

REVIEW OF PRACTICE AND PROCEDURE FOR SUBMISSION OF COURT DOCUMENTS AND ADMINISTRATIVE PROCEDURE LETTERS IN CROATIA AND NEIGHBORING COUNTRIES FROM THE EU

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Summary: *The article provides an overview of the existing practice and procedures for the submission of court documents and administrative procedure letters in the Republic of Croatia and in the neighbouring European Union Member States (hereinafter: the EU): Austria, Italy, Hungary, Netherlands, within the framework of cross-border cooperation between European Union Member States and in compliance with the EU Postal Directive, amendments to this Directive and the legislation on competition related to the Directive.*

1. Introduction

The issues of service of court documents and administrative procedure documents should be divided into several segments for the purpose of easier understanding:

1. The application of procedures of receipt and service in national frameworks regulated by national legislation
2. The application of procedures of receipt and service within the framework cross-border cooperation between EU Member States is regulated by Regulation No. 1393/2007 of the European Parliament and the Council on the service in the Member States of judicial and extrajudicial documents (in civil or commercial matters)
3. Compliance with the EU Postal Directive, amendments to the Directive and other regulations in force related to the protection of competition in relation to the Directive

Although it was formally envisaged as the third point of this paper, the compliance of existing national legislation and practice applied in EU Member States with the *acquis communautaire*, is a necessary precondition of the definition of this review.

The official position of the Croatian legislator (Ministry of Maritime Affairs, Transport and Infrastructure) in the process of adoption of the current Postal Services Act (hereinafter: PSA) in late 2012 (OG No. 144/12), which formally entered into force on 1 January 2013 (with some amendments adopted in late 2013 - OG No. 153/13) is that, with the adoption of the proposed PSA, the Republic of Croatia (hereinafter: RoC) has achieved full alignment with the Postal Directive (and its amendments) and all of its objectives that have been formally aligned with the Treaty on European Union.

This fact has become very important for the Republic of Croatia with its accession to the EU (1 July 2013) since the Treaty on European Union at that moment officially became a constituent part of the Croatian legal framework, that is, a group of rules regulating actions and interaction on the common market of goods and services. What should be mentioned in this respect is that, on the example of the RoC as a full member of the EU, there are numerous disagreements concerning the existing PSA and its solutions and procedures, in the first place among providers of postal services and towards the national regulatory authority, the Croatian regulatory Authority for Network Industries (hereinafter: HAKOM).

2. Service of documents in the Republic of Croatia

According to data available to HAKOM, the service of court documents and administrative procedure letters in the Republic of Croatia, pursuant to its legislation (which, in addition to the existing PSA, consists of 6 different legal acts), is carried out for the most part by HP-Hrvatska pošta d.d., as the universal service provider (hereinafter: HP) and to a lesser extent by several providers of interchangeable postal services which is why it may be concluded that this area has been liberalized, or, in other words, it is not reserved for a single provider of postal services.

In concrete cases, the following procedures for the service of documents are different from the PSA:

1. Civil Procedure Act (OG No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 and 89/14) regulates in Articles 133 to 150 delivery and time limits for delivery/service on the basis of delivery by certified mail, which is why it may be concluded that only the universal service provider (HP), within the meaning of provisions of the PSA and the Criminal Procedure Act, may deliver documents as certified mail with proof of delivery.

2. Ordinance on service in criminal proceedings (OG No. 58/12) regulates in Article 2 the service of documents pursuant to the Criminal Procedure Act (personal and indirect delivery of postal items, overnight delivery) in such a manner that service may be carried out by universal service providers (post office, companies and small businesses licensed by HAKOM to provide universal services) on the basis of which it may be concluded, within the meaning of the valid provisions of the PSA and the Ordinance, that only the universal service provider (HP) may deliver court documents. HAKOM's existing practice shows that the majority of such documents are sent as certified mail with proof of delivery.

3. Enforcement Act (OG NO. 112/12, 25/13 and 93/14) envisages the service of certified mail by postal service providers (there is no reservation for a single provider).

