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

REGULATION (EU) 2020/1784 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 1393/2007 of the European Parliament and of the Council[(3)] has been amended before. Since further substantial amendments are to be made, that Regulation should be recast in the interests of clarity.

(2) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among other measures, measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.

(3) For the purposes of the proper functioning of the internal market and the development of an area of civil justice in the Union, it is necessary to further improve and expedite the transmission and service of judicial and extrajudicial documents between the Member States in civil and commercial matters, while ensuring a high level of security and protection in the transmission of such documents, safeguarding the rights of addressees and protecting privacy and personal data. This Regulation seeks to improve the effectiveness and speed of judicial procedures by simplifying and streamlining them as regards the service of judicial and extrajudicial documents in the Union, while at the same time helping to reduce delays and costs for individuals and businesses. Providing greater legal certainty and simpler, streamlined and digitalised procedures,

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/1784 of the European Parliament and of the Council. (See end of Document for details)*

will encourage individuals and businesses to engage in cross-border transactions, thereby boosting trade within the Union and thus the functioning of the internal market.

(4) This Regulation lays down rules on the service of judicial and extrajudicial documents in the Member States in civil or commercial matters. It should not apply to the service of judicial and extrajudicial documents in other matters such as revenue, customs or administrative matters.

(5) Cross-border service should be construed as service from one Member State to another Member State.

(6) This Regulation should not apply to the service of documents on a party's authorised representative in the forum Member State, but should apply to the service of any document on a party in another Member State if such service is required under the law of the forum Member State, irrespective of whether the document has been served on the party's representative.

(7) Where an addressee has no known address for service in the forum Member State, but has one or more known addresses for service in one or more other Member States, the document should be transmitted to such other Member State for service under this Regulation. This situation should not be construed as domestic service within the forum Member State. In particular, the document should not be served on the addressee by a fictitious method of service, such as service by posting an announcement on the court notice board or by depositing the document in the court file.

(8) For the purposes of this Regulation, the term 'extrajudicial documents' should be understood to include documents that have been drawn up or certified by a public authority or official, and other documents of which the formal transmission to an addressee residing in another Member State is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. The term 'extrajudicial documents' should not be understood to include documents issued by administrative authorities for the purposes of administrative proceedings.

(9) Efficiency and speed in judicial proceedings in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States should be able to designate separate transmitting agencies and receiving agencies or to designate one or more agencies to perform both functions for a period of five years. It should, however, be possible to renew that designation every five years.

(10) In order to ensure the speedy transmission of documents between Member States for the purposes of service, any appropriate modern communications technology should be used, provided that certain conditions as to the integrity and reliability of the document received are met. Therefore, as a rule, all communication and exchange of documents between the agencies and bodies designated by the Member States should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, and without prejudice to further technological progress, based on e-CODEX. Accordingly, a decentralised IT system should be established for data exchanges under this Regulation.

The decentralised nature of that IT system would enable data exchanges exclusively between one Member State and another, without any of the Union institutions being involved in those exchanges.

(11) Without prejudice to possible future technological progress, the secure decentralised IT system and its components should not be understood to necessarily constitute a qualified electronic registered delivery service as defined by Regulation (EU) No 910/2014 of the European Parliament and of the Council[(4)].

(12) The Commission should be responsible for the creation, maintenance and future development of reference implementation software which Member States should be able to use instead of a national IT system, in accordance with the principles of data protection by design and by default. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725[(5)] and (EU) 2016/679[(6)] of the European Parliament and of the Council, in particular the principles of data protection by design and by default. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring a level of security and interoperability which is appropriate for the exchange of information in the context of service of documents.

(13) In relation to the components of the decentralised IT system which are under the responsibility of the Union, the managing entity should have sufficient resources in order to ensure the proper functioning of that system.

(14) The competent authority or authorities under national law should be responsible as controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data that they carry out under this Regulation for the transmission of documents between Member States.

(15) Transmission through the decentralised IT system could become impossible due to a disruption of the system. Other means of communication could be more appropriate also in exceptional circumstances, which could include situations in which converting voluminous documentation into electronic form would impose a disproportionate administrative burden on the transmitting agency or whereby the original document is needed in paper format to assess its authenticity. Where the decentralised IT system is not used, transmission should be carried out by the most appropriate alternative means. Such alternative means should entail, inter alia, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means or by postal service.

