delays, this practice goes against the very objective of the Regulation of not requiring translations by default. On the other hand, the national stakeholders interviewed by the economic contractor, pointed out that some defendants actually abuse of their right of refusal to accept the document under Article 8 of the Regulation, stating their lack of "sufficient" knowledge of the language of the document. This situation entails delays for the procedure. The Regulation has, however, improved this situation as the defendant is now required to specifically mention which language he/she understands in the form of Annex II. In the context of the protection against the issuance and the effects of default judgments, the 2017 MPI Study referred to the

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<sup>200</sup>

<sup>201</sup> MPI p. 60.

<sup>202</sup> MPI p. 55



results of its data collection, according to which there is a clear need for a common set of rules regarding essential procedural aspects.<sup>203</sup>

In terms of achievement of the Regulation's general objectives, the analysis of effectiveness proves the importance which the Regulation had in improving and expediting the transmission of judicial and extrajudicial documents between the Member States of the EU for purposes of service abroad, as well as in allowing for direct methods of cross-border service. Moreover, although there is still room for improvement, stakeholders agreed that the Regulation has been key to ensuring the successful service of documents in cross-border proceedings.

In particular, the scope of the Regulation was identified as an element to be revised. According to art. 1 (2), the Regulation only applies when the address of the person to be served is known. This scope raises some difficulties as it might be the case that the address is not known, or the information on the address at the disposal of the applicant proves to be incorrect or obsolete. Although for internal situations most of the legislations of the Member States establish the duty of the serving authority to make specific efforts in order to locate the domicile of the addressee, apparently, such an effort is not done when the Regulation is applied.<sup>204</sup> The legal landscape of available tools and measures is very diverse in the different Member States and their efficacy is doubtful, as the agencies face real challenges to determine the address. For example, in a few Member States, such as in France there is no central domicile registry for natural persons. Therefore, when a person moves out and the new address is not communicated to the city hall, French bailiffs do not have the means to reach this person. The vast majority of stakeholders (78% out of 126 respondents to the question concerned) partaking in the online public consultation actually agreed that the Regulation should ensure a greater level of transparency in terms of finding the whereabouts of the addressee. As a solution, some national stakeholders suggested to centralize this information in the e-Justice Portal. This centralization of information in the e-Justice Portal would only be possible if such data is publicly available in the Member State of origin.

The Regulation hence seems to still be relevant to address the real life needs of legal practitioners, citizens and businesses. However, the analysis of the available data suggests, that there might be a number of challenges for the future, which could hamper the capacity of the Regulation to respond to emerging and future needs of stakeholders, as detailed below.

Although the most common methods currently used are the transmitting/receiving agencies, and the postal services, the stakeholders interviewed pointed out that the Regulation does not cover sufficiently the transmission and the service of documents through electronic channels. A recent survey carried out in the context of the European Judicial Network (civil) on the cross-border electronic service under the Regulation showed that incompatible legal requirements and the lack of technical interoperability make it practically impossible that a

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<sup>203</sup> MPI p. 174.

<sup>204</sup> see evidence. MPI p. 56.

document be delivered electronically from the applicant in one Member State to the recipient in another Member State. In line with this, also the electronic communication and exchange of documents remains a rare exception in the interactions between the designated transmitting and receiving agencies under the Regulation.<sup>205</sup> Electronic service of documents is an emerging method in civil proceedings in the Member States, national procedural codes are opening up more and more towards this possibility (although the types of cases and the circle of addressee eligible for this method of service varies hugely)<sup>206</sup>. However the Regulation does not mention electronic service as a possible method for the service of documents in cross-border proceedings, and therefore falls behind those national systems already including such method. Based on a comparative legal analysis of the relevant laws and practices of the Member States, ICT can actually enable courts to provide “more effective, quicker and cheaper” services<sup>207</sup>. In addition, as mentioned during the fieldwork interviews carried out by the economic contractor, the electronic service of documents is a promising method to be developed and adopted in the future. Most of the Member States are actually keen on involving IT solutions in the service of documents, expressing their interest in such methods. As an example, the e-CODEX project is aiming at improving cross-border access and businesses to legal means in Europe<sup>208</sup>. For this purpose, e-CODEX has selected four electronic services: European Payment Order, European Small Claim procedure, European Arrest Warrant, and Secure cross-border exchange of sensitive data, but it is currently focusing on the first two mentioned. The service of document is an additional electronic service to which e-CODEX could be applied. The IT platform for exchange of electronic documents to be served is estimated to be ready by 2021<sup>209</sup>. The electronic service of documents could address and reduce some problems faced today, such as the difficulties to find the whereabouts or the need to cope with the urgency in some legal proceedings.

Also at the EU level, the increased use of digital solutions (through e.g. eID and trust services) is encouraged and is being explored in all types of sectors and business processes, including in legal proceedings<sup>210</sup>. The eIDAS Regulation has laid down a framework of standards that ensures the mutual recognition of notified Member State electronic

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<sup>205</sup> See: from results of the QE!

