



# Research on the Related Issues About the Service of Mutual Legal Assistance Documents Through Electronic Delivery

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**Abstract.** The service of mutual legal assistance documents through electronic delivery is prohibited by the formal diplomatic approach and not approved by many conventions and regulations in sending documents from one country to another over the past few years.

In the Internet of Things world, the service through electronic delivery is indispensable and convenience. Under the ideas, I want to research the related issues about the service of mutual legal assistance documents through electronic delivery to provide the legitimate and the feasibility.

Council Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 had amended and repealed the Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). Expanding electronic service for delivery judicial or extra-judicial documents for every country will be popular in the future.

I boldly proposed in this article that the electronic delivery judicial or extra-judicial documents of mutual assistant in civil and commercial matters through the Blockchain method and take advantage of the Digital signature produced by Ethereum, or similar to this way, providing a digital signature as a reference to protect privacy and to be as the security protection.

Furthermore, this article introduces all of the defects of the electronic service will be improved if the delivery sends on the Blockchain.

**Keywords:** Mutual assistant · Electronic delivery · E-service

## 1 Preface and Research Scope

The service of mutual legal assistance documents through electronic delivery by network is used for a long time in investigation and information exchanging, that consistent with official cooperation and under the commitment and the sovereignty comity of those States but is different from what this article is about to discuss that the service direct delivery through electronic channels from judicial department to people.

The service of mutual legal assistance documents through electronic delivery is prohibited by the formal diplomatic approach and not approved by those convention and regulations (All of the service abroad of European conventions contain:

Convention On Civil Procedure, 1954 Convention On The Law Governing Transfer Of Title In International Sales Of Goods, 1958 Convention On Concerning The Recognition And Enforcement Of Decisions Relating To Maintenance Obligations Towards Children, 1958 Convention On Abolishing The Requirement Of Legalization For Foreign Public Documents, 1961 Convention On The Choice Of Court, 1965 Convention On The Service Abroad Of Judicial And Extrajudicial Documents In Civil Or Commercial Matters, 1965 Convention On The Recognition Of Divorces And Legal Separations, 1970 European Convention on State Immunity, 1972 Council Regulation (EC) No 1348/2000 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, 1968 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, 1970 Convention On The Recognition And Enforcement Of Foreign Judgments In Civil And Commercial Matters, 1971 European Convention on State Immunity, 1972 Hague Convention the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, 1973 Convention Concerning The International Administration Of The Estates Of Deceased Persons, 1973 Convention On The Law Applicable To Products Liability, 1973 Convention On The Law Applicable To Maintenance Obligations, 1973 Hague Convention on International Access to Justice, 1980.) in sending documents from one country to another.

But in the Internet of Things world, the service through electronic delivery is indispensable and convenience. Under the ideas, I want to research the related issues about the service of mutual legal assistance documents through electronic delivery to provide the legitimate and the feasibility.

Mutual legal assistance is very developed in Europe especially well develop in European Union, so the research scope of this article is restricted in the proceedings of the European countries and the documents covers not only judicial but also extrajudicial service of documents, because the service may arise in various out of the court proceeding such as documents seeking or informing the attendance of persons in the absence of any underlying judicial proceedings.

## 2 Legislation

Council Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 had amended and repealed the Council Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), that not only prescribes the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) by electronic channel but also replace the direct delivery by post across borders to further bring people the greater convenience and more efficiencies.

According to article 23 of Council Regulation (EC) No 1393/2007, the electronic communication shall be available in particular through the European Judicial Network in Civil and Commercial Matters. Article 23 of Council Regulation (EC) No 1393/2007 regulates:” The Commission shall draw up and update regularly a manual containing

the information referred to in paragraph 1, which shall be available electronically, in particular through the European Judicial Network in Civil and Commercial Matters.”

According to the explanatory memorandum of Council Regulation (EC) No 1393/2007 On 31 May 2018 [1], the European Commission undertook a regulatory fitness evaluation by the Commission’s Regulatory Fitness and Performance Programme(REFIT) [2], in line with the better regulation guidelines, to assess the operation of the instrument in relation to the five key mandatory evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value. The main conclusions of REFIT are set out below [3].

