



**Project No JUST/2010/JCIV/AG/0010-30-CE-0421163/00-50
„Enhancing quality of judicial cooperation in civil matters: the
European Union civil proceedings and tools provided by
regulations on taking evidence and service of documents”**

**Training course „Cross-border judicial cooperation in civil matters:
tools provided by regulations on taking evidence and service of
documents”**

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**Application of Regulation (EC) No 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),
and repealing Council Regulation (EC) No 1348/2000
in Estonia**

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Introduction

- ▶ Regulation (EC) No 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), and repealing Council Regulation (EC) No 1348/2000 (hereinafter: **Regulation**) is implemented in EU Member States since 13 November 2008
- ▶ The Regulation repealed Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (entered into force 31 May 2001).
- ▶ The purpose of the Regulation in general is to promote judicial cooperation between Member States and expedite the transmission of judicial and extrajudicial documents in civil or commercial matters.

Introduction (continuation)

- ▶ Central terms of regulation, i.e. civil and commercial matters, judicial and extrajudicial documents, the Regulation does not contain definitions of any of these terms, are to be interpreted autonomously. It means that courts and agencies of Member States cannot define them according to national law. Autonomous interpretation is important to ensure a coherent application of the Regulation.
- ▶ In order to define civil and commercial matters judicial practice of European Court can be used (including cases about the regulation Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: **Brussels I regulation**). E.g.: *Lechouritou v Greece* (C-292/05); *LTU v Eurocontrol* (C-29/76); *Netherlands State v Rüffer* (C-814/79).
- ▶ There has not been much practice of the European Court concerning the definitions of judicial and extrajudicial documents. Some guidelines for defining the terms can be found in the European Court case *Roda Golf & Beach Resort SL* (C-14/08).
- ▶ Article 1 (1) of the Regulation: the regulation shall not extend in particular to revenue, customs or administrative matters or to liability of the State for actions or omissions in the exercise of state authority (*acta iure imperii*).

General remarks

- ▶ The Regulation distinguishes basically four methods for service of documents.
 - 1) the use of transmitting and receiving agencies;
 - 2) service by consular or diplomatic agents;
 - 3) service by postal services;
 - 4) direct service.
- ▶ The implementation practice of the Regulation can be analyzed more thoroughly regarding the service of documents through transmitting and receiving agencies. There is no exact data for the other methods.

General remarks (continuation)

- ▶ Documents can be served through the diplomatic or consular agents of another Member State which are located in Estonia only if they are to be served on a national of the Member State in which the documents originate (Article 13 (2)).
- ▶ It is evident from judicial practice that documents are also served from other Member States to Estonia directly by postal services (Article 14 of the Regulation).
- ▶ Direct service of documents (Article 15 of the Regulation) is not allowed in Estonia (Estonia has used the possibility arising from Article 15 of the Regulation for making a reservation according to Article 23 (1) of the Regulation).

General remarks (continuation)

- ▶ The outline:
 - Implementation procedure of the Regulation in Estonia
 - Regulation of service in Estonian national law
 - Typical problems when serving documents of other Member States (in Estonia)
 - Some remarks about service requests of Estonian courts

Implementation procedure of the Regulation in Estonia

Central body (Article 3)

- ▶ Central body: **Ministry of Justice of the Republic of Estonia**
 - Postal address: Tõnismägi 5a, 15191 Tallinn, Republic of Estonia
 - Website: www.just.ee; e-mail: info@just.ee
- ▶ Functions are carried out by the **International Judicial Cooperation Division**

Transmitting agencies (Article 2 (1))

- ▶ ***Judicial documents:*** court, whose documents in the matter in proceedings have to be served
- ▶ ***Extrajudicial documents:*** Ministry of Justice

Receiving agencies (Article 2 (2))

- ▶ Receiving agencies: **county courts** (the courts of first instance of general jurisdiction)
- ▶ There are four county courts in Estonia:
 - Harju County Court;
 - Tartu County Court;
 - Pärnu County Court and
 - Viru County Court.
- ▶ Every county court comprise of several **courthouses** that are situated in country's largest local governments.
- ▶ Additional information on territorial competency and contact information of courthouses can be found in the European Judicial Atlas in Civil Matters
 - http://ec.europa.eu/justice_home/judicialatlascivil/html/ds_information_et.htm

Receiving agencies (continuation)

- ▶ The following means of communication are available for receiving documents: post, fax and electronic transmission channels.
- ▶ In case of electronic transmission of documents the technical difficulties may arise in identifying the sender. So far the unified technical requirements between the Member States are missing for electronic transmission of the documents.

Languages (Article 4; Article 10) and costs (Article 11)

- ▶ Standard forms completed in either **Estonian** or **English** are accepted in Estonia
- ▶ Generally documents are served **without charge**
 - a fee must be paid for service of documents through a bailiff .