<sup>206</sup> A good summary of the state of play in 2016 in the Member States can be found in the Study containing a comparative legal analysis of laws and practices of the Member States on service of document (launched by the Commission, carried out by a consortium composed of University Firenze, University Uppsala and DMI, published in November 2016), Available at: [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf),

<sup>207</sup> DMI Associates, University of Florence, University of Uppsala. (2016, October 5), Study on the service of documents – Comparative legal analysis of the relevant laws and practices of the Member States, available at: [http://ec.europa.eu/justice/civil/files/studies/service\\_docs\\_en.pdf](http://ec.europa.eu/justice/civil/files/studies/service_docs_en.pdf)

<sup>208</sup> e-CODEX has been developed by 21 EU Member States with the participation of other countries/territories and organisations: Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Jersey, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, Spain, Turkey, United Kingdom, CCBE and CNUE.

<sup>209</sup> Fieldwork interviews.

<sup>210</sup> For example, Deloitte is currently conducting a study for DG CONNECT which promotes the use of eID and Trust Services (as defined in the eIDAS Regulation) among SMEs, including the legal sector.

identification (eID) schemes across the EU public sector and recognition of qualified status given to trust services (eTimeStamp, eSeal, Electronic Registered Delivery Service, eSignature). This framework allows for interoperability of more digital solutions and thus opens the door for potential growth in use of eID and trust services (e.g. in combination with e-CODEX) to enhance the service of documents in cross-border proceedings.

#### 5.4. Coherence

**The Regulation is largely coherent internally, as well as with other EU policies, which have similar objectives, and national law. Minor problems could be identified, though.**

The overall coherence of the Regulation should be assessed both internally, and externally. For the internal coherence, the consistency of the different provisions within the Regulation was analysed. As far as the external coherence is concerned, it was assessed how well the Regulation operates with other legal instruments (i.e. with respect to the national legislations and the technical developments carried out recently in Member States; and to other relevant EU level legislation).

In addition to the internal and external coherence, the study team has identified some general issues related to the scope of the Regulation. The scope *rationae materiae* of the Regulation, as defined by Article 1(1), applies to civil and commercial matters. Nevertheless, some interviewees pointed out the difficulty to determine in some cases whether the Regulation applies. This problem arises in fiscal or criminal cases with a civil or commercial dimension. In addition, some participants to the online survey pointed out the difficulty to identify the nature of extra-judicial documents as the definition provided by the Regulation is not clear enough.

##### 5.4.1. Internal coherence

**The assessment shows that the internal coherence of the Regulation is robust. Nonetheless, it can still be improved by addressing some particular internal inconsistencies.**

The majority of stakeholders interviewed consider that the provisions of the Regulation are generally clear. This was also supported by the responses the contractor received to its online survey. However, some stakeholders interviewed during the fieldwork pointed out some inconsistencies of the Regulation.

First, as established in Article 8 of the Regulation, the receiving agency needs to explain to the addressee, using the standard form set out in Annex II, his/her right to refuse to accept the document to be served. The same article also explains when this right of refusal can be

invoked. If the document to be served has been drafted in or translated to one of the official languages of the receiving Member State, there is no such right for refusal<sup>211</sup>. This is a clear conclusion of the grammatical interpretation of the relevant provision. Therefore, the addressee has no right of refusal when the document is provided in the official language of the Member State. In that case, some stakeholders challenged the need to provide Annex II in all official languages to the addressee. This contradiction gained on relevance after the CJEU confirmed that the provision of information in the standard form (Annex II) is obligatory also in cases where the document to be served is in the language of the Member State addressed, i.e. where the addressee cannot validly refuse service (Article 8(1)(b)).<sup>212</sup> In practical terms, attaching the standard form in such circumstances might only mislead the addressees into thinking that they do have the right to refuse.<sup>213</sup>

Second, there is a lack of clarity concerning the date of the refusal. As stated in Article 8, the addressee is entitled to refuse to accept the document to be served either at the time of the service or by returning the document to the receiving agency within one week. Some interviewees highlighted that the Regulation is not sufficiently clear concerning the date of such refusal. It is not actually mentioned which date should be taken into account: the date the document is sent back to the receiving agency, or the date when the document arrives.

Third, still with regard to the procedure on exercising the right of refusal in Article 8, the addressee is required to send back the document if he/she refuses in writing to accept it. There were reports that the originals are often not sent back by the addressees, which may lead to an ambiguity with regard to the validity of the refusal, even if the written declaration of the addressee represents a clear intention of that they. 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.<sup>214</sup>

#### 5.4.2. External coherence

**The overall external coherence of the Regulation is ensured with both national and EU measures. Nevertheless, as shown more alignment and synergies could be achieved by adjusting the provision of the Regulation.**

##### 5.4.2.1. General Treaty objectives

The objectives of the Regulation are coherent with the EU Treaty framework.

