



DIGI-GUARD

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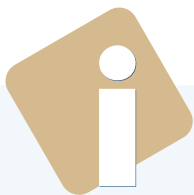
SERVICE OF DOCUMENTS

Digital communication and safeguarding the parties' rights:
challenges for European civil procedure

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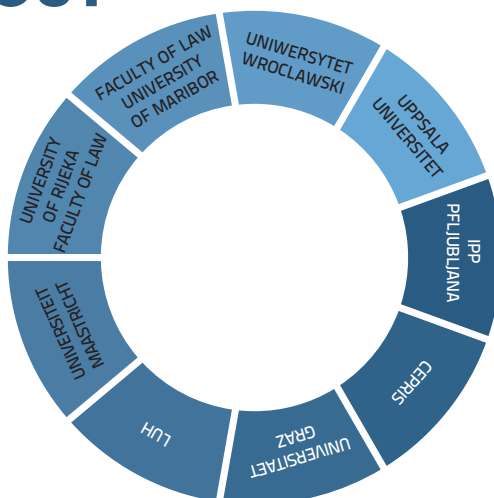
GENERAL INFORMATION

Service of documents is one of the cornerstones of European civil procedure. It promotes the rule of law by ensuring access to justice to the addressee, as well as the right to be heard. Its purpose is to give legal notice to the addressee of the document so that he or she can prepare a legal defence.

Yet EU Member States may experience difficulties in cross-border service of documents. These may range from practical to legal issues. For example, the address of the defendant may be unknown or there are difficulties in establishing the languages spoken by him or her, or there might be difficulties in establishing the validity of service when the defendant has not entered an appearance. The electronic service of documents and the use of digital technologies to transmit requests for service may also present other challenges. The Regulation (EU) No. 2020/1784 on the service of documents, as well as other implementing EU legislation, are an important step towards facilitating service of documents within the EU.

KEY POINTS ABOUT DIGI-GUARD

THE
CONSORTIUM IS
COMPRISED OF
9 PARTNERS



RESULTS OF THE PROJECT



Research on national regulation relevant to cross-border service of documents



Comparative Legal Expert report on the basis of 15 national reports



Recommendations that will contribute to the effective application of the Service Regulation



Increased knowledge and understanding of partakers in cross-border cases regarding the use of digital communication tools



Recommendations for EU legal minimum safeguards in digital communications



Identify any possible barriers and necessary legal safeguards, with the ultimate goal of strengthening mutual trust and increasing the use of the Service Regulation.

STATE OF PLAY



The way in which service of documents is effected (incl. electronic service) varies in each Member State. More in-depth knowledge of how service occurs in each Member State is thus necessary.



THE EFFECTIVE APPLICATION OF SERVICE REGULATION

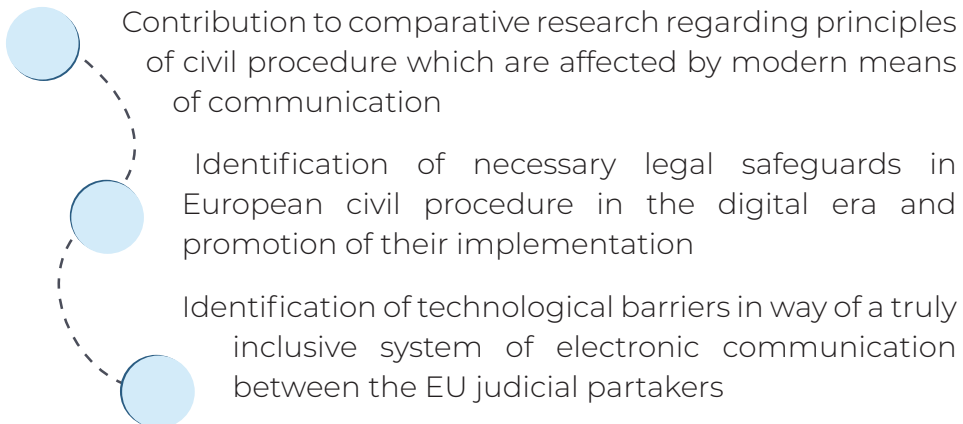
A comparative analysis will attempt to identify different practices and legal requirements with regard to service of documents. Sharing this knowledge among EU Member States will increase the effectiveness of the application of the Service Regulation

SERVICE OF DOCUMENTS



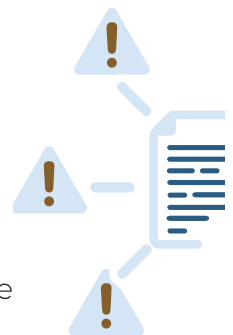
The Service Regulation does not harmonise the manner in which service of documents is effected in the Member States. Thus, the different methods and requirements of service of documents used in the Member States vary and are sometimes unknown. This may potentially create confusion and hinder European civil cooperation.

