

# Service of Documents on Insurance Companies: The ECJ in the *Corporis/Gefion* Insurance Case

The Court of Justice of the European Union on 27<sup>th</sup> February 2020 delivered its judgment in ***Corporis/Gefion Insurance, Case C-25/19***. The case concerned rules surrounding service of documents in a specific, yet increasingly common context.

*Corporis* is a Polish insurance company, who was assigned damages by the owner of a vehicle following a car accident for the value of 30 euro. *Gefion* was the Danish insurance company covering the risk related to the accident. Under the **Solvency II Directive**, insurance undertakings may provide services in other Member States without having there an agency or an establishment - yet, for compulsory motor insurance coverages they must appoint a representative with “*sufficient powers to represent the undertaking ... including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims*” (Art 152). The Polish representative of *Gefion* was *Crawford Polska*.

When *Corporis* wanted to start judicial proceedings, it served legal documents upon the prospective defendant, in Denmark. Documents were not translated, and the recipient of the documents, according to Art 8 of the **Service of Documents Regulation (no. 1393/2007)**, refused to accept service on the ground that it was in not in the condition to understand the content of the documents.

Polish courts suspended proceedings, requesting *Corporis* advanced payment for translation for 1.500 euro. Failing such payment, the court dismissed the case.

On appeal, the court of appeal questioned whether the Service of Documents Regulation was applicable, as its recital 8 states that it “*should not apply to service of a document on the party’s authorised representative in the Member State where the proceedings are taking place regardless of the place of residence*”

*of that party”.*

The Court of Justice was thus called to rule on whether the rules on the appointment of representatives contained in the Solvency II Directive and the scope of application of the Service of Documents Regulation as reconstructed in light of its recital extend the competence and duties of said representative to receive service of documents in the language of that specific host State for which he has been appointed.

The Court of Justice has confirmed that the Service of Documents Regulation is not applicable to service of a document on the party’s authorized representative in the Member State where the proceedings are taking place (para 28 f). The applicability of the regulation is set aside in light of its recital 8, according to which it should not be applied *“to service of a document on the party’s authorised representative in the Member State where the proceedings are taking place regardless of the place of residence of that party”*. This sets the difference from the previous case law of the court, namely the **Alder judgment Case C-325/11**, where there was no local representative of the foreign defendant, nor a legal obligation to appoint such a representative.

Yet, in the Court’s eye, the non-application of the Service of Documents Regulation in the case at hand does not mean that EU law remains silent in general. The Solvency II Directive creates a harmonized regime for the pursuit of insurance activities between Member States. Amongst its goals, not only the promotion of cross-border services, but the protection of persons as well. The necessity for an insurance undertaking to appoint a representative in a State where it decides to offer services without opening an agency or an establishment is pre-ordered at the protection of persons; even though the Solvency II Directive is silent on the matter, according to the Court, not recognizing the right to victim to serve documents in his own language to the representative with whom it has already taken preliminary steps would, in essence, deprive the provisions of their *effet utile*.

Interestingly, in terms of legal narrative, the matter is mostly constructed in positive terms. The Court speaks of the *“possibility for that representative to accept service”* (para 37); it stress the negative consequences of excluding *“the powers [of the] representative to accept service of documents”* (para 42). Evidently, from the perspective of the foreign insurance company and its

representative, this is more a matter of legal obligation to accept service.

The approach and the perspective followed by the Court becomes apparent in the conclusion. The Court does not clearly say that the representative has an obligation to accept service - it says that the rules on appointment in the Solvency II Directive include the power to receive service of documents. An argumentative style that appears to little prejudice to the conclusion: insurance companies now know that when they appoint a representative in another Member State under Artt. 152 Solvency II Directive, persons will have the possibility to serve documents to that representative, and avoid a cross-border service of documents.