<sup>211</sup> OGH (AT) 01.03.2012 - 10b218/11g, *unalex AT-789*.

<sup>212</sup> In C-519/13, *Alpha Bank Cyprus* the CJEU held that the receiving agency is required, in all circumstances and without it having a margin of discretion in that regard, to inform the addressee of a document of his right to refuse to accept that document, by using systematically for that purpose the standard form set out in Annex II to the Regulation.

<sup>213</sup> COM(2013) 858 final, p. 11.

<sup>214</sup> COM/2013/0858 final, p. 11.

The Regulation is part of the EU framework on judicial cooperation in civil and commercial matters and contributes to the EU objective to establish an area of freedom, security and justice, as defined in Article 3(2) of the Treaty on European Union (TEU) and Article 67 of the Treaty on the Functioning of the European Union (TFEU). In this context, the EU is to develop judicial cooperation in civil and commercial matters with cross-border implications based on the principle of mutual recognition of judgments and decisions, as stipulated in Article 81 TFEU. Furthermore, the Regulation contributes to the EU objective of establishing an internal market (Article 26 TFEU).

The Regulation contributes to the area of freedom, security and justice and the functioning of the internal market by facilitating the service of documents in the context of cross-border legal proceedings. Nevertheless, as explained in the effectiveness section, some Member States are not accepting the direct service of document under Article 15 of this Regulation, despite the fact that such method is foreseen in their national legal framework<sup>215</sup>. This could be perceived as a barrier to the Internal Market as the Regulation is hindering the access of parties involved in a cross-border proceeding to services that are available in the Member States.

#### 5.4.2.2. Relevant EU instruments in the field of judicial cooperation

The external coherence with other EU level legislation refers to an analysis of how well does this Regulation operate with other legal instruments, including an analysis of potential overlaps, contradictions and synergies. The assessment concerns the relation of the Regulation with the:

- Regulation on Taking of Evidence<sup>216</sup>;
- Brussels Ia Regulation<sup>217</sup>
- Brussels IIa Regulation<sup>218</sup>;
- Maintenance Regulation<sup>219</sup>;
- Succession Regulation<sup>220</sup>;

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<sup>215</sup> E.g. for England and Wales, the UK communicated that it is opposed to the possibility of direct service provided for by Article 15(1), although it is established practice there to have documents served in legal proceedings directly by solicitors.

<sup>216</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1206&from=en>

<sup>217</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:en:PDF>

<sup>218</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgement in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:338:0001:0029:EN:PDF>

<sup>219</sup> Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0004&from=EN>

- Insolvency Proceedings Regulation<sup>221</sup>;
- Matrimonial Property Regulation and the Regulation on the Property Consequences of Registered Partnerships<sup>222</sup>;
- Small Claims Regulation<sup>223</sup>;
- European Enforcement Order for uncontested claims<sup>224</sup>;
- European Payment Order (EPO) Regulation<sup>225</sup>;
- General Data Protection Regulation<sup>226</sup>.

An overview of the most relevant instruments or policies<sup>227</sup>, their main contents, as well as their relationship to the Regulation including potential difficulties is provided in the following table.

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- <sup>220</sup> Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0650&from=EN>
- <sup>221</sup> Regulation (EU) 2015/848 on insolvency proceedings, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0848&from=EN>
- <sup>222</sup> Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1103&from=EN>;
- Council Regulation (EU) 2016/1104 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.183.01.0030.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.183.01.0030.01.ENG)
- <sup>223</sup> Council Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0861&from=EN>; and Regulation (EU) 2015/2421 of the European parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2421&from=EN>
- <sup>224</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0805&from=EN>
- <sup>225</sup> Council Regulation (EC) NO 1896/2006 of 12 December 2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1896&from=EN>; and Regulation (EU) 2015/2421 of the European parliament and of the Council of 16 December 2015 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2421&from=EN>
- <sup>226</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>
- <sup>227</sup> The list is not exhaustive. The focus is on the most relevant instruments, in particular those that have direct links or in relation to which problems have arisen.

