

[PostEurop Position Paper on the Proposal for a Regulation amending Regulation \(EC\) No 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters](#)

Brussels, 19 December 2018,

PostEurop, representing 52 Universal Postal Service providers across Europe, welcomes the opportunity offered to reflect its opinion on the initiative.

The European Commission published its Proposal for a Regulation amending Regulation (EC) No 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (service of documents) on 31st May 2018. It includes an amendment to article 14 on the service of judicial and extrajudicial documents by postal services.

The amendment raises a number of concerns for PostEurop because the Commission's proposal, including the acknowledgement of receipt in the annex, would require us to develop a new international product with different operational requirements.

For this reason, we are asking decision makers to revert back to the existing legal text. We believe it is much more proportionate, particularly given the trend towards the electronic service of documents. This would enable the national postal operator to decide the best way for it to provide acknowledgement of receipt on international postal items, including judicial and extrajudicial documents.

EXISTING LEGAL FRAMEWORK – ARTICLE 14 OF REGULATION (EC) NO 1393/2007

Regulation (EC) No 1393/2007 establishes a fast, secure and standardised procedure for judicial and extrajudicial documents in civil or commercial matters to be transmitted for service between parties in different member states via designated “transmitting agencies” and “receiving agencies”. It also provides for other means of service, such as service by postal services under article 14. The current article 14 of Regulation (EC) No 1393/2007 reads as follows:

“Each member state shall be free to effect service of judicial documents directly by postal services on persons residing in another member state by registered letter with acknowledgment of receipt or equivalent”.

The national postal operator is therefore free to decide the best way for it to provide acknowledgement of receipt on postal items, including judicial and extrajudicial documents.

PROPOSED AMENDMENT TO THE EXISTING LEGAL FRAMEWORK

The Commission’s proposed amendment to article 14 of Regulation (EC) No 1393/2007 reads as follows:

- 1. Service of judicial documents may be affected directly by postal services on persons domiciled in another member state by registered letter with acknowledgement of receipt.*
- 2. For the purpose of this Article, service by post shall be carried out by using the specific acknowledgement of receipt set out in Annex IV.*
- 3. Irrespective of the law of the member state of origin, service by post shall be considered as validly effected also, if the document was delivered at the addressee’s home address on adult persons who are living in the same household as the addressee or are employed there by the addressee, and who have the ability and are willing to accept the document.*

This goes beyond the existing regulation. It requires national postal operators to provide an acknowledgement of receipt, as found in the annex. It would require operators to develop a new international product with different operational requirements because we do not provide such an acknowledgement today.

INTERNATIONAL RULES ON REGISTERED MAIL

PostEurop's members are designated postal operators under the UN's Universal Postal Union (UPU). They do not own their international network. The sending post is responsible for its products on export and the receiving post is responsible on import. It is for the sending post to determine the international product it sells to its customer to send postal items (and service documents through the post) to the receiving country.

The UPU therefore ensures the post is delivered across the globe. It provides a common base, while allowing national postal operators to tailor their services to their customers in their own country.

Registered mail provides receipt of delivery. The UPU has developed a standard form (CN07) for the receipt of delivery. The European Committee for Standardization (CEN) has a group in charge of postal standardisation (TC331). There is an agreement between CEN TC331 and the UPU which means the UPU is responsible for standard forms, such as the CN07, in the postal world.

Several UPU members have an exemption to the CN07. This means not all postal operators provide physical advice of delivery. They provide electronic confirmation of delivery.

POSTEUROP'S CONCERNS WITH THE PROPOSAL

The amendment raises a number of concerns for PostEurop because the Commission's proposal, including the acknowledgement of receipt in the annex, would require some of us to develop a new international product with different operational requirements. For this reason, we are asking decision makers to revert back to the existing legal text. We believe it is much more proportionate, particularly given the trend towards the electronic service of documents. This would enable the national postal operator to decide the best way for it to provide acknowledgement of receipt on international postal items, including judicial and extrajudicial documents. Our arguments against the proposal are as follows:

Postal operators use about 60 standardised forms for international mail exchanges (CN forms). They are easily recognisable and have common features when it comes to presentation, size, colour, format, material, typography, etc. The UPU has developed some electronic equivalents, which allows data to be shared between operators. The use of a new form that does not comply with the usual characteristics will be a source of error and operational inefficiency.

It is not clear how a postal operator would recognise a relevant package containing a “judicial or extrajudicial document” during delivery. In order to make this work across the whole of the EU, national postal operators would need to work together to come up with a common system which would make it clear on the face of the package that it contains judicial and extrajudicial documents and requires a special process. The UPU, rather than the EU, is responsible for developing international postal standards for operators.

It would be necessary to provide training to every postman and woman across the EU to make sure that they recognise a relevant package, and then know how to complete the form on delivery. Moreover, postmen and women could still make mistakes when filling out the form in the annex, particularly given that it may not be widely used.

It is not clear what the national postal operator should do with the form once it has been completed. There will need to be new processes put in place in order to store the relevant forms and transmit the relevant data back to sending national postal operator, and then back to the sender/relevant court officials. Again, the UPU, rather than the EU, is responsible for developing international postal standards for operators. This will be complex and costly.

A specific return slip will not achieve what the Commission has set out to achieve (to overcome problems “where service is deficient due to incomplete acknowledgements of receipt or possible ambiguities as to who actually received the documents in question”, SWD(2018) 287 final) because the documents do not always have to be given to the addressee in person. Under UPU rules, a registered item should be delivered against a signature. National rules set out who can receive a registered item, and the rules of proxy. Moreover, some member states have national legislation which requires documents should be served on the addressee not at the address. However, others have an obligation to deliver to the address. We do not believe an amendment to this regulation should change obligations under well-established domestic postal law.

CONCLUSIONS

It would be incredibly costly and complex for national postal operators to introduce this new, bespoke, solution for a single product, namely the service of cross-border judicial and extrajudicial documents. It is also disproportionate to the purpose of the regulation which aims to replace the service of documents by post by electronic means over the longer term. It goes against the general trend as court proceedings, and in particular the transmission of key pleadings and other correspondence, are increasingly taking place electronically. In fact, this is the purpose of the legislation. Moreover, the vast majority of court proceedings, including those involving parties located in other member states, involve correspondence between representatives (such as lawyers) who are located in the same member state. We suspect European volumes are therefore low. Against this background, it seems hugely disproportionate to introduce legislation requiring national postal operators to provide this new service.

For further information and action please contact:

Ms Elena Fernandez-Rodriguez
Chair of the European Union Affairs Committee at PostEurop
E: elena.fernandez@correos.com

Association of European Public Postal Operators AISBL
Association des Opérateurs Postaux Publics Européens AISBL

PostEurop is the association which represents the interest of 52 European public postal operators. Committed to supporting and developing a sustainable and competitive European postal communication market accessible to all customers and ensuring a modern and affordable universal service, PostEurop promotes cooperation and innovation bringing added value to the European postal industry. Its members represent 2.1 million employees across Europe and serve to 800 million customers daily through over 175,000 counters. PostEurop is also an officially recognised Restricted Union of the Universal Postal Union (UPU).