

## Regulation (EU) 2020/1784 presented to practitioners

### Introduction: History of Regulation 2020/1784

15 November 1965 will remain a key date for the international service of judicial and extrajudicial documents in civil and commercial matters.

A few years earlier, the International Union of Judicial Officers (UIHJ) had suggested to the Hague Conference on Private International Law to dedicate an international convention of private international law to allow an efficient, fast, and inexpensive exchange of judicial and extrajudicial documents in transnational matters.

The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters – the first instrument in this field – is the result of the work carried out by the Hague Conference on Private International Law, in cooperation with the UIHJ.

This Convention, in force in 79 countries and one of the most widely used Hague Conventions in the world, is clearly the pillar on which successive instruments on cross-border service of documents in civil and commercial matters are based. in the European Union, and further irrigates Regulation (EU) 2020/1784.

The second instrument (the first instrument within the European Union) concerning the transnational service of judicial and extrajudicial documents is the Convention of the 26 of May 1997 on the Service in the Member States of the European Union of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

This text, largely inspired by the Convention of 15 November 1965 – several of its articles are reproduced almost entirely – has not met with the expected support, according to some countries which have ratified it.

To give life to the conclusions of the Tampere European Summit of 15 and 16 October 1999 on the creation of an area of freedom, security and justice in the European Union, the European Commission opted for more immediate solutions by drafting a regulation to replace the Convention of the 26 of May 1997.

Regulation 1348/2000 of the 29 of May 2000, the third instrument in this field (second instrument within the European Union), is the result of this change.

It also remains fully in line with the spirit of the 1965 Hague Convention.

Despite its imperfections, Regulation 1348/2000, which entered into force on the 31<sup>st</sup> of May 2001, significantly improves the service of documents in the European Union, by means of the forms attached to the requests and allowing the actors of the regulation (transmitting and receiving entity) to correspond easily, despite language barriers.

The effectiveness of this regulation can be demonstrated by noting that, as regards the time needed to serve a document between two countries of the European Union, it has shortened the years into months, the months into weeks, and the weeks into days.

**Regulation 1348/2000 lays down several principles set out in its two successor Regulations, including:**

Modes of transmission of documents between transmitting agencies and receiving agencies using numbered forms.

Principle of double date of documents, offering greater legal certainty for both the applicant and the addressee (Article 9).

Principles of translation of the served deed and possibility for the addressee to refuse the document for lack of translation (Articles 5 and 8).

Coverage of the costs of service (Article 11).

Consequences of the non-appearance of the addressee after service of the document instituting the proceedings (Article 19).

In accordance with the requirements of Regulation 1348/2000, and in particular Article 24, the European Commission will without delay initiate a revision process which will give rise to the fourth instrument in this field (third instrument within the European Union), namely the Regulation 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("service of documents").

This regulation considers most of the remarks and criticisms made by the Court of Justice of the European Union and the experts and professionals consulted, including the representatives of the profession of judicial officer of the member countries of the European Union and their representative at the international level.

Regulation 1393/2007, applicable in all its provisions from the 13 of November 2008, will have lived well beyond its expiry date scheduled for the 1<sup>st</sup> of June 2011, due to the revision provided for in Article 24.

It was only nine years later that Regulation 2020/1784 of the European Parliament and of the Council of the 25<sup>th</sup> of November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) was adopted.

Whatever the reasons, this delay will have made it possible to give life to the many reflections stemming from experience but also from future issues, at the forefront of which is the dematerialization of exchanges, to reform the regulation in depth and offer a new axis, clearly oriented towards electronic notification and service, the securing and dematerialization of exchanges between the actors of the regulation.

The purpose of this e-learning is to present to practitioners the mechanisms of this fifth instrument in this area (fourth instrument within the European Union) in the light of Regulation (EC) No 1393/2007.

## Mechanisms of Regulation (EU) 2020/1784

### **General Considerations**

Regulation 2020/1784 of the European Parliament and of the Council of 25 November 2020 was published in the Official Journal of the European Union on the 2<sup>nd</sup> of December 2020.