Regulation of service in Estonian national law

Regulation of service in Estonian national law (I)

- ▶ In accordance with Article 7 (1) of the Regulation service can be requested in two ways:
 - in accordance with the law of the Member State addressed
 - by a particular method requested by the transmitting agency (unless that method is incompatible with the law of that Member State).
- ▶ Predominantly the service is requested in accordance with the law of the Member State addressed (i.e. Estonian national law).
- ▶ Other methods of service have been requested very rarely. For example there have been request for service in accordance with Articles 13 or 14 of Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. However, these norms refer to the national law of the Member State where the service has to be effected, by defining only permitted methods of service.

Regulation of service in Estonian national law (II)

- ▶ County courts effect the service of documents on the basis of the Regulation in proceedings on petition.
- ▶ The general regulation on service of procedural documents is in the independent part (**6th part**) of Code of Civil Procedure (hereinafter: **CCP**)
- ▶ Last amendments of CCP entered into force on 01.01.2013. The amendments also involve the norms of service of procedural documents.

Regulation of service in Estonian national law (III)

- ▶ Special provisions concerning the implementation of the Regulation are in **§ 316¹ of CCP**.
- ▶ CCP § 316¹:
 - the documents from other Member States are served according to the provisions of service of procedural documents stipulated in CCP;
 - it is forbidden to use public service.

Regulation of service in Estonian national law (IV)

- ▶ Definition of service:
 - CCP § 306 (1): service of a procedural document means delivery of a document to its recipient in a manner which enables the recipient to examine the document in time in order to exercise and protect the rights thereof.
 - The recipient is a participant in a proceeding or another person to whom the procedural document is addressed.

Regulation of service in Estonian national law (V)

- ▶ **On the basis of the provisions of CCP the following manners of service can be distinguished:**
 - service of procedural documents in the court premises;
 - service of procedural documents (through postal service provider) by sending a registered letter with a delivery notice;
 - service of procedural documents by unregistered letter, fax or electronic means;
 - service of procedural documents through bailiff, court security guard or other competent person or institution.
- ▶ In addition the public service of procedural documents can be distinguished. This manner of service is forbidden in case of serving documents from foreign countries on the basis of the Regulation.
- ▶ For serving of documents from foreign countries the two of the first serving methods are the most common in practice: serving on the recipient in the court premises and sending a registered letter with a delivery notice.

Regulation of service in Estonian national law (VI)

- ▶ A procedural document may be served on the recipient in the court premises. The time of issue has to be specified in the file and the recipient is ought to give a signature on receipt of the document (CCP § 311). It is the most secure way for serving documents.

Regulation of service in Estonian national law (VII)

- ▶ Service of procedural documents on the recipient through a person providing postal services as an economic activity by sending a registered letter with a delivery notice (CCP § 313). Service of a document sent by registered letter is certified by the delivery notice which must be returned to the court without delay (CCP § 313 (1)). A delivery notice shall set out the information stipulated in CCP § 313 (3).
 - Postal service provider should try to issue documents to the receiver in exchange of a signature or other means of identification. If it is not possible, the postal service provider can also use other possibilities stipulated in chapter 36 of CCP, especially placing the document in the post box (CCP § 326) or by deposit of a letter (CCP § 327) (Supreme Court ruling of 15 February 2012 in civil matter no. 3-2-1-168-11, para. 13).

Regulation of service in Estonian national law (VIII)

- ▶ Application of other above-mentioned manners of service has been marginal in terms of serving requests on the basis of the Regulation.
- ▶ Service of procedural documents through a bailiff is priced (Article 11 (2) of the Regulation).
 - Since 01.01.2013 the fee is EUR 30-60 (depending on the success of the requested service and on the method how a bailiff manages to deliver the documents).

Regulation of service in Estonian national law (IX)

▶ Electronic service

- Relevant regulation CCP § 311¹ (entered into force on 01.01.2013).
- In case of sending documents by e-mail, the procedural documents have to be served to participants as scanned copies, upon the application of a participant also digitally signed if possible (Supreme Court ruling of 17 January 2012 in civil matter no. 3-2-1-145-10, para. 13).
- A document sent by electronic mail is deemed to have been served if the recipient sends the court written confirmation on the receipt of the document by fax or electronic mail, as chosen by the recipient. The confirmation shall set out the date of receipt of the document and bear the signature of the recipient or representative thereof. A confirmation prepared in electronic form shall bear the digital signature of the recipient or be transmitted in another secure manner which enables establishment of the sender and the time of receipt (CCP § 311¹ (5)).

