

Service of documents in the European Judicial Space: on the Commission's proposal for amending Regulation 1393/2007

Guest post by Dr. Stefano Dominelli of the University of Milan

In recent times, the European Commission has investigated the possibility of amending Regulation 1393/2007 on the service of judicial and extra-judicial documents between Member States. Such instrument has already settled some issues practitioners encountered under the application of the previous legal framework, in particular related to the administrative cooperation regime, the linguistic exception to service, and direct service by registered mail – or equivalent measure.

The need for a proper functioning of the cross-border service of documents mechanisms is properly highlighted in the Commission's proposal, and new rules are suggested to further implement the system.

A recent volume, *Current and future perspectives on cross-border service of documents*, by Stefano Dominelli (Univ. of Milan, Dep. of International, Legal, Historical and Political Studies), explores and addresses the Commission's proposals.

The functioning of Regulation 1393/2007 is in the first place reconstructed by the author in particular by taking into consideration the case law of a number of Member States. It is against this background that the proposed amendments are commented.

Amongst the numerous points, the book dwells upon proposed new art. 3a, and its possible impact. Acknowledging technical evolutions, communication and exchange of documents between transmitting and receiving agencies in the diverse Member States should in the future strongly rely on e-transmission. According to proposed new art. 3a, only if electronic transmission is not possible due to an unforeseen and exceptional disruption of the decentralised IT system,

transmission shall be carried out by the swiftest possible alternative means. The author advises caution in the matter, as the Commission itself argues in the explanatory memorandum of the proposal that modern channels of communication are in practice not used due to old habits, legal obstacles, and lack of interoperability of the national IT systems. In this sense, the work proposes that, at least for time being, a transition to e-transmission between agencies should be encouraged as an alternative method of transmission, rather as being the only available option.

A number of proposals are made as regards the right of the addressee to refuse service on linguistic grounds. In the first place, with a solution supported in the volume, a new Annex to the Regulation should clearly set out the means and methods of the addressee to refuse service, a matter that is currently not expressly dealt with by the regulation.

The time frame for the addressee to refuse service based on linguistic grounds should become two weeks, rather than one, a solution that is strongly endorsed by the author of the volume as it is deemed to be a more satisfying point of balance between the opposing interests of the prospective plaintiff and the defendant.

Nonetheless, the work highlights that some issues that have emerged in the case law still are not addressed in the Commission's proposal. In the first place, conflict of laws and international civil procedure issues are not referenced in the text, even though questions as the competent court before which violations of the rules on service can be invoked or which court has to investigate on the legitimate refusal to service based on linguistic grounds, have consistently been addressed by judges.

Additionally, the Commission's proposal gives to this day no clear indication on the refusal to service based on linguistic grounds when the addressee is a corporation, a matter that, according to the author, should deserve at least some guidance in the recitals of the instrument.

The volume can be freely downloaded at <https://ssrn.com/abstract=3259980>