It entered into force twenty working days after that date and is applicable from the 1<sup>st</sup> of July 2022.

Articles 5, 8 and 10 will apply from the first day of the month following the three-year period following the date of entry into force of the implementing acts referred to in Article 25 (Article 37).

The implemented act was adopted by the European commission at the end of March 2022.

The articles 5, 8 and 10 will apply from 1<sup>st</sup> of April 2025!

The Regulation does not apply to revenue, customs, or administrative matters or to the liability of a Member State for actions or omissions in the exercise of state authority.

Its application is also excluded (except for article 7) when the addressee of a document to be served is not known (Article 1.2).

In this case, it is necessary to refer to the law of the sending State applicable in the case of an unknown address of the recipient.

The Regulation applies to communications of judicial and extrajudicial documents in civil and commercial matters between 26 of the 27 Member States of the European Union (it does not apply to Denmark)

The main purpose of this instrument is to provide for the methods by which judicial and extrajudicial documents are transmitted abroad, either directly to the addressee or to the competent authorities of the receiving State, for service there.

**The Regulation establishes a main modus operandi based on the involvement of three bodies:**

Transmitting agency

Receiving agencies

and central body (Articles 3 to 15).

**It includes rules relating to:**

The means of communication between the entities (Article 5).

The legal effects of electronic documents (Article 6).

Assistance in the search for addresses (Article 7).

The translation of documents (Articles 9 and 12).

On the date of service (Article 13).

Or the costs of service (Article 15).

Forms accompanied the acts all along the procedure.

**Beside this main procedure, the Regulation offers five other methods of transmission and service of judicial and extrajudicial documents:**

Transmission by diplomatic or consular channels (article16).

Service by diplomatic agents or consular officers (article17).

Service by postal services (article 18).

Electronic service (Article 19).

Direct service (Article 20).

As there is no prioritization between the different modes referred to in the Regulation, it is possible to use the method of your choice– or several modes combined – if the envisaged method is applicable in the concerned country.

The text of the Regulation is available on the website of the European Union, in the 24 official languages of the European Union:

<https://eur-lex.europa.eu/eli/reg/2020/1784/oj?locale=fr>

## The actors of the regulation

**The Regulation establishes three separate bodies each with a specific role:**

the transmitting agencies,

the receiving agencies,

and the central body

These bodies are designated by the states.

The transmitting and receiving agencies may be multiple, distinct, or perform both functions (Article 3.3).

Several central bodies may be designated according to the specificities of the Member States.

These three bodies communicate with each other in accordance with the means of communication provided for in Article 5 of the Regulation (e-Codex).

### **Transmitting agencies**

According to Article 3.1 of the Regulation, transmitting agencies are the public officers, authorities, or other persons, competent for the transmission of judicial or extrajudicial documents from another Member State.

As such, they must verify that the document to be transmitted falls within the scope of the regulation.

They must also inform the applicant of the possibility for the addressee to refuse it for lack of translation under the conditions of Article 12.

They will be responsible for completing the relevant forms set out in Annex I to the Regulation.

### **Receiving agencies**

According to Article 3.2 of the Regulation, receiving agencies are public officers, authorities, or other persons competent for the receipt of judicial or extrajudicial documents from another Member State.

They are responsible for receiving judicial or extrajudicial documents from another Member State.

They will do the service of the document in accordance with the law of the Member State addressed or in the particular manner requested by the transmitting agency, unless that method is incompatible with the law of the Member State addressed (Article 11).

They will be responsible for completing the relevant forms set out in Annex I to the Regulation.

### **Central bodies**

**According to Article 4 of the Regulation, central bodies are responsible for three tasks:**

Provide information to transmitting agencies.

Seeking solutions to any difficulties which may arise during the transmission of documents for service

Forwarding, in exceptional cases, a request for service to the competent receiving agency at the request of a transmitting agency.

### **Means of communication to be used by transmitting agencies, receiving agencies and central bodies**

According to Article 5 of the Regulation, any exchange between transmitting agencies, receiving agencies and central bodies must be carried out by means of a secure and reliable decentralised IT system, based on an interoperable solution such as the e-CODEX.