### **3 The Impact Assessment**

The impact assessment concluded that benefits would result from using electronic communication for digitalisation of the judiciary, by simplifying and speeding up cross-border judicial procedures and judicial cooperation.

REFIT sets up a framework of judicial cooperation aligned with the digital single market strategy. It will help improve the speed and efficiency of cross-border proceedings by reducing the time spent on sending documents between agencies and by reducing reliance on paper-based communication. This would ensure the safe electronic communication and exchange of documents between the users of the decentralised IT system, and it would provide for automatic recording of all steps of the workflow. It would also have security features to ensure that only authorised participants with verified identities may use the system. [4] If only in half of the cases, where there are currently problems with the legal assessment of the returned acknowledgments of receipt, would postal service be successful in the future, 2.2 million EUR in each year could be saved, an amount currently wasted for letter post service not bringing any result [4].

## **4 Execution Method and Result**

### **4.1 Electronic Service Methods and Subjects**

Service is usually conducted through e-mail (e.g. Germany, Denmark, Portugal, Czech Republic and Estonia), Face book, Twitter, specified Platform [5], ICT (Information and Communications Technology) System, a special Mobil-ID or Fax.

The service via an e-mail by all of those countries always requires an e-signature for the confirmation on the receipt by the addressee and returns it to the executor. Generally, the method is only permitted as a possible mean of service and communication between the parties and with the court when the consent is given before the proceeding is instituted.

## 4.2 Overview of Priority 2 of REFIT Initiatives Taken by the Present Commission

### Overview of Priority 2 REFIT Initiatives taken by the present Commission:

#### Initiatives proposed by the Commission and pending in legislative procedure:

1. ENISA (European Union Agency for Network and Information Security)
2. Revised Audiovisual Media Services Directive
3. Satellite and Cable Directive 93/83/EEC
4. Regulatory framework for electronic communications networks and services (Telecoms regulatory framework)
5. Directive on Privacy and Electronic Communications Free Flow of Data
6. Free Flow of Data – initiative on the free flow of non-personal data in the digital single market
7. VAT for cross-border e-commerce (extension of the VAT Mini One Stop shop)

#### Initiatives planned by the Commission:

1. .eu Domain Name Regulation
2. Review of Public Sector Information

#### Areas being evaluated:

1. Legal protection of databases

Resource: Andrus Ansip, Priority 2-Simplification And Burden Reduction In The Digital Single Market (European Commission, Regulatory Fitness And Performance Programme Refit Scoreboard Summary, p.13, 24. 10. 2017.)

## 4.3 Confirmation of Service

When the effectiveness of delivery is would be a matter of legislative policy decisions. Service is confirmed when the documents are opened to be read as a receipt is automatically returned to the sender in Estonia [6] and France [6], but reach rather than opened is in another country.

## 5 Problems Waiting to be Overcome

To support an e-service should solving many practical issues, such as the cost of establishing and maintaining the digital platform, time regulated to allow for instantaneous delivery, and the receipt by letting the system send a receipt when the document is received and read by the addressee. Those elements are easy to be solved, but the following problems are not easy.

### 5.1 Ambiguity Over Whom Actually Received the Documents

It may happen that the recipient overlooks the e-mail transmitted by the parties or with the court, but the e-mail has been opened by the others using the computer and the e-signature confirmation of the receipt automatically returned.

The addressee does not receive the e-mail due to the filtering software filters out the letter or the letter is isolated by antivirus software, and then a delivery notification automatically sends to the sender via the electronic platform or the special system.

## **5.2 Privacy**

The judicial documents transmitted pursuant to this Regulation should be treated under suitable protection. Those matters fall within the scope of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, [7] and of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [8].

## **5.3 Security**

According to the proposal made of the Commission's Regulatory Fitness and Performance Programme(REFIT), the Safety checks need to be strengthened. [4] How to work? The proposal recommended strengthening the protection of privacy through an alignment with the General Data Protection Regulation, to ensure that exceptions to the 'consent' rule for cookies are possible provided that they do not create any privacy risk, to address national implementation problems and facilitate the exchange of best practice [9].