IN THE CROSS- BORDER CONTEXT



POSSIBLE CHALLENGES IN THE SERVICE OF DOCUMENTS IN DOMESTIC PROCEEDINGS WHEN DETERMINING:

- ▶ Date of service
- ▶ Costs of service
- ▶ Legal requirements and consequences of proper service of documents
- ▶ Substitute methods of service and in which circumstances these methods are employed



- ▶ Improper service
- ▶ Refusal to accept service
- ▶ Defendant's failure to appear and default judgments

This project will also examine important concepts such as “**service**” and “**civil and commercial matters**”.



SPECIFIC ISSUES REGARDING SERVICE OF DOCUMENTS IN THE CONTEXT OF THE REGULATION

- ▶ Identifying the transmitting / receiving agencies, and the declarations of Member States in the relevant language
- ▶ Choosing the method of service (incl. direct service) and assessing costs
- ▶ Tracing the address of the person to be served
- ▶ Determining the need for translation of the documents to be served
- ▶ Service by diplomatic agents or consular officers
- ▶ Lengthy delays

ELECTRONIC SERVICE OF DOCUMENTS AND THE PROTECTION OF THE RIGHTS OF THE DEFENDANT

The Service Regulation provides for the electronic service of documents if certain conditions are fulfilled (art. 19). One of the scenarios contemplated in the Regulation is that documents be sent and received using qualified electronic delivery services within the meaning of the Regulation (EU) No 910/2014 but only if the addressee gave prior express consent to the use of such electronic means in legal proceedings.



Another scenario relates to the following:

- 1 when the addressee gave prior express consent to the court or authority seised of the proceedings or to the party responsible for service of documents in those proceedings to the use of email sent to a specified email address *and*
- 2 The addressee confirms receipt of the document, with an acknowledgement of receipt, including the date of receipt.

By establishing strict conditions to electronic service of documents, the Service Regulation seeks to protect the rights of the defendant.



ELECTRONIC SERVICE

This research analyses elements that are considered important with regard to **electronic service** such as:

- ▶ Declarations of Member States on electronic service (conditioning or restricting its use)
- ▶ Use of internet portals to log in
- ▶ e-identification (incl. e-signature) of electronically served documents
- ▶ Verification of the identity of the user
- ▶ Consent to electronic service
- ▶ Time of electronic service
- ▶ Security and data protection issues

DIGI-GUARD will deliver an important output regarding this topic:

It will analyse the ways in which electronic service is used in EU Member States, as well as its requirements and challenges. It will draw conclusions from this research and will share a list of findings

MAIN FINDINGS

- 1 The importance of selecting access points for e-CODEX and the interoperability between national IT systems and the e-Codex platform has been underscored.

There are different approaches to e-Service. Some States have adopted legislation to serve documents electronically in domestic cases if the recipient has given his or her consent or has registered for the system (for example, through the e-justice information system in Slovenia, the Elektronischer Rechtsverkehr in Austria or the ICT system in Poland).
- 2
- 3 Generally, regular e-mail is not considered a secure method of service.
- 4 The maturity of certified mail digitalization in Member States must be examined when considering e-service. The level of maturity and its compliance with the eIDAS Regulation varies from State to State.
- 5 It was acknowledged the need to implement the Digitalisation Regulation (No 2023/2844), as well as the potential synergies with the project.

ADVANCING THE USE OF MODERN TECHNOLOGIES AND A BETTER UNDERSTANDING OF E-CODEX

DIGI-GUARD will explore the different national electronic IT systems. **One output** that will result from this study is:

Comparative report on IT systems complexity, confidentiality and ease of access

This project will also briefly consider the e-CODEX system and how it operates in procedures for European Payment Orders and European Small Claims.

An **additional output** will be relevant to selected EU Member States, in particular Slovenia:



Cabinet study work of the interoperability between the selected national IT system and the e-CODEX platform and translation of those results



PROJECT ACTIVITIES REGARDING THE SERVICE REGULATION

- ▶ Kick-off meeting at University of Maribor, Slovenia
- ▶ Two expert meetings in Wroclaw (Poland) and Hannover (Germany)
- ▶ Questionnaire regarding service of documents
- ▶ National Reports
- ▶ First and second International Conferences in Slovenia
- ▶ An awareness raising seminar in each partner Member State
- ▶ Conference proceedings
- ▶ Comparative expert report

Co-funded by the European Union. Views and opinions expressed are however those of the authors only and do not necessarily reflect those of the European Union or the European Commission (granting authority). Neither the European Union nor the granting authority can be held responsible for them.



University of Maribor

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