Only when such transmission is not possible, the transmission will be carried out by the swiftest, most appropriate alternative means, considering the need to ensure reliability and security.

## Assistance in address enquiries

**Article 7 of the Regulation requires Member States to help in determining the address of the recipient of the document in, at least, one of the following ways:**

providing for designated authorities to which transmitting agencies may address requests on the determination of the address of the person to be served.

allowing persons from other Member States to submit requests, including electronically, for information about addresses of persons to be served directly to domicile registries or other publicly accessible databases by means of a standard form available on the European e-Justice Portal; or

providing detailed information, through the European e-Justice Portal, on how to find the addresses of persons to be served.

To see what every country communicated to the commission please go to the e-justice portal by following this link:

[https://e-justice.europa.eu/38580/EN/serving\\_documents\\_recast](https://e-justice.europa.eu/38580/EN/serving_documents_recast)

## Forms

In addition to the differences in legislation between States, the language barrier is a major problem.

To reduce its effects, twelve forms are listed in Annex I to the Regulation and constitute the communication tools essential for its proper functioning.

They exist in the 24 official languages of the European Union.

Since the text of the Regulation refers to the forms set out in Annex I, each user is required to use the model drawn up in his own language and to complete it in the official language of the requested Member State or, if there are more than one official language in that Member State, in the official language or one of the official languages of the place where service is to be effected, or in any other language which the requested Member State has indicated that it accepts (Articles 3, 5, 7, 8, 10, 11, 12 and 14).

Since 1<sup>st</sup> of July the twelve forms are on the EU e-Justice Portal where they can be downloaded, completed, and translated, as is the case for the seven forms of Regulation (EC) No 1393/2007 in force until that date.

You find the form on the e-justice portal by following this link : [https://webgate.ec.europa.eu/e-justice-online-forms/online-forms/serving-documents-forms\\_en](https://webgate.ec.europa.eu/e-justice-online-forms/online-forms/serving-documents-forms_en)

### **Twelve forms are as follows:**

Request for service of documents (**Form A**).

Request to determine the address of the person to be served (**Form B**).

Reply to the request to determine the address of the person to be served (**Form C**).

Acknowledgement of receipt (**Form D**).

Request for additional information or documents for the service of documents (**Form E**).

Notice of return of request and document (**form F**).

Notice of retransmission of request and document to the competent receiving agency (**Form G**).

Acknowledgement of receipt by the appropriate receiving agency having territorial jurisdiction to the transmitting agency (**Form H**).

Request for information on service or on non-service documents (**Form I**).

Reply to the request for information on service or non-service of documents (**Form J**).

Certificate of service or non-service of documents (**Form K**).

Information to the addressee about the right to refuse to accept a document (**Form L**).

The transmitting agencies are required to complete forms A, B, C, and I (*wi*).

Receiving agencies are required to complete Forms D, E (*i*), F, G, H, J, K and L.

The addressee of the document will be required to complete and return the form L given to him by the receiving agency or the authority responsible for service of the service.

## The translation of the document

### *Principle*

**According to the provisions of Article 9 of the Regulation, the addressee may refuse to receive the document if it is not drawn up in one of the languages provided for in Article 12.1, that is:**

In a language he understands; or

In the official language of the requested Member State or, if there are more than one official language in that Member State, the official language or one of the official languages of the place where service is to be done.

**The principle relating to translation is therefore the follow:**

The prior translation of the document is not compulsory.

Only the addressee may refuse the document for lack of translation, under the conditions of Article 12.1 of the Regulation.

According to the Regulation the transmitting agency to which the applicant has forwarded the document for transmission will advise the applicant that the addressee may refuse to accept the document if it is not in one of the languages provided for in Article 12(1) (Article 9.1).

The applicant will bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decisions by the court or competent authority on liability for such costs. (Article 9.2).

### **What needs to be translated?**

The question arises as to whether, in the case of a translation of the document, the documents accompanying it must also be translated and must also be served.

