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Digitalisation as a Tool for Enhancing Access to Justice and Protection of the Rights of the Parties in View of the Service of Documents in the European Union

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INTRODUCTION

Recently, the effects of digitalisation have also been reflected in the legal sphere, historically oftentimes resistant to change. This can perhaps be best seen in terms of service of documents, which is always a relevant issue when assessing whether there have been certain procedural violations. This is particularly so given the fact that in civil procedural law various legal effects depend on proper service of documents. With digitalisation in full swing, the EU and its Member States have started to include digital tools and solutions into laws and regulations. Service of documents has been particularly affected, as many of the digital tools can be of significant help in that area. At the EU level, the newest rules for the cross-border service of documents are contained in the 2020 Service Regulation Recast, developed specifically with the aim of digitalisation in mind. While benefits of digitalization for the service of documents may be obvious, it is important to consider whether the inclusion of digital tools can also create new issues that need to be addressed.

RESEARCH OBJECTIVES

The main aim of the research is to answer how does the process of digitalisation affects the service of documents in the EU. In that sense, particular regard will be given to the Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast). The research considers whether digitalisation enhances two particular EU objectives: increasing access to justice and protection of the rights of the parties.

This is done through the analysis of the current Service Regulation and the comparison with its predecessors. Different experiences of the Member States and the case law of both the national courts and the Court of Justice of the European Union will also be taken into account.

In that way, an answer to the question of usefulness and other effects of using digital tools in the process of cross-border service of documents in the EU can be given. This will help with creating better support for inclusion of digital tools into the legal sphere.

2020 SERVICE REGULATION RECAST

From the Preamble:

*‘(...), any appropriate modern communications technology should be used, **provided that certain conditions as to the integrity and reliability of the document received are met.** (...) all communication and exchange of documents between the agencies and bodies designated by the Member States should be carried out through a **secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable**, for example, and without prejudice to further technological progress, based on e-CODEX. (...)’*

*‘In order to enhance electronic cross-border transmission of documents through the decentralised IT system, **such documents should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.** (...)’*

*‘(...) it should be possible to effect the service of documents **directly by electronic means** on an addressee who has a known address for service in another Member State. (...) only by electronic means that are **available under the law of the forum Member State for the domestic service of documents** (...) ensure that there are **appropriate safeguards for the protection of the interests of the addressee, including high technical standards and a requirement for express consent by the addressee.**’*



INCREASING ACCESS TO JUSTICE AND PROTECTING THE RIGHTS OF THE PARTIES

‘Access to justice is a fundamental right and a core element of the rule of law, which is one of the essential values on which the European Union is founded under Article 2 of the Treaty on European Union and which are common to the Member States.’

Possible problems with service of documents and solutions in view of its digitalisation:

- **Unfamiliarity** with the legal system of another Member State in which service of documents is to be effected → creation of **e-Justice Platform** as a ‘one-stop shop’ for information on all of the questions of cross-border judicial cooperation, as well as on the national systems of the Member States
- **Lengthiness and cost** of the cross-border service of documents → increased **speed** of the electronic service + **lower costs**
- **Lack of protection of the rights of the parties** → **simplification** of the service of documents, but also acknowledgment of the need to **retain traditional non-digital processes as an option** for the parties

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CONCLUSIONS

Digitalisation has an overall positive impact on the service of documents, particularly by enhancing effectiveness, legal certainty and fundamental rights protection. In that way, the EU’s objectives of increasing access to justice and strengthening the protection of the rights of the parties are accomplished. However, these positives also depend on the matters that cannot be governed by regulations. These include issues of technical improvement of digital tools; further coordination between Member States; and finally, letting go of the old habits, as many still choose not to utilize digital tools or are simply unaware of the opportunities that digitalisation provides in this sphere. Digitalisation of judicial cooperation is a big project and it is understandable that some time will have to pass before everyone adjusts to the new, digital era in the legal sphere. Therefore, there is still a long road ahead in terms of digitalisation, not only of service of documents, but of all points of judicial cooperation in the EU. What is most important is that the EU is taking major and continuing steps towards that goal.

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