Table 21: EU instruments in the field of judicial cooperation and their relationship to the Service Regulation and others

Instrument	Main contents	Relationship
<b>Regulation on Taking of Evidence</b>	<ul style="list-style-type: none"> <li>- Common rules on the taking of evidence in another Member States in civil and commercial matters.</li> </ul>	<ul style="list-style-type: none"> <li>- The two Regulations have the same aim and are complementary. Together they constitute the EU legal framework for international mutual judicial assistance in civil and commercial matters. Both legal instruments are applied in proceedings in cross-border proceedings in civil or commercial matters, but cover different procedural aspects.</li> </ul>
<b>Brussels Regulation Ia</b>	<ul style="list-style-type: none"> <li>- Harmonised rules on international jurisdiction in civil and commercial matters.</li> <li>- Recognition and enforcement of judgments rendered in another Member States.</li> </ul>	<ul style="list-style-type: none"> <li>- Complements the Regulation on Service of Documents in proceedings concerning civil and commercial matters (excluding family matters).                             <ul style="list-style-type: none"> <li>- Refers in Article 28(3) to Article 19 of the Regulation when the defendant does not enter an appearance and the document has to be transmitted from one Member State to another.</li> </ul> </li> <li>- No difficulties identified.</li> </ul>
<b>Brussels Regulation IIa</b>	<ul style="list-style-type: none"> <li>- Harmonised rules on international jurisdiction in family matters (in divorce proceedings and proceedings related to parental responsibility).</li> <li>- Recognition and enforcement of judgments falling in its scope.</li> </ul>	<ul style="list-style-type: none"> <li>- Complements the Regulation on Service of Documents in proceedings concerning family matters:                             <ul style="list-style-type: none"> <li>- Refers in Article 18(2) to Article 19 of the Regulation when the defendant does not enter an appearance and the document has to be transmitted from one Member State to another.</li> </ul> </li> <li>- Brussels IIa Regulation has not been updated, and refers to the previous Regulation No 1348/2000. The Brussels IIa Regulation is being revised currently by the EU co-legislators.</li> </ul>
<b>Maintenance Regulation</b>	<ul style="list-style-type: none"> <li>- Harmonised rules on international jurisdiction in matters relating to maintenance obligations.</li> <li>- Recognition and enforcement of judgments.</li> </ul>	<ul style="list-style-type: none"> <li>- Complements the Regulation on Service of Documents in proceedings concerning maintenance obligations.                             <ul style="list-style-type: none"> <li>- Refers in Article 11(2) to Article 19 of the Regulation when the defendant does not enter an appearance and a document instituting the proceeding (or an equivalent document) has to be transmitted from one Member State to another.</li> </ul> </li> </ul>



Instrument	Main contents	Relationship
		<ul style="list-style-type: none"> <li>- States that the Central Authorities designated under this Regulation are in charge of the facilitation of the service of documents (Article 51). However, it explicitly states that such tasks should be carried out without prejudice (Article 51(2)(j)), clarifying thereby the relationship between the two instruments.</li> </ul>
<b>Succession Regulation</b>	<ul style="list-style-type: none"> <li>- Harmonised rules on international jurisdiction for matters of succession to the estates of deceased persons.</li> <li>- Harmonised rules determining the applicable law in these cases.</li> <li>- Recognition and enforcement of judgments and decisions taken in these cases.</li> <li>- Introduction of the European Certificate of Succession with uniform pan-European legal effects.</li> </ul>	<ul style="list-style-type: none"> <li>- Complement the Regulation on Service of Documents in the proceedings these instruments apply to.</li> <li>- The Succession and Will Regulation states that Article 19 of the Regulation on Service of Documents applies when a document instituting the proceeding (or an equivalent document) has to be transmitted from one Member State to another.</li> <li>- No issues have been identified.</li> </ul>
<b>Insolvency Proceedings Regulation</b>	<ul style="list-style-type: none"> <li>- Harmonised rules aiming at facilitating debt recovery in cross-border insolvency proceedings</li> </ul>	<ul style="list-style-type: none"> <li>- The Insolvency Regulation clearly mentions that the Regulation on Service of Documents does not apply when creditors are informed about the opening of insolvency proceedings relating to their debtor's assets (recital 64).</li> <li>- No issues have been identified.</li> </ul>
<b>Matrimonial Property Regulation; Registered Partnership Regulation</b>	<ul style="list-style-type: none"> <li>- Common procedural rules aiming at determining jurisdiction, applicable law, as well as the recognition and enforcement of judgments for matrimonial property regimes and the property consequences of registered partnerships.</li> </ul>	<ul style="list-style-type: none"> <li>- Both Regulations refer in their Article 16(2) to Article 19 of the Regulation on Service of Documents when a document instituting the proceeding (or an equivalent document) has to be transmitted from one Member State to another.</li> <li>- No issues have been identified.</li> </ul>
<b>Small claims Regulation</b>	<ul style="list-style-type: none"> <li>- Common procedural rules for simplified and accelerated cross-border litigation in</li> </ul>	<ul style="list-style-type: none"> <li>- This Regulation also contains rules on the service of documents.</li> <li>- The provisions, however, differ from and complement those in the</li> </ul>



