



Brussels, 6.11.2020
COM(2020) 695 final

2018/0203 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

**pursuant to Article 294(6) of the Treaty on the Functioning of the European Union
concerning the**

position adopted by the Council at first reading on the adoption of a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and of a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters

**This Communication refers to both
COM(2018) 378 final - 2018/0203(COD) and COM(2018) 379 final – 2018/0204(COD)**

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1. BACKGROUND

Council Regulation (EC) No 1393/2007 provides for fast-track channels and uniform procedures for transmitting documents directly between the designated competent agencies from one Member State to another, for purposes of service in the latter. The Regulation includes certain minimum standards on 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.

Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters is an important instrument for European judicial cooperation, given that it is often crucial to present sufficient evidence to the court to prove a claim. The Regulation establishes an EU-wide system for the direct and rapid transmission of requests for the taking and execution of evidence between courts and lays down precise rules as to the form and content of such requests.

The EU justice agenda for 2020¹ stressed that, in order to enhance mutual trust between Member States' justice systems, the need to reinforce civil procedural rights should be examined, for example as regards the service of documents. The aim of improving the framework of judicial cooperation within the EU is also in line with the objectives set out by the Commission in the digital single market strategy.² In the context of e-government, the strategy expresses the need for more action to modernise public (including judicial)

¹ COM(2014) 144 final.

² COM(2015) 192 final.

administration, achieve cross-border interoperability and facilitate easy interaction with citizens.

In 2017 the Commission undertook a regulatory fitness (REFIT) evaluation, in line with the better regulation guidelines, to assess the operation of the instruments. The findings of that REFIT evaluation showed that full advantage is not being taken of the potential of recent technological developments. As regards the interoperability of the national IT systems, the impact assessment concluded that in this context substantial improvement could be achieved with little investment, by relying on the EU outputs and legal standards that already exist.

Accordingly, the Commission undertook in its work programme for 2018 to prepare proposals revising the Regulations.

Date of transmission of the proposals to the European Parliament and to the Council: 31 May 2018.

Date of the opinions of the European Economic and Social Committee: 17 October 2018.

Date of the positions of the European Parliament, first reading: 13 February 2019.

Date of adoption of the positions of the Council: 4 November 2020.

2. PURPOSE OF THE COMMISSION PROPOSALS

The proposals aim to improve the smooth functioning of the area of freedom, security and justice, and of the internal market, by increasing the efficiency and speed of the cross-border service of documents and taking of evidence. They should achieve this by adapting Regulations (EC) No 1393/2007 and (EC) No 1206/2001 to technical developments and exploiting the advantages of digitalisation. The initiatives increase legal certainty and thereby help to avoid delays and undue costs for citizens, businesses and public administrations and address shortcomings in the protection of parties' procedural rights.

3. COMMENTS ON THE POSITION OF THE COUNCIL

Throughout the inter-institutional negotiations the Commission achieved the safeguarding of all the key principles included in its proposals, in particular: the mandatory nature of the electronic transmission of requests as the common main element of both instruments, bringing

about the digitalisation of communications; the possibility to serve documents directly on the addressee electronically; and further rules to ensure that more use is made of videoconferencing in the context of cross-border taking of evidence. In trilogues appropriate solutions were found on all technical issues, including the way in which reference to e-CODEX³ (e-Justice Communication via Online Data Exchange) is made, as well as on two political issues regarding the deadlines for implementing acts. These were resolved in accordance with the Commission's objectives and mandate. More specifically, the main elements of the Council position are the following:

- The Commission adopts the implementing acts to establish the technical system 15 months after the entry into force of the Regulations.
- Member States will then have 3 years to implement the system following the adoption of the implementing acts, with the proviso that Member States which are already sufficiently advanced can start implementation earlier.
- The decentralised IT system will be adopted by implementing acts.
- The texts are transformed into recasts.⁴

4. CONCLUSION

The Commission supports the Council positions.

³ An information technology instrument at Union level that allows swift, direct, interoperable, reliable and secure cross-border electronic exchange of case related data.

⁴ The Commission endorsed the transformation of the texts into recasts in the interest of legal practitioners, as requested by Council and Parliament, and accepted exceptionally to deviate from the Interinstitutional agreement on recasts since the legislative technique initially chosen, namely having the two proposals as amending acts, was rather due to the specific circumstances and calendar constraints linked to their adoption at the end of the previous Commission's mandate, and not due to unsuitability of having recast formats; and since it was agreed at trilogues that provisions for which the Commission did not propose an amendment and that were not subject to the political agreement, remain untouched.