4. Notary Public Act (OG No. 78/93, 29/94, 162/98, 16/07 and 75/09) prescribes the following in Article 86: „where a notary public while acting pursuant to Article 83 paragraph 3 of this Act does not find the party to which the statement should be notified at the designated place or is not allowed access to this party or the party refuses to listen to him or her, the notary action of notification of the statement shall be carried out by sending the notification by certified mail in writing.” Therefore, there are no reservations for a particular provider.

5. Misdemeanour Act (OG No.107/07, 39/13, 157/13) in Article 145. paragraph 1 prescribes the following:

„Decisions, pleadings and other letters are delivered in the following manner:

1. by mail,
2. by own delivery service of the body that adopted the decision,
3. by immediate hand-in delivery at the premises of the body that adopted the decision ,or
4. in some other manner realizing the purpose of delivery and not compromising the right to defence.”

In relation to the above, paragraph 3 of the same Article prescribes: „The court may entrust delivery to a legal person authorized to perform universal postal services pursuant to the Postal Act (service of documents in misdemeanour proceedings)”. What follows from the mentioned provisions of the Misdemeanour Act and of the PSA is that only the universal service provider (HP) may deliver court documents by certified mail with proof of delivery.

6. General Administrative Procedure Act (OG No. 47/09) envisages in Article 72 paragraph 2 that the date on which the document has been sent by certified mail or handed over to an authorized provider of postal services, that is, the date of delivery to the post office or to an authorized provider of postal services shall be regarded as the date of delivery to the addressed public authority (there are no reservations for any single provider).

Therefore, it may be concluded that documents may be delivered by certified mail with proof of delivery not only by the universal service provider (HP) but also by providers notified for the provision of substitute postal services within the meaning of the provisions of the PSA, the Enforcement Act, the Notaries Public Act, the General Administrative Procedure Act and partially by the Misdemeanour Act.

3. Service of documents in neighbouring EU states

Contrary to the above-mentioned examples from the Republic of Croatia, in the neighbouring EU Member States this issue is regulated in such a manner that the delivery

of court documents (and administrative procedure letters) is carried out only by national providers of universal postal services.

Below are the provisions of national laws of Austria, Italy, Hungary and the Netherlands referring to service of court documents and administrative procedure letters supporting the above-mentioned conclusion.

3.1. AUSTRIA

„Delivery of official documents: Section 17. (1) The service of official documents from the courts and administrative authorities pursuant to the second chapter of the Service of Documents Act (Zustellgesetz, ZG), Federal Law Gazette No. 200/1982, shall be a service to be rendered in the scope of the universal service“

3.2. ITALY

„Article 4 of Legislative Decree 22 July 1999, No 261 and 'replaced by' Art 4 (Services entrusted exclusively). - 1 For reasons of public order, are delegated exclusively to the universal service provider: a) services relating to notifications of documents by post and by e-communications related to the service of judicial documents of the Law of 20 November 1982 No 890, as amended; b) services relating to the postal service referred to in Article 201 of Legislative Decree 30 April 1992, No 285“

3.3. HUNGARY

“...official document: a registered postal item posted or delivered in paper format or in an electronic data carrier or using the electronic communications network in the course of procedures of governmental or local governmental agencies or any other body or person specified in legislation, the posting or delivery (or attempted delivery) of which or the dates thereof have legal consequences attached by a legal regulation, or which serves as a basis for the calculation of time limits specified in legislation, or which is deemed an official document by the relevant legislation.

Article 6 states that official documents are part of the universal service scope. Article 30 states that the USP is obliged and exclusively allowed to provide postal services linked to official documents in the entire territory of the country "

3.4. THE NETHERLANDS

„Within the Netherlands, the Universal Postal Service shall involve at least the following Postal Conveyance Services:

- a. the conveyance of registered Postal items;
- b. the conveyance of insured Postal Items;
- c. the service of the judicial document referred to in Articles 585(2) and 587(1) of the Code

of Criminal Procedure [Wetboek van Strafvordering]“

It may be concluded from the above-mentioned provisions that the countries in question, on the basis of concrete reasons such as official court documents, public order, laws, precise deadlines for delivery/service, reception and delivery at the national level are targeted for their „national” provider of universal postal services.