Instrument	Main contents	Relationship
	civil and commercial disputes concerning small value claims.	<p>Regulation on Service of Documents. They do not aim to replace the rules on this Regulation, but to clarify the eligible methods of service of documents for the procedure under the Small Claims Regulation and to set a hierarchy between those methods. For example, the first method for service of documents is through postal services (Article 13 (1)). If this method is not possible, the service of documents will be conducted on the basis of the Articles 13 and 14 of the European Enforcement Order for uncontested claims (see below).</p> <ul style="list-style-type: none"> <li>- Its recast Regulation (Regulation (EU) 2015/2421 of 16 December 2015, applicable since 14 July 2017), provides in its new Article 13(b) detailed rules on electronic service.</li> <li>- No issues have been reported by any of the interviewees. However, it was highlighted that attention should be paid to the relationship between the Regulation on Service of Documents and the Small Claims Regulation.</li> </ul>
<b>European Enforcement Order Regulation</b>	<ul style="list-style-type: none"> <li>- Common procedural rules for simplified and accelerated recognition and enforcement of judgments, court settlements and authentic instruments on uncontested claims (including also default judgments) in civil and commercial disputes.</li> </ul>	<ul style="list-style-type: none"> <li>- The European Enforcement Order for uncontested claims Regulation lists the eligible methods of service of documents as minimum standards for the uncontested claims. Only those judgments, settlements or authentic instruments may be attested as a European Enforcement Order with regard to which the service was done in line with these minimum standards. The Regulation lists two groups of admissible methods of service: service with a proof of receipt (Article 13) and service without proof of receipt by the debtor (Article 14).</li> <li>- No issues have been reported.</li> </ul>
<b>European Payment Order Regulation</b>	<ul style="list-style-type: none"> <li>- Creates a uniform procedure to obtain a European Payment Order in order to speed up and reduce the costs of litigation in</li> </ul>	<ul style="list-style-type: none"> <li>- EPO Regulation takes the same minimal standards as the previous Regulation.</li> <li>- No issues have been reported.</li> </ul>

Instrument	Main contents	Relationship
	cross-border cases concerning uncontested pecuniary claims.	
<b>General Data Protection Regulation</b>	- Harmonisation of data privacy laws across Europe, protecting EU citizens data privacy and reshaping the way organizations approach data privacy.	- The lack of rules concerning the protection of data according to GDPR is another issue that could raise some concerns amongst the stakeholders. While the Regulation on Service of Documents is aligned with the Directive 95/46/EC <sup>228</sup> , the GDPR (which came into force in May 2016) will apply from May 2018. Some stakeholders shared their concern during our fieldwork interviews with Deloitte stating that the Regulation on Service of Documents is not aligned with the provisions of GDPR and hence the new data protection standards.

Source: Deloitte elaboration

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<sup>228</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31995L0046&from=en>

### 5.4.2.3. National law

The Regulation is adopted in line with the principle of proportionality and does not interfere with the diverging national regimes of service of documents of the various legal systems. Although called as Regulation "on service of documents", in fact the main focus of its rules is to establish uniform channels for transmission of documents from one Member State to another for purposes of serving those documents there. There is only one method of service acknowledged in the Regulation which actually defines the service of the document (with uniform legal conditions and consequences) and does not subject the procedure of delivery at domestic level or the determination of the legal effects of the delivery to the national laws of the Member States: Article 14 on the postal service introduces a harmonised method of cross-border service of documents. This means that a service performed through postal channels to another Member State shall be considered valid if it complies with the requirements in Article 14 and Member States may not apply technical or procedural formalities of their own laws while assessing the validity of the delivery.

According to Article 7(1) of the Regulation the document shall be served, as a general rule, in accordance with the Member State addressed. Nevertheless, there is a possibility that the transmitting agency requests to have the service performed by a particular method (the usual requests in this context contain that the document is served to the person of the recipient). Theoretically, it may happen that such requests are not compatible with the national law of the receiving Member State. The economic contractor received, nevertheless, very little indication via its on-line survey of this potentially being a problem in practice. This conclusion was also corroborated by the case law assessment, as very few cases concern this issue<sup>229</sup>. Nevertheless, the stakeholders interviewed mentioned that more clarity in that respect is necessary to ensure that the transmitting agency is requesting a viable option for the Member State concerned.

In general terms, the service of documents is a procedure based on systems that require formal service of documents through judicial officers (or similar authorities). The Regulation is not naturally coherent with Member States where lawyers or other competent persons normally carry out the service of documents without the intervention of the courts (e.g. in most common law systems).

As previously explained under the relevance criteria, the use of ICT is increasing in national judicial proceedings. As stated by CEPEJ, "ICT is playing a growing role within the justice administration and the justice service provision"<sup>230</sup>. Electronic communications are more often used, although paper-based communication (in particular between legal practitioners and courts) is still the general rule. Nevertheless, the national

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<sup>229</sup> See for example: OGH (AT) 26.04.2005 - 4 Ob 60/05k, unalex AT-94.

