



EUROPEAN COMMISSION

*Brussels, 21.1.2019
C(2019) 82 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation 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 {COM(2018) 379 final}.

The proposal aims 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. In the Commission's view, this objective will be attained by adapting Regulation (EC) No 1393/2007 to technical developments, exploiting the advantages of the digitisation of the electronic service and enhancing the efficiency of existing methods of service. At the same time, it will increase legal certainty and thereby help to avoid delays and undue costs for citizens, businesses and public administrations and address the shortcomings in the protection of the parties' procedural rights.

Discussions between the Commission and the co-legislators, the European Parliament and the Council, concerning the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future.

The Commission welcomes the broad support of the Bundesrat to the aims of the proposal, but at the same time also takes note of its concerns and suggestions. In response to the latter, the Commission would like to refer to the attached Annex and hopes that the clarifications provided in this reply address the issues raised by the Bundesrat. The Commission looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Věra Jourová
Member of the Commission*

*Mr Daniel GÜNTHER
President of the Bundesrat
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Annex

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications.

Article 3

As a general rule, Regulations enter into force and apply directly from the moment the vacatio legis expires. Should it prove necessary to defer the application of the Regulation or of its part until a date after its entry into force, the Regulation must clearly specify the reasons for that. The Commission is aware that technical and financial considerations need to be taken into account. Therefore, it suggested to have reasonably long transitional periods of deferred application, namely 12, 18 and in 24 months respectively. Taking into account that a large number of Member States participates in the e-Codex project and the estimation that the proposal is scheduled for adoption only in the forthcoming legislative period, additional exceptional cases in the new Article 3a(4) will very likely not be necessary.

Article 4

The Commission takes note of the suggestion to expand the scope of the second sentence of the new Article 4(3) and will further reflect on safeguards such as the qualified electronic signature.

Article 8

The Commission would like to clarify that the 14-day deadline in which an addressee may exercise the right to refuse a document needs to be interpreted in the sense that the refusal needs to be sent within two weeks. A different interpretation, namely that authority concerned needs to be in possession of the refusal within 14 days, could lay grounds for discrimination, for instance, on the basis of the efficiency of postal services in different Member States.

Article 14

The Commission would like to thank the Bundesrat for the valuable suggestions for an additional rule in this Article. During the ongoing negotiations with the co-legislators, it will make every effort to clarify the legal effects in cases of non-delivery or belated delivery of a registered letter.

Article 15

This provision extends the scope of the existing Article in two aspects: Firstly, it no longer requires the applicant to have an interest in the proceedings, thereby allowing transmitting agencies and courts seized with the proceedings to use this way of service. Secondly, direct service would be applicable in the future in the territory of all Member States.

In this respect, the group of professors and practitioners from different Member States (including Germany) appointed by the Commission in order to obtain the required additional expertise stressed that, when there is need to serve a temporary measure document that has a short deadline, the postal service is not appropriate and that Article 15 is the key. In addition, the same experts provided several examples of how the provision is applied in the legal systems of different Member States (solicitors/lawyers, huissiers, bailiffs etc.) in the attempt to find a common ground. They concluded that Member States should leave open all the methods available under national law and have at least one person who can provide service under national law.

Article 15a

The Commission is aware of the concerns regarding direct electronic service. However, in the Commission's view, the fact that a person uses electronic registered delivery service implies that this particular person knows that it can be used for important documents, including documents triggering deadlines. This should therefore imply the consent to also receive judicial or extrajudicial documents to be served under the proposed amendments of the Regulation.

Article 19

Regarding the giving of notice through alternative channels to a person whose physical whereabouts are not known, for instance, by sending alert messages to e-mail addresses or social media accounts, the Commission wishes to clarify that such practice was recommended by the expert group mentioned above, as an example of actions which may be performed by the court in order to comply with the 'every reasonable effort' criterion. This only means alerting the addressee about the court proceedings, and not the actual delivery of the documents that have to be served.

Articles 23a and 24

The Commission takes note of the Bundesrat's considerations that the Member States should be involved to a larger extent in the monitoring and evaluation of the Regulation.