A partial reply was given by the Court of Justice of the European Union.

The document instituting proceedings must make it possible to identify with certainty at least the subject-matter and cause of the case, as well as the invitation to appear before a court or, depending on the nature of the proceedings in progress, the possibility of bringing an action before a court.

Documents which serve only an evidentiary function - and are therefore not important for understanding the subject-matter and cause of the case - are therefore not an integral part of the document instituting the proceedings within the meaning of the Regulation.

Caution should be exercised in this matter and the applicant is advised, in the event of a translation of the document, to translate any document which appears essential to the cohesion of the information provided to the addressee.

### **Who needs to translate?**

If the regulation does not set a minimum standard for translation, it must be considered reliable and accurate.

We can therefore only prohibit a machine translation of the act by computer software, without any control.

Free translations are also discouraged without a great command of legal language.

It is strongly recommended to use, if possible, a sworn translator, for reasons of reliability and responsibility.

Translation costs are paid or advanced by the applicant.

### **Consequence of the refusal to receive the document for lack of translation**

The refusal of the document for lack of translation by the addressee does not cancel the service but suspends its effects for him until the subsequent service of the document with its translation (Article 12.5 of the Regulation).

The applicant will therefore take care to have the documents translated as soon as possible to allow a new transmission to the requested party.

Failing this, the document remains undelivered or not served on the addressee.

## The date of the document

To guarantee and preserve the rights of the parties, the Regulation retains the principle of the double date established by Regulation 1348/2000.

Article 13 of Regulation 2020/1784 lays down a principle and an adjustment.

The principle establishes that the date of service is the date on which the document was served in accordance with the law of the Member State addressed.

That principle is immediately accompanied by a provision according to which, where the law of a Member State requires that a document be served within a particular period, the date to be considered with respect to the applicant will be that determined by the law of that Member State.

The same article also provides for an adjustment of the date in the event of a refusal of the document for non-translation by the addressee.

The Court of Justice of the European Union had the opportunity to specify under Regulation 1348/2000 that in the case of double sending by means of two different methods of transmission (by post and through entities for example), account had to be taken of the sending which first reached the addressee when determining the date of the document.

## Transmission of documents

In accordance with Article 8 of the Regulation, documents will be transmitted directly and as quickly as possible between the transmitting and receiving agencies.

The document to be transmitted will be accompanied by a request drawn up using form A in Annex I. The form will be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be done, or in another language which that Member State has indicated it will accept.

Remember that Article 5 of the Regulation applies to the transmission of documents (use of an interoperable solution such as e-CODEX).

Are also concerned requests, confirmations, acknowledgments of receipt, certificates, and any documents.

The transmitting agency must first ensure that the act falls within the scope of the Regulation (judicial or extrajudicial document in civil and commercial matters only).

It must then refer the applicant to the possibility of refusal by the addressee for lack of translation.

In practice, the transmitting agency may consider itself exempted from this formality where the document is already accompanied by a translation, or where the applicant indicates in advance that he does not intend to have the document translated.

The transmitting agency must then identify the receiving agency competent to receive the documents.

The contact details of the receiving agencies can be found on the European e-Justice Portal.

## Service of the document

### **Receipt of documents by the receiving agency**

When it receives the document to be served, the receiving agency will automatically send to the transmitting agency an acknowledgement of receipt as soon as possible by means of the decentralised IT system or, where the acknowledgement is sent by other means, as soon as possible and in any event within seven days of receipt, using Form D in Annex I (Section 10.1).

Where the request for service cannot be fulfilled based on the information or documents transmitted, the receiving agency will contact the transmitting agency without undue delay to obtain the missing information or documents, using form E in Annex I. (Article 10.2).

Where the request for service is manifestly outside the scope of this Regulation or where non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted will be returned to the transmitting agency upon receipt, without undue delay, together with a notice of return, using form F in Annex I. (Section 10.3).