However, the letters of the text of the contract are usually very small and difficult to read. If you don't pay attention to read, you will ignore it, and agree all of the contents in the text of the contract. Moreover, the computer option is generally unknown, and it is easy to be misled.

## **5.4 No Unified Platform**

Each Member State(s) of the European Union concerned seems to have developed its own IT system without paying attention to the possibility of making it inter-operable with the systems of other Member State(s) of the European Union. The discrepancies in the digital platform may result in the letter being unable to reach the recipient, or the receipt cannot be delivered to the sender.

## **5.5 Unable to Use Computer**

The elder people or the persons with disabilities are not able to use computers will be excluded of access to justice for privacy and suitable safe because they have to ask someone to help for pre-registering and having a digital account to consent the way delivered through electronic service or the digital specified platform on the initiating proceeding.

## 5.6 Entailing the Risk of Failures

Using the ordinary method such as e-mail or the ICT (Information and Communications Technology) platform does not guarantee the transfer or the receipt by the addressee is always successful.

# 6 Overcome the Problems

## 6.1 Security and Privacy Protection

Under the principle, which would be the human common will, this article Boldly proposed the electronic delivery of mutual assistant in civil and commercial matters through the Blockchain method, taking advantage of the Digital signature produced by Ethereum, or similar to this way, to be as security and privacy protection, furthermore, in this way, the authenticity of the judicial or extra-judicial documents would be attested avoid fraud or verify for transnational litigation and service of Notice by Publication.

The basic theory of Blockchain is that each user has two keys, a public key and a private key. The public key can be known to others, the private key is known only to oneself and a one-time address to receive the letter or message. When A wants to send a message or trade to B, it needs to use B's public key to encrypt the transaction, and this encrypted message or transaction can only be unlocked by using B's private key [10]. Under the theory, A means the judicial institute and B is the addressee, lawyers or the parties of litigation. During the process, the privacy of the contents of documents and safeguard the security would be ensured.

Although everybody in the chain would know there is one delivery comes from the court or judicial institute to be served to someone, but no one knows who someone is because the addressee is composed of digital numbers and not to be specified to know who he/she is. Therefore, there is no scruple of privacy.

The news that the Exchange was hacked [11], for example, in January 2018, Virtual currency Coincheck \$523 million New Dollar (NEM) was missing in Tokyo Headquarters, does not equal to the Blockchain is not safe, because the exchange is not built on the Blockchain.

## 6.2 Delivery Errors

The theory of Hash cash algorithm, Elliptic curve digital signing algorithm and various hash functions can solve the aforementioned problem of delivery errors, because the Hass cash algorithm and various hash functions ensure the data or documents not be falsified in electronic transmission [10].

## 6.3 Unified Platform Is Not Required

The unified platform is not required for the delivery through Blockchain. No need specified platform to execute there may achieve the same effect.

## 6.4 Specific Recipient

No one can open an e-letter without a private key, unless someone with a private key tells the other person the golden key code, or ask someone else to open the e-letter on behalf of the recipient; no one else can receive or open the e-letter, therefore the aforementioned problem of who received it can be specified.

## 7 Conclusion

Expanding electronic service for delivery judicial or extra-judicial documents for every country will be popular in the future. Messages containing confidential information must be encrypted or secured in some other manner. Security, safeguards, privacy and modifying the defect of the technology is connection with the authentic and human rights.

I boldly proposed in this article that the electronic delivery judicial or extra-judicial documents of mutual assistant in civil and commercial matters through the Blockchain method and take advantage of the Digital signature produced by Ethereum, or similar to this way, providing a digital signature as a reference to protect privacy and to be as the security protection. Furthermore, the delivery carried on the authorized key by the judicial institute would save time for service via parties without service carried on the court clerk or bailiff because the character of the decentralization and the Public Key Cryptosystem. All of the defects of the electronic service will be improved if the delivery sends on the Blockchain.

Until the development of Blockchain is used as the encryption method, for the identification of delivery in civil or commercial matters, a certificate complying with the requirements for a qualified certificate in the Act on Electronic Signatures or another secure and verifiable identification method shall be used.

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