(16) In order to enhance electronic cross-border transmission of documents through the decentralised IT system, such documents should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents.

(17) In order to facilitate the transmission and service of documents between Member States, the forms set out in Annex I should be used. The document to be transmitted should be accompanied by a request drawn up using form A in Annex I. The form should be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State should indicate the official language or languages of the Union other than its own which it can accept.

(18) An acknowledgment of receipt using form D in Annex I should be sent automatically to the transmitting agency through the decentralised IT system or by other means, as soon as possible and in any event within seven days of receipt of the document.

(19) When it receives a certificate of non-service of documents, it is important for the transmitting agency to know whether the authorities of the Member State addressed have submitted requests to domicile registries or other databases, where such registries or databases exist, for a search for a new address for the person to be served. Therefore, Member States should inform the Commission if their authorities make such requests on their own initiative in cases where the address indicated in the request for service is not correct. However, this Regulation should not impose an obligation on the authorities of the Member States to make such requests.

(20) Where a request for service cannot be fulfilled on the basis of the information or the documents transmitted, where it falls outside the scope of this Regulation, where non-compliance with the formal conditions makes the service impossible, or where it was sent to a receiving agency not having territorial jurisdiction, the receiving agency should undertake the steps provided for in this Regulation without a delay that is unjustified, unreasonable and unnecessary in the light of the particular circumstances, including the means of communication at the disposal of the receiving agency.

(21) Speed in transmission requires documents to be served within days of receipt of the document. The service of documents should be effected as soon as possible, and in any event within one month of their receipt by the receiving agency.

(22) The receiving agency should continue to take all necessary steps to effect the service of the document even in cases where it has not been possible to effect the service within one month of the receipt of the document, for example, because the defendant was on holiday away from his or her home or was on business away from his or her office. However, in order to avoid an open-ended obligation for the receiving agency to take steps to effect the service of a document, the transmitting agency should be able to specify a time limit after which service is no longer necessary, using form A in Annex I.

(23) To ensure that this Regulation is effective, the circumstances in which it is possible to refuse the document to be served should be confined to exceptional situations.

(24) In all cases where the document to be served is not in the official language or one of the official languages of the place of service, the receiving agency should inform the addressee in writing using form L in Annex I that the addressee can refuse to accept the document to be served if it is neither in a language which the addressee understands nor

in the official language or one of the official languages of the place of service. This rule should also apply to any subsequent service once the addressee has exercised the right of refusal. The right of refusal should also apply in respect of service by diplomatic agents or consular officers, service by postal services, electronic service and direct service. It should be possible to remedy the service of the refused document by serving a translation of the document on the addressee.

(25) If a translation is attached to the document to be served, it should be certified or otherwise deemed suitable for proceedings in accordance with the law of the Member State of origin. The translation should be made available to the Member State where service is to take place. The translation of documents into another language for the purpose of ensuring compliance with this Regulation is without prejudice to the ability of the recipient to challenge the correctness of the translation in accordance with the law of the forum Member State.

(26) If the addressee has refused to accept the document and the court or authority seised of the legal proceedings decides upon verification that the refusal was not justified, that court or authority should consider an appropriate way of informing the addressee of that decision in accordance with national law. For the purposes of verifying whether the refusal was justified the court or authority should take into account all the relevant information on the file in order to determine the language skills of the addressee. Where relevant, when assessing the language skills of the addressee, the court or authority could take into account factual elements, for example documents written by the addressee in the language concerned, whether the addressee's profession involves particular language skills, whether the addressee is a citizen of the forum Member State or whether the addressee previously resided in that Member State for an extended period of time.

(27) Given the differences between the Member States as regards their rules of procedure, the effective date of service varies from one Member State to another. In the light of such situations and the possible difficulties that may arise, this Regulation should provide for a system under which the law of the Member State addressed determines the date of service. However, where under the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant should be that determined by the law of that Member State. That double date system exists only in a limited number of Member States. If Member States apply that system, they should communicate that information to the Commission, which should make that information available electronically through the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC[(7)] and on the European e-Justice Portal.

(28) In order to facilitate access to justice, Member States should lay down a single fixed fee for recourse to a judicial officer or a person competent under the law of the Member State addressed. That fee should respect the principles of proportionality and non-discrimination. 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 those principles.