Where a receiving agency receives a document for service which it does not have territorial jurisdiction to serve, it will forward that document without undue delay, together with the request, to the receiving agency that has territorial jurisdiction in the Member State addressed, if the request complies with the conditions laid down in Article 8(2). The receiving agency will inform the transmitting agency accordingly at the same time, using form G in Annex I. Upon receipt of the document and the request by the receiving agency having territorial jurisdiction in the Member State addressed, that receiving agency will send an acknowledgement of receipt to the transmitting agency as soon as possible and in any event within seven days of receipt, using form H in Annex I. (Article 10.4).

Where appropriate, the receiving agency may request a provision.

### **Delivery of the document to the addressee**

The receiving agency will itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State. (Article 11.1).

Service must be done as soon as possible and, in any event, within one month of receipt (Article 11.2).

**If it has not been possible to effect service within one month of receipt, the receiving agency will:**

immediately inform the transmitting agency by means of form K in Annex I or, if the transmitting agency has requested information by means of form I in Annex I, by means of form J in Annex I; and

continue to take all necessary steps to carry out the service of the document where service seems to be possible within a reasonable period, unless the transmitting agency indicates that service is no longer necessary. (Article 11.2).

Where the formalities relating to the service of the document have been completed, the receiving agency will draw up a certificate using Form K provided for in Article 14.1 of the Regulation and set out in Annex I.

This certificate will be sent to the transmitting agency, together with a copy of the document served where Article 8.4 has been applied.

The certificate referred to in Article 14.1 will be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated it accepts (Article 14.2).

### **Failure to effect service of the document**

Sometimes the entity responsible for service may not be able to serve the document.

Form K provided for in Article 14 of the Regulation and set out in Annex I will then also be completed (point 4 of the form) and returned to the transmitting agency.

In this case, the document will not be served on its addressee.

Article 1.2 of the Regulation specifies that a search may be carried out in accordance with the provisions of Article 7.

### **Refusal of receipt of the document by the addressee for failure to translate**

The addressee may refuse to accept the document either at the time of service or within two weeks of the time of service by making a written declaration of refusal of acceptance. For that purpose, the addressee may either return to the receiving agency form L in Annex I or a written declaration stating that the addressee refuses to accept the document because of the language in which it was served. (Article 12.3).

Where the receiving agency is informed that the addressee refuses to accept the document pursuant to paragraphs 1, 2 and 3, it will immediately inform the transmitting agency by means of the certificate of service or non-service, using form K in Annex I, and return the request and, where available, each document of which a translation is requested. (Article 12.4).

As indicated before, it's possible to regularize the service of the document refused for lack of translation by serving the addressee accompanied by a translation into one of the languages provided for in article 12, paragraph 1.

In such a case, the date of service of the document will be the date on which the document and its translation were served in accordance with the law of the Member State addressed.

The general principle laid down in Article 8 of Regulation (EC) No 1393/2007 does not change: the addressee may refuse to receive the document to be served if it is not drawn up or accompanied by a translation into a language which he understands, or into the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

Similarly, the principle of regularization of the document following a refusal of type-approval for lack of translation is also retained in Regulation (EU) 2020/1784.

**However, Article 12 makes two changes to the refusal of receipt of the document by its addressee for lack of translation.**

**The first change** concerns the form provided by the receiving agency to the addressee at the time of service and accompanying the document to enable him to exercise his right of refusal.

Under Regulation (EC) No 1393/2007, the form for informing the addressee of his right to refuse to receive the document, set out in Annex II to the Regulation, is communicated in all 22 languages, and allows the addressee to formalize his refusal.

From now on, the form for informing the addressee of his right to refuse to receive a document (Form L) will be annexed to the document in the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected, or in the official language of another Member State which it appears that the addressee understands.

This form simplifies the procedures, both for the judicial officer responsible for service and for the addressee.

**The second** change concerns the period within which the addressee may refuse the document, which is set at two weeks (instead of seven days under Regulation (EC) No 1393/2007) from service (Article 12.3).

## Service costs

**The question of the costs of service is regulated by Article 15 of the Regulation:**

The service of judicial documents originating in a Member State will not give rise to any obligation for the payment or reimbursement of taxes or costs for services rendered by the Member State addressed.