<sup>230</sup> CEPEJ Studies No. 18: "European judicial systems – 2012 Edition", p109.

stakeholders interviewed during the fieldwork have expressed their willingness to become more digital. In line with this, Member States are developing their own platforms either for national or cross-border service of documents. For the service of documents in cross-border proceedings, some Member States<sup>231</sup> have joined their efforts in a common project, the e-Justice service of documents (EJS), aiming at developing an IT platform to secure cross-border exchange of documents between judicial officers<sup>232</sup>. The stakeholders interviewed declared that further alignment between the Regulation and these national technological developments is needed.

The Regulation does not seem to raise significant coherence issues. The flexibility provided by the Regulation offering different methods for the service of documents and the possibility to choose some or all of them, has enabled each Member State to choose their methods of preference, increasing the coherence between the Regulation and the national legal systems individually. Nevertheless, there is some confusion among the transmitting agencies as the method to be applied in a given Member State is not always clear.

#### 5.4.2.4. The Hague Convention and other bilateral or multilateral agreements

The Regulation is coherent with the Hague Conventions and other bilateral or multilateral agreements.

Article 20(1) of the Regulation stipulates that the Regulation prevails over bilateral or multilateral agreements or arrangements of the Member States, in particular Article IV of the Protocol to the Brussels Convention of 1968 and the Hague Convention of 15 November 1965. These continue to apply in cases outside the scope of the Regulation.

In addition, Member States are free to maintain or conclude bilateral or multilateral agreements or arrangements to further facilitate the service of documents in cross-border civil and commercial cases, as long as these are compatible with the Regulation (Art. 20(2)). Based on the information available on the e-Justice portal, at least fifteen Member States have one or more agreements relating to service of documents in place.<sup>233</sup>

No difficulties in relation to the coherence of the Regulation with the Hague Conventions and other bilateral or multilateral agreements have been identified based on the research and consultations carried out by this study.

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<sup>231</sup> Six Member States have been involved: France (leader), Belgium, Luxembourg, The Netherlands, Hungary, Estonia and one partner: The French Ministry of Justice.

<sup>232</sup> For more information, see: <http://www.cehj.eu/en/activities/projects/e-Justice/>

<sup>233</sup> 6 Member States indicated that they do not currently have such agreements in place, while 15 affirmed they have one or several bilateral agreements in place. For the other Member States, the information is not available on the English version of the e-Justice portal.

## 5.5. EU added value

**The key aspect of this Regulation is the establishment of a common set of procedures to all Member States, which is essential to ensuring a successful service of documents in cross-border proceedings. Stakeholders agree on the added value of the Regulation and the positive effects achieved through this instrument could have not been achieved otherwise. Continued EU action is needed.**

In line with the Better Regulation Guidelines, the EU added value test is performed on the basis of the effectiveness and efficiency evaluation criteria. The following section presents the main benefits of an EU intervention, and explain to what extent the positive effects could not have been achieved at national level.

The cross-border dimension of judicial cooperation is actually the reason why an EU intervention is essential: it provides the necessary coordination to ensure a uniform procedure across the Member States. This objective could not have been sufficiently reached by the Member States on their own due to the cross-border dimension.

Firstly, prior to the adoption of the Regulation, rules and procedures regarding the cross-border service of documents varied across the EU Member States. Mainly regulated by international conventions and bilateral mutual legal assistance agreements, there was no uniform regime throughout the EU. One of the aims of the EU intervention was to put this type of international judicial assistance on a uniform legal basis, thereby reducing disparities between the Member States. The Regulation has brought a set of common procedures for the service of documents in cross-border proceedings. Stakeholders interviewed consider this EU instrument well-functioning in comparison to its predecessor and to the bilateral and multilateral agreements. It was pointed out that service of documents within the EU was described as more efficient and effective than in third countries, where the procedure is significantly longer as it involves more steps. In particular, the existence of standard forms common to all EU Member States was pinpointed by interviewees as one of the main advantages of the Regulation, as it facilitates that the procedure is applied homogeneously across the countries, reducing the procedural barriers among the systems in cross-border proceedings.

Secondly, the Regulation's speeded up the transmission of judicial and extrajudicial documents by introducing direct communication between the local (decentralized) agencies, and enhanced the transparency of the relevant information by publishing that information in the common European platform (e-Justice Portal). The designation of the Central Bodies as well as the transmitting and receiving agencies facilitates the procedure as stakeholders involved are aware, through the information provided by the e-Justice portal, of who are the relevant authorities to be reached. This finding from the interviewees is also supported by 75% of the public consultation's respondents (out of 91), who stated that it was indeed easy to identify the receiving agency in the Member State where the document had to be served. This was also corroborated by the results of the online survey carried out by the contractor. This centralization of the information together with the constant coordination amongst the Member States were singled out as

key aspects of the Regulation. The interviewees actually consider the main benefit of the Regulation to lay in the improved communication between the Member States. Therefore the geographical distance between the Member States has been reduced thanks to the centralization of information and fluent communication between the stakeholders involved in cross-border proceedings.