4. Service of documents within the framework of cross-border cooperation between EU Member States

The next segment in the issue of service of court documents or administrative procedure letters is to define and apply the procedure for the receipt and service of court documents within the framework of cross-border cooperation between EU Member States.

Cooperation between judicial authorities of EU Member States is a constituent part of the European area of freedom, security and justice referred to in Article 3, paragraph 2 of the Treaty on European Union. Such cooperation is particularly necessary in order to ensure efficient sending of judicial and extrajudicial documents for the purpose of delivery between Member States since the service of documents is an obligatory part of any case. Fast and efficient sending of documents is of key importance for success in proceedings and for protection of rights of parties. The cross-border service of documents between Member States (in addition to mutual bilateral agreements) was regulated by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Convention on the Service of Documents of 15 November 1965, published in the Republic of Croatia in the OG - International Agreements, No. 10/05).

For the purpose of further easier/faster procedures and alignment of the existing EU practice, the EU adopted Regulation (EC) No. 1348/2000 laying down rules for easier cross-border service of documents, which was later replaced by Regulation (EC) No. 1393/2007.

This piece of legislation (Regulation) is applied in civil and commercial matters when a judicial or extrajudicial (administrative) document must be sent from one Member State to another for the purpose of service. It envisages different ways of service between Member States, in particular through sending and receiving agencies, by mail (postal service providers, through consular and diplomatic channels or directly. Special rules of the Regulation additionally lay down deadlines (date of delivery), rules on the use of language in documents to be served and rules that must be respected by courts in case of default judgment, which additionally protect interests of applicants and recipients of delivery and is included under consumer protection. This Regulation shall not apply, in particular, to tax, customs or administrative matters or to the responsibility of a country (Member State) for actions or omissions in the execution of public authority which, as such, are excluded from the application of the Regulation.

Contrary to that, and in accordance with guidelines of the Court of Justice of the European Union (hereinafter: CJEU) on the interpretation of the concepts of „civil and commercial matters” in disputes between public and private persons, the Regulation may apply to such disputes to the extent to which they refer to civil cases in which the state in question acts as a private individual. It must be mentioned that all ways of service

envisaged in the Regulation may be used for the delivery of documents abroad even when the addressee of the judicial document in commercial or civil matter is a country of a state authority.

The Regulation envisages three possible models for the service of judicial documents:

- service by postal services (national/public postal service providers)
- service by other providers of postal services
- direct service (through national judicial authorities or central state administration bodies)

Service by postal services envisaged in Article 14 of the Regulation is the most accepted and the most common manner of service of documents and every Member State may execute delivery of documents to persons living in another Member State directly by post, which means, as a rule, by national/public operators, providers of universal postal services. Such service by post is carried out by certified mail with proof of delivery, which must be publicly available and accessible to everyone as a service and subject to national legislation aligned with the Directive (examples of exceptions and postal items in international traffic).

Service by other providers of postal services, as a rule by private postal operators of countries of domicile, is carried out in such a manner that they apply their own "rules" (e.g. rules of the Universal Postal Union or rules of a company offering specialized private postal services, which are not always in compliance with the Postal Directive) to service of certified mail with proof of delivery. Due to the number and diversity of providers, service is carried out in different ways and consequently this ways of service of court documents is not very common.

In accordance with the laws of the Member State in which direct service is executed, the Regulation permits to a party in proceedings to execute direct service by competent persons (official bodies and/or judicial bodies and/or judicial officers) of that Member State. This mechanism of service of postal items is not widely accepted and is very problematic. Thus, for example, direct service is available in: Belgium, Denmark, Greece, France, Italy, Cyprus, Malta, Netherlands, Portugal, Finland, Sweden (only in principle), a part of Great Britain (Scotland and Gibraltar), while in Germany the acceptance of direct service depends on the nature of documents that are being delivered, and Luxembourg permits direct delivery on the basis of reciprocity.

This manner of service is particularly successful in Member States in which documents are delivered by judicial officers, for example, in France, Cyprus, Greece and Belgium, while in other Member States this manner of service is not frequently used due to lack of alignment and precision between national definition of judicial officers, civil servants and other competent persons referred to in Article 15 of the Regulation, that is, what are the conditions for service in the Member State addressed.