By way of derogation from paragraph 1, the applicant will pay or reimburse the costs of:

recourse to a judicial officer or to a person competent under the law of the Member State addressed.

the use of a particular method of service.

Member States will lay down a single fixed fee for recourse to a judicial officer or to a person competent under the law of the Member State addressed.

That fee will be in accordance with the principles of proportionality and non-discrimination.

Member States will communicate such fixed fees to the Commission.

## **Other means of transmission and service of judicial or extrajudicial documents**

### **Transmission by diplomatic or consular channel**

In exceptional circumstances, each Member State may use diplomatic or consular channels to transmit judicial documents, for the purpose of service, to the receiving agencies or central bodies of another Member State (Article 16).

### **Service by diplomatic or consular agents**

#### **Article 17 of the Regulation provides:**

Each Member State may carry out service of judicial documents on persons residing in another Member State, without the use of coercive measures, directly through its diplomatic agents or consular officers.

A Member State may communicate to the Commission that it is opposed to service of judicial documents, as referred to in paragraph 1, within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.

### **Service through postal services**

The service of judicial documents on persons present in another Member State may be done directly through the postal services, by registered letter with acknowledgment of receipt or equivalent (Article 18).

### **Service by electronic means**

Article 19 of Regulation says:

The service of judicial documents may be done directly on a person who has a known address for service in another Member State by any electronic means of service available under the law of the forum Member State for the domestic service of documents, provided that:

the documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 and the addressee gave prior express consent to the use of electronic means for serving documents during legal proceedings; or

the addressee gave prior express consent to the court or authority seized of the proceedings or to the party responsible for service of documents in such proceedings to the use of email sent to a specified email address for the purpose of serving documents during those proceedings and the addressee confirms receipt of the document with an acknowledgement of receipt, including the date of receipt.

To guarantee the security of transmission, any Member State may specify and communicate to the Commission the additional conditions under which it will accept electronic service referred to in point (b) of paragraph 1, where its law sets stricter conditions in that respect or does not allow electronic service by email.

### **Direct service**

Article 20 of the Regulation provides:

Any person with an interest in particular judicial proceedings may do the service of judicial documents directly through the judicial officers, officials, or other competent persons of the Member State in which the service is sought, provided that such direct service is permitted under the law of that Member State.

A Member State that allows direct service will provide the Commission with information regarding which professions or competent persons are permitted to do the direct service of documents in their territory.

The Commission will make that information available through the European e-Justice Portal.

## Major changes

### **Creation of a decentralized computer system (Articles 5 and 25 to 28)**

The major change in the new Regulation lies in the creation of the decentralized, secure, and reliable IT system referred to in Article 5.1 of the Regulation, whereby transmitting agencies, receiving agencies and central bodies must transmit documents to be served, as well as requests, confirmations, receipts, attestations, and communications, so as mentioned in the Regulation.

This decentralized system is based on an interoperable solution such as the e-CODEX.

However, where such transmission proves impossible due to a disruption of the decentralised IT system or due to exceptional circumstances, it will be carried out by the fastest and most appropriate alternative means, considering the need to ensure the reliability and security of the transmission (Article 5.4).

Article 6 of the Regulation also states that *“documents that are transmitted through the decentralized IT system will not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form”*.

**In accordance with Article 25, it is for the European Commission to adopt implementing acts to establish that decentralised IT system by 23 March 2022, with those acts specifying:**

Technical specifications defining the methods of communication by electronic means for the purposes of the decentralized IT system.

The technical specifications of the communication protocols.

Information security objectives and relevant technical measures ensuring minimum information security standards for the processing and communication of information within the decentralized IT system.

The minimum availability objectives and possible related technical requirements for the services provided by the decentralized IT system.

The establishment of a steering committee comprising representatives of the Member States to ensure the operation and maintenance of the decentralized IT system to meet the objectives of this Regulation.