Thirdly, the EU intervention has significantly contributed to ensuring legal certainty of the procedure. As previously explained, the provisions of the Regulation are clear concerning the steps to follow, the deadlines to respect, and the forms to fill in. In addition, an added value of the Regulation is the protection of the rights of the defence, in particular in relation to the language barriers. In this sense, 58% of the respondents to the public consultation (out of 62 to the question concerned) strongly agree or tend to agree that the procedural rights of the addressee are adequately respected in course of the proceedings. Despite the distance between the parties located in different Member States, the Regulation ensures that a common procedure is respected and their rights protected.

Lastly, as explained in the assessment under the previous evaluation criteria, the Regulation has yielded effectiveness and efficiency gains. Overall, stakeholders interviewed agreed that the Regulation is a very useful instrument, which has considerably helped speeding up cross-border proceedings. In particular, direct communication and the existence of predefined standard forms have made cross-border cases easier. In terms of costs, the service of documents to other Member States has not generated disproportionate costs (see section 0).

Although stakeholders having a negative view on the Regulation are truly a minority, limited criticism also emerged from the fieldwork interviews. A limited group of stakeholders consider the service of documents abroad not only slower than before the adoption of the Regulation, but also more costly. On the other hand, due to the lack of respect of the deadlines laid down in the Regulation, legal certainty is threatened as there is no reliable expected time-frame of the procedure.

## **6. CONCLUSIONS**

The conclusions below are the result of extensive research from various sources: desk research (including an assessment of case law), strategic interviews with EU level stakeholders, fieldwork (on-site or phone) interviews in ten Member States, analysis of the public consultation and the online survey<sup>234</sup> results.

### **6.1. Effectiveness**

The implementation of the Regulation has contributed to some clear improvements concerning the effectiveness of the service of documents. Nevertheless, according to

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<sup>234</sup> See section 2.3. for an explanation regarding the online survey results.

some of the evidence gathered, the Regulation still results in some issues such as delays or confusion for the parties involved. Therefore, the Regulation has not fully achieved its general, specific and operational objectives.

In terms of the operational objectives, the Regulation has not reached them to a full extent. In particular, two objectives are regarded as not fully achieved. First, it is still not ensured that all appropriate means are used to warrant a direct and rapid transmission of documents. Second, the direct service of documents under Article 15 of the Regulation is not fully facilitated, as it is only available in 12 Member States. Further, some Member States have very strict rules on the way that direct service can be used in their territory under the Regulation which, differing from their own domestic rules, create confusion and additional burden to applicants in other Member States.

The Regulation has impacted positively on all specific objectives, but on some more than others. Although some delays are created in the process of serving documents, stakeholders generally agree that the situation has improved with the use of the Regulation and thus the objective of improving the efficiency and speed of cross-border proceedings have been realised. Regarding the right to access to justice and the protection of the rights of the parties, it was found that this objective is not met to the full extent. Although the provisions on the right to refusal and default judgments contained in the Regulation are welcomed by stakeholders, issues still exist with regard to their interpretation and application in the Member States. In addition, the Regulation does not address its relationship to the use at domestic level of fictitious or alternative methods of service on addressees with a residence or seat in another Member State, which can also impact of the rights of parties involved in cross-border proceedings. Lastly, in terms of the burden for citizens and business involved in cross-border proceedings, the Regulation has allowed for some reductions in the burden for businesses compared with the situation before the Regulation however it has not minimised the burden. Ambiguities in the Regulation cause additional costs for citizens and rapid and technological opportunities that could further reduce such burdens are not fully exploited by the Regulation.

Regarding the Regulation's general objectives, the Regulation has had a positive impact on ensuring the smooth functioning of the area of freedom, security and justice. This is mostly achieved through the uniform procedures for transmitting the documents abroad for purposes of service there and the harmonized conditions of certain direct methods of cross-border service of documents. However, regarding ensuring the smooth functioning of the Internal Market, the restriction of access to direct service in some of the Member States was found to be contrary to internal market principles.

## **6.2. Efficiency**

Assessment of the efficiency of the Regulation indicates that its effects have been achieved at a reasonable cost. The costs identified on the Member States' side to comply with the Service Regulation consist mainly of allocating administrative tasks to relevant bodies and providing information for the e-Justice portal. This is not a significant burden when compared with the positive effects of the Regulation, which are: a common process

among competent agencies exists for serving a document in the EU; a common set of alternative ways for transmission and service of the documents in another Member State; and information being available online for the execution of service. Nevertheless, there is still room for improvement, notably the administrative burden for judicial authorities in terms of the communication through forms annexed in the Regulation is still significant.