All of the above indicates the complexity of procedures for the service of judicial documents within the framework of cross-border cooperation between EU Member States

and shows that, among other things on the basis of these examples, the service of such documents by post (as a rule by national/public providers of universal postal services) may be used as an additional argument and justification used by Member States to grant to their national postal service providers the right and obligation for receipt and service of (certified) court documents and administrative procedure letters.

5. Alignment with the Postal Directive and accompanying legislation

The basis for the above described practice exists in several provisions of the Treaty on European Union, related provisions of the Postal Directive (including its amendments), its interpretations/instructions about application by the European Commission (hereinafter: EC) and the well-known and publicly available case law of the CJEU.

Articles 51, 52, 56, 62, 71, 101 and 106 of the Treaty on European Union prescribe certain freedom for the provision of services, common for the entire territory of the EU (as part of the measures for the creation of a single internal market) with an indication that exceptions are possible, exclusively on the basis of the Treaty on European Union and positive case law of the European Court of Human Rights.

Possible derogations/exceptions from application may be found in the interpretation of Articles 51 (official/public authority) and 52 (public order/public security) of the Treaty on European Union which allows to Member States certain derogations from common rules of the common market (including the postal services market) although they are justified by reasons of public order, public safety or public health. In relation to the above-mentioned derogations/exceptions, it is established in the case-law of the CJEU that concrete exceptions are based on the most important conditions related to common interest. After years of solving different disputes in practice, the CJEU recognized in judgements and case-law that judiciary and the preservation of safety and fairness of judiciary, as objectives including and/or representing a legitimate public interest (as part of the public order and legal security), and which permit, according to the CJEU, justified restrictions of the freedom to provide services. It must be stressed that it was emphasised in CJEU's decisions that provisions of national legislation restricting/derogating from the freedom to provide services or describing exceptions must precisely justify the objective (purpose) for which they were adopted and may not exceed reasons for their adoption in order to remain in compliance with the principle of proportionality since it is correctly assumed that otherwise (directly or indirectly) provisions on the freedom of movement of goods and services in Article 62 and 71 of the Treaty on the EU would be breached.

Postal services in the EU are in the normative, and partially in obligatory sense, through the Postal Directive, amendments to the Directive and regulations on the protection of competition, a very important segment of the overall services market and any allocation of special or exclusive rights to one or several providers of postal services (which are related to a certain kind of postal items), in accordance with the freedom to provide services, would result in discrimination or restrictions in the provision of postal services. A concept of "remonopolization" of the postal market is mentioned in some discussions on that topic.

For that reason, any intervention in that sense must be justified and aligned with the EC, pursuant to the provisions of Article 4 of the Treaty on European Union and based on the principle of open cooperation between Member States and aimed at eliminating the possibility for "remonopolization" of postal services.

In the concrete case, restrictions may be applied to the receipt and service of court documents and administrative procedure letters at the national level, which may be supported and justified by explicit application of Articles 51 (*official/public authority*) and 52 (*public order, public safety*) of the Treaty on European Union or by implementation of measures of general interest (examples of such interest include: maintenance of public order, social policy objectives, protection of users of services, user protection, worker protection (including social protection of workers), animal protection, maintenance of financial balance of the social order, prevention of fraud and unfair competition, protection of environment, protection of creditors, judicial protection measures...)

On the other hand, Article 8 of the Postal Directive (which has been aligned with Articles 52 and 62 of the Treaty on the EU) recognizes the right of Member States to organize service of (certified) mail items used by judicial and state administration bodies in administrative and court proceedings pursuant to their national legislation in such a manner that they are entitled to designate a body or bodies authorized to provide services of (certified) mail in court and administrative proceedings whereby reasons of public order and public safety are used as arguments/justification officially justifying the above-mentioned restrictions of the right of the freedom to provide services. Since Article 8 of the Postal Directive does not provide (or set) a time limit (or any other conditions) for the implementation of that right, it may be assumed that Member States of the EU are free to continue to organize/implement such restrictions of the rights of the freedom to provide services, in later stages, and after the incorporation of the prescribed provisions of the Directive in national legislation.