The European commission did adopt this implementation act on the 14<sup>th</sup> of March 2022 by regulation (EU) 2022/423

Link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0423>

The European Commission is also responsible for the creation, maintenance, and future development of reference implementation software which Member States may choose to use as a back-end system instead of a national IT system.

The creation, maintenance and future development of the reference implementation software will be financed from the general budget of the European Union.

The Commission will ensure, manage, and support the implementation, free of charge, of the software components supporting access points (Article 27).

The costs of that centralized IT system will be borne by each Member State as regards their installation, operation and maintenance of its access points linking the national IT systems under that system, as well as the costs of setting up and adapting its national IT systems necessary to enable their interoperability with the access points, and their management, operation and maintenance costs, without prejudice to the right of Member States to apply for grants to support the activities referred to in those paragraphs under the financial programmes of the European Union (Article 28).

### **Direct electronic service (Article 19)**

The second major change in Regulation (EU) 2020/1784 concerns direct electronic service.

It is now possible to have documents served directly by electronic means on an addressee who has a known address for the purpose of service in another Member State.

### **The conditions under which this electronic service may be effected are strictly regulated and *de facto* exclude any unsecured process:**

The documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 and the addressee gave prior express consent to the use of electronic means for serving documents during legal proceedings; or

The addressee gave prior express consent to the court or authority seized of the proceedings or to the party responsible for service of documents in such proceedings to the use of email sent to a specified email address for the purpose of serving documents during those proceedings and the addressee confirms receipt of the document with an acknowledgement of receipt, including the date of receipt.

To guarantee the security of transmission, any Member State may specify and communicate to the Commission the additional conditions under which it will accept electronic service referred to in point (b) of paragraph 1, where its law sets stricter conditions in that respect or does not allow electronic service by email.

For example, if an applicant domiciled in France wishes to effect electronic service on an addressee residing in Belgium, he must comply with the electronic service procedure in force in Belgium and send the document to a Belgian judicial officer, the

only one competent in the matter, who will be responsible for serving it electronically on its addressee.

### **Electronic signature of deeds, documents, and forms (Article 5. 3)**

Where the documents to be served, requests, confirmations, receipts, certificates, and other communications referred to in paragraph 1 of this Article require or feature a seal or handwritten signature, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.

### **Assistance in finding an address (Article 7)**

**Where the address of the person to whom the judicial or extrajudicial document is to be served in another Member State is not known, that Member State will help in finding that address in at least one of the following ways:**

Providing for designated authorities to which transmitting agencies may address requests on the determination of the address of the person to be served.

Allowing persons from other Member States to submit requests, including electronically, for information about addresses of persons to be served directly to domicile registries or other publicly accessible databases by means of a standard form available on the European e-Justice Portal; or

Providing detailed information, through the European e-Justice Portal, on how to find the addresses of persons to be served.

This is a major step forward in access to information concerning the address of the recipient of a judicial or extrajudicial document in civil and commercial matters.

In the absence of such a provision, it is indeed very difficult and complicated to carry out searches in the Requested Member State to know with certainty the address of the recipient of the document.

Article 7 of the Regulation sets up a service which, if effective, makes it possible to increase the effectiveness of the regulation and to reduce the number of unsuccessful service while the addressee has an address where he can be contacted.

## Conclusion

The long debates that preceded the adoption of Regulation (EU) 2020/1784 made it possible to pursue its objectives of effectiveness in an area of law where the differences between States are numerous and sometimes difficult to reconcile.

The integration of electronic service, as well as the dematerialization of exchanges between its actors, are at the heart of the regulation while offering legal certainty that the European legislator wanted to significantly strengthen.

In this context, the judicial officer will continue to offer, both in the context of the classic service and in that of the electronic service, the most reliable security, at a reasonable cost and as soon as possible, because of its professionalism, its status, its faculties of adaptation, and a modernism anchored in its DNA.

Through the e-CODEX that he calls for to constitute the only electronic platform of the system set up under Regulation (EU) 2020/1784, the judicial officer positions himself as a guardian of the electronic service and the security of cross-border procedures.