Regulation of service in Estonian national law (X)

- Since 01.01.2013 it is possible to serve documents electronically through a central information system (the E-File system).
- Electronic service has not been practiced much for serving of foreign procedural documents in Estonia.
 - Electronic service is not yet widely spread in many other Member States. Lack of trust in such technological solutions.
 - It is probably technologically impossible to check Estonian digital signatures abroad and there is no delivery notice in its conventional meaning.
 - Electronic service is probably efficient (and in accordance with the purposes of the Regulation) only if the addressee wishes to participate in the proceedings (it is something that cannot be automatically presumed).

Regulation of service in Estonian national law (XI)

- ▶ As a general rule a procedural document is deemed to be served as of the time the document or a certified copy or printout thereof is delivered to the recipient (CCP § 307 (1)).
- ▶ However, there are several special cases of service stipulated in the Chapter 36 of CCP when a procedural document can be considered served notwithstanding that it has not been delivered to the recipient (personally).

Regulation of service in Estonian national law (XII)

- ▶ **Service in special cases** (service-fictions) (chapter 36 of CCP);
 - service in dwelling place or place of stay (CCP § 322);
 - service to employer, lessor and administrator of apartment building (CCP § 322);
 - service in business premises (CCP § 323);
 - refusal to accept procedural documents (CCP § 325);
 - service by placement in post box (CCP § 326);
 - service by deposit (CCP § 327).

Typical problems when serving documents of other Member States

Difficulties in identifying the addressee

- ▶ Difficulties in identifying the addressee in the request
 - only the name/business name of the addressee is stated in the request
 - Problem: possible different name variations and writing variations; there may be many natural persons with the same name; name of legal persons may change.
 - Recommendation: whenever possible, specify the personal identification number or time of birth of natural persons and registry code of legal persons in the request.

Readability and reliability of documents

- ▶ **Readability** and **reliability** of documents transmitted for service
 - 7th recital of the preamble and Article 6 (3) of the Regulation.
 - What are the minimal formal requirements for the documents?
 - Does the receiving agency have to check the conformity with formal requirements (of transmitted documents) and to which extent?
 - How competent is the receiving agency to do such check?

Untranslated documents

- ▶ Transmission of untranslated or partially translated documents for service.
 - In individual case it may be difficult to estimate if the use of right of refusal stipulated in Article 8 (3) of the Regulation is justified. See: *Ingenieurbüro Michael Weiss und Partner GbR v IHK Berlin (C-14/07)*
 - By which deadline can the mistake of service be remedied (by sending a translation)? See: *Götz Leffler v Berlin Chemie AG (C-443/03)*; *Ingenieurbüro Michael Weiss und Partner GbR v IHK Berlin (C-14/07)*
 - When can partially translated documents be considered as served?

Using postal service

- ▶ Service of procedural documents through a person providing postal services as an economic activity by sending a registered letter (CCP § 313).
 - Positive: faster service of transmitted documents in general.
 - Negative: problems with correct documentation of the act of delivery and delays caused by this.

Other problems

- ▶ Transmission of requests in languages Estonia does not accept.
- ▶ Completion of the requests by hand
 - it could be recommended to draw up a request in typewritten form (by using the Judicial Atlas).
- ▶ Requests that have not been correctly completed or have not been signed, illegible requests.

Other problems (continuation)

- ▶ Transmission of documents (appendices) not referred to in the request
- ▶ Missing of documents (appendices) referred to in the request
- ▶ The extensive volume of standard form set out in Annex II of the Regulation
- ▶ Difficulties to effect the service within the time limits stipulated in Article 7 (2) of the Regulation

Some remarks about service requests of Estonian courts

Problems

- ▶ The courts attempt to effect the service of judicial documents (in another Member State) by using postal services (Article 14).
 - Advantage: it could be faster way to effect the service compared to transmission of documents between transmitting and receiving agencies.
 - Disadvantages:
 - Right to refusal may not be adequately protected.
 - There is a risk that delivery is effected to a wrong person.
 - Incomplete fulfillment of a delivery notice.
- ▶ It is hard to predict the actual time required to effect the service.
- ▶ Delays in service (Article 7 (2))

Defendant not entering an appearance

- ▶ Two kinds of constellations should be differentiated.
- ▶ First: documents have been properly served in another Member State.
 - Article 26 (1) of Brussels I Regulation: it is necessary for Estonian court to control its competency in accordance with Articles 22 and 23 of the same regulation. It can be alleged on the basis of practice that this kind of control has not always been carried out in the necessary extent.

Defendant not entering an appearance (continuation)

- ▶ Second: no certificate of service or delivery has been received.
 - Estonian court may adjudicate the matter according to the conditions stipulated in Article 19 (2) of the Regulation.
 - In practice the possibility arising from Article 19 (2) for adjudicating the matter has not been used to notable extent.
 - An application for relief may be filed, in accordance with the third sentence of Article 19 (4) within one year following the date of the judgment.

Thank you for your
attention!

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