In the meantime, the EC (notice of the European Commission) prepared an interpretation/guidelines on the application of rules of competition in the postal sector arising from the need for the European Commission to express a clear position on the compatibility of measures of countries restricting the freedom to provide services and/or competition on the market of postal services in accordance with the provisions of the Treaty on European Union and providing clear guidelines for businesses and Member States on ways to avoid violations of the Treaty on European Union.

"Postal Notice" (of the European Commission) clearly expresses the EC's position that postal services provided in the process of service of court documents and administrative procedure letters are the only case of explicit derogation from the application of the provision of Article 51 of the Treaty on the EU (public authority) and thus excludes other examples such as handling of direct mail and/or mail items in international traffic.

It may be concluded from the above that transport and delivery of mail items related to and used for the purpose of court and administrative proceedings, in particular notifications related to court and administrative proceedings, must be regarded as a

special, qualified (unique) service provided within a specific type of public interest even if related, although only occasionally, with the execution of public authority.

Under such circumstances, the guarantee of exclusive (or special) rights in relation to the provision of certified mail service for the sending of court and administrative documents, which the EC clearly stated as its position in the Notice, is regarded as a justified restriction/exception to the extent that this service is, by the nature of things, related, even if only occasionally, with the execution of public authority.

Finally, it is obvious that the described *acquis communautaire* (legislative framework) of the EU permits to Member States to grant special or exclusive rights to businesses as long as they are compatible with the provisions of the Treaty on European Union concerning competition and free entrepreneurship and do not represent a remonopolization of the postal services market.

Consequently, it may be concluded that Austria, Italy, Hungary and the Netherlands applied the provision on justified restriction/exception in the creation of their legislative framework and in practice and granted the right and obligation to receive and service (certified) judicial documents and administrative procedure documents to their national providers of universal postal services, while this was not done in Croatia.

6. Conclusions

Therefore, there are obvious differences between national practice and procedures in neighbouring EU Member States and handling of court documents and administrative procedure letters in the RoC. At the same time, the manner of handling of such postal items within the framework of cross-border cooperation between EU Member States, that is, in international postal traffic in the segment of delivery of such postal items, is complementary.

Concerning the complementarity of service of judicial documents within the framework of cross-border cooperation between EU Member States, it may be concluded that service by national/public providers of universal postal services is the most accepted and most common manner of service of such documents, among other things, as a result of traditional procedures and the achieved level of legal security of such handling, which is, as a rule, very successfully and in a quality manner carried out by providers of universal postal services.

In our opinion differences between business practice and procedures between national frameworks of neighbouring EU Member States and handling of court documents and administrative procedure letters in the RoC result for the most part from different models and ways of liberalization of national markets of postal services and readiness of the legislator to achieve a higher or lower degree of protection of a part of its legal system in the process of alignment with the *acquis communautaire*.

The above-described examples are at the same time legitimate and allowed to the extent to which they are compatible with the provisions of the Treaty on European Union and

provisions of the Postal Directive (with amendments) and procedures regulating competition and free entrepreneurship and to the extent to which they are not, or do not represent, "remonopolization" of the postal services market at the national level and at the level of the EU.

References

- [1] Postal Services Act (OG No. 144/12 and 153/13),
- [2] Civil Procedure Act (OG No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 152/08, 148/11, 25/13 and 89/14),
- [3] Ordinance on service in criminal proceedings (OG No. 58/12)
- [4] Enforcement Act (OG NO. 112/12 and 93/14),
- [5] Notary Public Act (OG No. 78/93, 29/94, 162/98, 16/07 and 75/09)
- [6] Misdemeanour Act (OG No. 107/07, 39/13, 157/13)
- [7] General Administrative Procedure Act (OG No. 47/09)
- [8] Postal Notice, ([http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998Y0206\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31998Y0206(01))), 01.10.2014.
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- [10] Regulation (EZ) No. 1393/2007 , (<http://eur-lex.europa.eu/legal-content/hr/TXT/PDF/?uri=CELEX:32007R1393&qid=1407749645470&from=DE> , 01/10/2014

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