The costs borne by citizens and businesses involved in the service of documents under the Regulation are mainly the translation costs, costs stemming from the delays the cross-border nature of the delivery process brings with it, and the costs for the intervention of a judicial officer or another competent person in the Member States where these agents are responsible for serving judicial and extrajudicial documents. Nevertheless, there is no evidence that the Regulation has increased the costs involved in cross-border proceedings; the situation is rather the opposite: certain elements of the Regulation (such as the approach which does not require a translation for a formal service of a document, the time saved by the direct communication between the transmitting and receiving agencies and the obligation of the Member States concerned to communicate a flat rate fee to be charged for the intervention of a judicial officer) contributed to the mitigation of these costs.

### **6.3. Relevance**

The Regulation was adopted to address the real life needs of stakeholders involved in cross-border proceedings regarding service of documents.

On the one hand, legal practitioners require a streamlined process where the efficient and speedy transmission of judicial and extrajudicial documents is ensured. The Regulation has brought not only a common regime to all Member States for the service of documents across borders, but has also contributed to improving the speed of cross-border proceedings. On the other hand, businesses and citizens involved in cross-border proceedings require not only that the procedures for the service of documents be common to all EU countries, but most importantly, that it ensure that their rights are protected equally in all Member States.

In broad terms, stakeholder needs identified have not changed significantly over the past years of implementation of the Regulation. The Regulation, hence, still addresses the main needs of the stakeholders involved. Nevertheless, there still room for improvement. For example, the scope of the Regulation is not clear enough. Although its Article 1(1) stipulates that the Regulation applies in civil and commercial matters, there is some confusion about whether it should also apply in proceedings of different nature (e.g. criminal, or fiscal), but with a civil or commercial dimension. Similarly, there is an ambiguity around the concept of "extrajudicial documents" in the Regulation: the fragmented interpretation of its content relying on the diverging views of the national procedural laws, is against the stated intention of the EU legislator to have this notion as an autonomous concept of EU law.



Also, the limitation of the scope of the Regulation to situations where the address of the person served is known (Art. 1(2)), is considered by the stakeholders as an element not reflecting actual needs. This limitation in scope raises some difficulties in legal disputes having cross-border implications, because claimants and right seeking persons from one Member State do not have the necessary information on the availability or cannot access tools and measures in the other States which may be used for clarifying the whereabouts of their adversaries.

Furthermore, some key emerging trends, such as digitisation, have been identified as posing challenges to the relevance of the Regulation, which hence could no longer be regarded fully future-proof. At the national level, some Member States already include electronic service in their legal systems, while others are investing efforts to do so.<sup>235</sup> At EU level, the increased use of digital solutions (through e.g. eID and trust services) is encouraged and is being explored in all types of sectors and business processes, including in legal proceedings. The framework set up by the eIDAS Regulation allows for interoperability of more digital solutions and thus opens the door for potential growth in use of eID and trust services, or that of the CEF e-Delivery building block (which is used by e-CODEX) to enhance the service of documents in cross-border proceedings. The Regulation does not accept the (direct) electronic service of documents from one Member State to another as a valid means of serving documents, whereas electronic communication between the transmitting and receiving agencies designated under the Regulation is a rare exception. The Regulation therefore falls behind these technological developments.

#### **6.4. Coherence**

The coherence of the Regulation has been assessed from an internal and external perspective. In terms of internal coherence (i.e. the consistency of the different provisions within the Regulation), the Regulation is a robust legal instrument. There are nonetheless small issues hampering the overall internal coherence of the Regulation. For example, the Regulation requires the competent agency to include the refusal form when serving a document, even when the document is already written or translated in the official language of the Member States concerned (in such cases, the right of refusal cannot be exercised). Or that the addressee is required to send back the document if he/she refuses in writing to accept it, although the written declaration alone represents a clear intention of the recipient regarding the refusal.

The external coherence of the Regulation with both national and EU level instruments is ensured to some extent. Based on the evidence collected, it is noted that the Regulation is not fully compatible with certain national legal systems. The Regulation is, for example, not naturally coherent with Member States where lawyers or other competent persons normally carry out the service of documents without the intervention of the courts (e.g. in most common law systems). The lack of provisions on electronic service also indicates

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<sup>235</sup> See state of play in relevant chapter of the 2016 Study Firenze

the inadequacy of the Regulation in comparison to those national legal systems which already foresee such method. In addition, the Regulation was found to be coherent with other relevant EU instruments in the field of judicial cooperation. Although no major issues have been identified in this respect, there is room for more alignment and synergies by adjusting the provisions of the Regulation.

#### **6.5. EU added value**

The Regulation establishes a common set of procedures to all Member States, which is essential to ensuring a successful service of documents in cross-border proceedings. The Regulation has thereby contributed to ensuring the legal certainty of the procedure as all Member States now follow the same steps, are subject to common deadlines, and use uniform forms. The Regulation has also enabled to bring together all the information available in the Member States, and centralised it in the e-Justice portal facilitating in this way the coordination amongst the Member States. Overall, the Regulation has considerably helped speeding up cross-border proceedings, enabling significant effectiveness and efficiency gains.